

OVERVIEW of the Daf

1) Non-kosher birds (cont.)

The Gemara continues to try and determine whether the term צפור is not used in reference to non-kosher birds.

Regarding the last attempted proof the Gemara presents numerous interpretations of what is excluded with the term טהרות.

2) A kosher bird on non-kosher eggs

The Gemara questions why the mitzvah of shiluach hakein does not apply when a kosher bird is atop non-kosher eggs.

A teaching of R' Kahana is cited that teaches that the mitzvah does not apply if the item to be taken can only be given to the dogs.

The context of R' Kahana's teaching is identified.

The Baraisa's indication that the mitzvah of shiluach hakein applies even though the mother is a tereifah is unsuccessfully challenged.

The Baraisa's ruling that the mitzvah does not apply if the chicks are tereifim is unsuccessfully challenged.

R' Hoshaya asks a question related to the exemption when the chicks are tereifim but the inquiry is left unresolved.

3) Shiluach hakein

R' Yirmiyah asks a series of questions regarding the parameters of the mitzvah of shiluach hakein and the questions are left unresolved.

R' Zeira asks two questions as to whether the mitzvah applies when bird and eggs are from different species.

Abaye attempts to resolve this question but the matter is left unresolved.

4) Male partridge

R' Avahu explains the rationale behind R' Eliezer's position that one must send away a male partridge.

R' Elazar limits the scope of the dispute between R' Eliezer and Chachamim.

The necessity for this qualification is explained.

R' Elazar adds another limitation to the scope of this dispute.

The necessity for this qualification is explained.

A Baraisa is cited that supports R' Elazar's last statement.

5) **MISHNAH:** Additional prerequisites for the mitzvah of shiluach hakein to apply are discussed.

6) Wings touching the chicks

A Baraisa cites the source that the mother's wings must make contact with her young.

The exposition is explained.

R' Yehudah in the name of Rav provides the parameters for a bird that is sitting on two branches above the nest.

This ruling is unsuccessfully challenged from a Baraisa.

Support for this alternative reading of the Baraisa is suggested but rejected.

According to a second version the Gemara attempted to cite proof for this ruling from the Baraisa. ■

Distinctive INSIGHT

A bird hovering over a nest other than its own

בעי רבי זירא יונה על ביצי תסיל מהו? תסיל על ביצי יונה מהו?

The Gemara presents several questions regarding complications within the mitzvah of sending away a mother bird which is hovering above her nest.

R' Zeira presents a question. If a dove is hovering over the nest of a tasil, or if a tasil is hovering over the nest of a dove, what is the halacha? Rashi points out that the tasil is a kosher bird which is similar to a dove (see 62a). Abaye attempts to resolve R' Zeira's question from our Mishnah where we learned that if a kosher bird is hovering over a nest of a non-kosher bird, or vice-versa, the mitzvah of sending away the mother bird does not apply. This implies that if one type of kosher bird is hovering over the nest of a different kosher bird, the mitzvah does apply. The Gemara rejects Abaye's proof. Perhaps the earlier statement that the mitzvah applies where one kosher bird is hovering over the nest of another kosher bird is only said regarding a partridge bird, whose nature is to care for the eggs and the nest of a dove. This certainly can be considered "the mother is hovering over the nest of her chicks," as the partridge behaves just as would a true mother bird. The question of R' Zeira was regarding other kosher birds which do not naturally act in this manner.

Ra"n explains that the question of R' Zeira is not only regarding the dove and tasil, but it would be in regard to any two different birds where the one hovering is not necessarily known to remain with this nest, but it is found there now. Tif'eres Yaakov also notes that this seems to be the view of Rambam (Hilchos Shechita 13:11), where he writes, "If the bird was squatting over a nest which was not its own [type], if the bird and the nest are of the kosher type, the mitzvah of sending the mother away applies." Rambam does not limit this case to just that of a dove and tasil, but to all combinations of kosher types. However, Tif'eres Yaakov explains that perhaps the question of R' Zeira might be only regarding a dove and tasil, and because of their similarity it is common for these birds to exchange their roles and sit on each other's nests. But it is rare to find birds of other combinations of kosher types to sit on each other's nests, and the mitzvah certainly does not apply. This is perhaps the reason the Gemara provides the example of a dove and tasil, and Rambam did not feel it necessary to detail that which was obvious.

