

Chullin – Simanim

פרק יב – שילוח הקן

Daf 141 – דף קמא

1. The שילוח הקן of עשה is not ציפורי מצורע of עשה

Rava says the word "תשלח" teaches that one must send away the mother bird even if he needs it *מצוה* – *for the purpose of a mitzvah*, e.g., to purify a מצורע. The Gemara objects that a *passuk* would seem unnecessary, because the עשה of the מצורע procedure cannot override the לאו and violations of taking the mother bird from the nest (i.e., "לא תקח" and "תשלח")! Mar bar Rav Ashi ultimately answers that the case is שנטלה על מנת לשלח – *where he first took [the mother bird] intending to send it away*, so he no longer violates the לאו. Therefore, perhaps the עשה of מצורע would override the עשה of שילוח הקן. The Gemara objects: מאי אולמיה דהאי עשה מהאי עשה – *but what is the strength of this עשה (of מצורע) over that עשה (of שילוח)*, such that it should override it? It answers: we say גדול שלום – *peace between a man and his wife is great*, because Hashem's Name, which was written in *kedushah*, is erased to bring about marital harmony (in the case of a *sotah*). Therefore, perhaps purifying a מצורע, who is forbidden to his wife until completing his purification, would override the עשה of שילוח הקן.

2. *Machlokes* if הנוטל אם על הבנים receives *malkus*

The next Mishnah states: הנוטל אם על הבנים – *if one takes a mother bird while it is on its young*, Rebbe Yehudah says: משלח ואינו – *he receives malkus, and does not send the mother bird away*, but the Chochomim say: משלח ואינו – *he sends away the mother bird, and does not receive malkus*. They explain with a rule: כל מצות לא תעשה שיש – *any negative commandment which has in it a positive commandment* to correct his transgression does not obligate *malkus*. Rebbe bar Mammal inquired about Rebbe Yehudah's reasoning: does he hold לאו שניתק לעשה – *one always receives malkus for a לאו which is rectified by an עשה*, disagreeing with the Mishnah's rule? Or, does he agree that one does not receive *malkus* for a לאו שניתק לעשה, but says that this *mitzvah* is not a לאו הניתק לעשה, because he holds שלח מעיקרא משמע – *the commandment to send away the mother bird implies to do so in the beginning only*, not to correct a transgression of taking the mother bird from the nest? The latter explanation is eventually proven correct.

3. שילוח הקן in a nest in private property

A Baraisa states that doves of a dovecote or a loft are subject to שילוח הקן, שילוח, *but they are prohibited to others because of stealing, based on a Rabbinical enactment to promote harmony*. The Gemara objects: according to Rebbe Yose bar Chanina's ruling, that חצר של אדם קונה לו שלא מדעתו – *a person's chatzeir acquires for him without his knowledge*, the eggs should be automatically acquired, and be exempt from שילוח הקן. Rav[a] answers: ביצה עם יציאת רובה הוא דאחייב בשלוח – *an egg becomes obligated in שילוח when its majority leaves the mother's body, but is not acquired (by his חצר) until it falls into his courtyard*. Since he did not yet acquire the egg, it is not considered מזומן. Alternatively, the Gemara explains that since Rav says it is forbidden to acquire the eggs while the mother is roosting on them, they are subject to שילוח even after falling into his *chatzeir*, because כל היכא דאיהו לא מצי זבי – *wherever he cannot acquire the eggs because of a prohibition*, his *chatzeir* also does not acquire for him. [The Rabbinic prohibition against stealing is explained according to each interpretation.]

Siman – First Prize Winner

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3 things to remember

1. The **עשה** of **ציפורי מצורע** is not **שילוח הקן** the **עשה** of **דוחה**
2. **Machlokes** if **הנוטל אם על הבנים** receives **malkus**
3. **שילוח הקן** in a nest in **private property**