Toras Chaim and Minchas Chinuch (Mitzvah 545:#6) note that the Gemara does not ask about a case of a dove hovering over a different dove's nest, other than its own. This indicates that this mitzvah certainly applies in this case. This is also indicated in the wording of Rambam (ibid.), where the only case excepted from the mitzvah is where a kosher bird is on a nest of a non-kosher bird. However, had it been on a nest of one of its kind it would be included in the mitzvah. ■

HALACHAH Highlight

Intentionally nullifying a prohibited substance

אי לשילוח לא אמרה תורה שלח לתקלה

If it is to send it away, but the Torah would not say to send it away to become a stumbling block

Shach¹ notes that there are a number of Rishonim who maintain that Biblically one could nullify something prohibited in a permitted substance (מבטלים איסור לכתחלה). Noda B'yehudah² observes that the impetus for these Rishonim is to resolve a difficulty that emerges from the Gemara's earlier discussion (98b) concerning the cooking of the nazir's ram. The Halacha is that the nazir's ram is to be cooked and a kohen is given the foreleg and it is prohibited for the nazir to eat the foreleg that is given to the kohen. Even though the nazir may not eat the foreleg the Torah instructs that the entire ram should be cooked at once. Inevitably some of the taste from the foreleg will enter the rest of the ram but since the amount of taste that will be transferred is minimal it is nullified. This illustrates that the Torah allows the nullification of prohibited taste even l'chatchila.

Noda B'yehudah asserts that this position is limited to cases similar to the nazir's ram. In the case of the nazir's ram it is only the taste (טעם) of the foreleg that is nullified in the rest of the ram but there is no nullification of any prohibited substance (יבש ביבש). There is no precedent to maintain that the Torah allows one to take a prohibited substance and mix it into permitted food to intentionally nullify that prohibited

REVIEW and Remember

1. What halachos are derived from the term חיות?
2. When is the reason the mitzvah of shiluach hakein does not apply when a kosher bird is on non-kosher eggs?
3. What is the rationale behind R' Eliezer's position concerning a male partridge?
4. Is there a mitzvah of shiluach hakein if the mother is flying above the nest?

item. Proof to this can be derived from our Gemara. The Gemara states that one may not use a bird from a subverted city for the purification process of a metzorah. The reason is that the bird must be sent away and there is no way the Torah would have someone send away a bird that is prohibited for benefit if it was possible that someone would unknowingly catch the bird and derive benefit from it. If it is permitted in all circumstances to nullify something that is prohibited why can't one release the bird taken from the subverted city and release it into the wild so that it should be nullified in the world's population of birds? It must be that it is only prohibited taste that one may nullify intentionally but one may not intentionally nullify a prohibited substance. ■

1. ש"ך יו"ד סי' צ"ט סק"ז.
2. שו"ת נודע ביהודה מהדו"ת יו"ד סי' מ"ה. ■

STORIES Off the Daf

Blessing the Mitzvah

אין שם רק אפרוח אחד או ביצה אחת חייב לשלח

When someone asked the Korban Nesanel, zt"l, whether he should make a brochah when doing shiluach hakein, he replied that he should not. "The reason why is obvious: maybe the egg or eggs are inedible. As we find in Chullin 140 there is no mitzvah to do shiluach hakein on such an egg. It follows that we cannot make a brochah on this mitzvah."¹

But the Aruch HaShulchan, zt"l, raises a powerful question on this point of view. "How can one say that we are for-

bidden to make a brochah because the egg might be spoiled? Isn't the established halachah that we rely on a chazakah? Most foraged eggs are just fine!

"According to this line of thought, we could not make a brochah on tefillin either. After all, sometimes tefillin are rendered unfit over time without our knowledge. According to his reasoning, we must check our tefillin every day before making a brochah! Clearly, his reasoning is incorrect."²

But the Chida, zt"l, argues against this conclusion. "Since whether one should make a brochah is a dispute of the rishonim, it is obvious that one should refrain from making a brochah..."

When discussing this mitzvah the Aruch HaShulchan actually mentions a

different point from the Chida in the name of the Arizal: "Although one is not halachically obligated to fulfill this mitzvah, the Arizal writes that it is still worthwhile to seek to fulfill it."³

The Vilna Gaon explains the metaphysical repercussions of this mitzvah, "When one sends away the mother bird and takes the eggs or chicks, he arouses a heavenly voice in favor of redeeming the Jewish people. When the angels question this seeming cruelty, the Shechinah replies, 'What about my children who have been banished for so long? Why is this cruelty ignored?'"⁴ ■

1. הובא דבריו בפתחי תשובה ביו"ד, סי' רצ"ב, ס"ק ב'
2. ערוך השלחן, סי' רצ"ב, ס"י
3. ברכי יוסף, סי' רצ"ב
4. גר"א בתיקוני זהר