



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Sanctified nest

The Gemora asks what case the Mishna is referring to when it says that a sanctified nest is not obligated in *shiluach haken* – *sending away the mother bird*. If he consecrated a nest in his house, it wouldn't be obligated anyway, as it is prepared, while the verse only obligates one who happens upon a nest. If he consecrated a nest in the field, it is not sanctified, as the verse refers to one who consecrates "his house," teaching that one can only consecrate something that he owns, like his house. If he picked the chicks up to acquire them, and then placed them down, the nest isn't obligated anyway, as the braisa says that if one took chicks and returned them, and then the mother returned, he isn't obligated. If he took the mother, then consecrated it, he would still be obligated, as the obligation of sending away the mother was in effect before the consecration.

The Gemora proves this from a braisa, in which Rabbi Yochanan ben Yosef says that if one slaughtered a beast, and then consecrated it, he must cover the blood, as the obligation of covering the blood was in effect before the consecration. Rav says the Mishna is a case of one who consecrated the birds of his nest for use as a sacrifice, and they then ran away to the field. Since they are in the field, they would be obligated, but since he already consecrated them while they were still in his possession, they are sanctified and therefore exempt.

Shmuel says the case is where he consecrated them for the maintenance fund of the Bais Hamikdash, and they then ran away to the field.

The Gemora explains that Shmuel offered his case, as it is more general than Rav's case, including any kind of bird.

Rav didn't agree with Shmuel's case, as consecration for the maintenance fund is simply a consecration of value, and not of the birds themselves. Therefore, once they ran away, the consecration is revoked, as they aren't accessible. However, birds that were consecrated as sacrifices are themselves sanctified, and remain such even after running away.

Shmuel disagrees, saying that any consecrated item retains its status, even when inaccessible, as the verse says that Hashem, to whom it is consecrated, owns the world and all its contents.

The Gemora says that Rabbi Yochanan and Raish Lakish had the same debate, with Rabbi Yochanan agreeing with Shmuel and Raish Lakish agreeing with Rav.

How responsible?

The Gemora says that their positions seem inconsistent with their positions on the case of one who consecrated money, which was then stolen or lost.

Rabbi Yochanan says that he is still responsible to deliver the money to the maintenance fund.

Raish Lakish says that he is not, citing the verse that Hashem owns the world and its contents.

The Gemora says that we can explain that Raish Lakish initially thought that consecration is revoked when an item is lost, but he then changed his position when Rabbi Yochanan cited the verse, but how can we explain the change in Rabbi Yochanan's position?

The Gemora answers that the case of consecrating money is one where the person accepted on *himself* the obligation to donate money to the maintenance fund, obligating him even after it has been lost or stolen. The case of the nest is one where he pledged to donate this specific nest, and therefore it retains its sanctity, but he has no personal obligation.

If the case of consecrating money is a personal obligation, the Gemora asks how Raish Lakish can say he is not obligated, as a personal obligation is not removed when something is lost or stolen.

The Gemora proves this from the Mishna which states that if one who pledged to bring a sacrifice, then allocated an animal for the sacrifice, and it was lost or stolen, he must replace it, as he is personally obligated.

The Gemora answers that Raish Lakish would say that this is true only in the case of an animal for a sacrifice, which must still be sacrificed, and therefore cannot be considered to fulfill his personal obligation. However, if he pledged to donate money, the money belongs to the maintenance fund wherever it is, and he therefore has fulfilled his obligation.

The Gemora challenges this statement from a similar Mishna about personal obligation to donate to the maintenance fund. The Mishna says that if one pledged a personal obligation to donate a specific animal as a sacrifice, or a house to the maintenance fund, and then the animal died or the house fell, he must replace its value.

Raish Lakish answers that this Mishna only teaches a personal obligation if the item pledged is gone (dead or fallen), but not if the item is just inaccessible.

Pledging a value

Rav Hamnuna says that all agree that if one accepted a personal obligation to donate someone’s value to the maintenance fund, he is not obligated if the money was lost or stolen. Since the only way to express such an obligation is to state a personal obligation, his statement does not necessarily imply that the obligation remains directly on him.

Rav Hamnuna explains that just saying “my value” or “someone’s value” does not express any obligation at all, so he therefore must add “is my pledge.”

Rava challenges this, as he could say “I am in my/someone’s value”, which would imply that he must bring the value, without explicitly stating that the obligation is personally on him.

Furthermore, the Gemora states a braisa in which Rabbi Nasan says that the extra verse which states that “he will give the value” teaches that although money used to redeem

consecrated items or ma’aser which was lost or stolen need not be replaced, one is responsible for the money pledged for a value, until that money reaches the maintenance fund. The Gemora therefore revises Rav Hamnuna statement to be that all agree in the case of money pledged for someone’s value that one is responsible until the money reaches the maintenance fund, due to the verse that Rav Nasan cited.

Exclusions to shiluach haken

The Mishna stated that the obligation to cover the blood is more extensive than the obligation of shiluach haken, as it applies to birds and beasts, prepared or not, while shiluach haken only applies to birds that one chances upon. The Gemora cites a braisa which explains what each part of the verses about shiluach haken teaches:

<i>Ki yikare – when it will happen</i>	One need not look for it, as it only applies if one happens on it
<i>Kan tzipor – the nest of a bird</i>	It only applies to kosher birds, the denotation of tzipor – bird
<i>Lfanecha – before you</i>	In the private domain
<i>Baderech – on the road</i>	In the public domain
<i>B’chol etz – in any tree</i>	In a tree
<i>O al ha’arets – or on the ground</i>	In pits, ditches, and caves

The braisa says that once we will learn any location for the nest, the verse which refers to finding it on the road simply teaches that only if the nest is not in your control (like the road) are you obligated to send the mother away. Therefore, if doves settled in a dovecote or an upper level of a house, or geese or chickens settled in an orchard, they are out of human control, and one must send away the mother. However, nests of birds who settled inside a house, or hardis doves, which are used to dwelling among people, are not obligated.

What's a path?

The Gemora challenges the braisa's statement that *derech* teaches that a nest is not obligated if under your control. In addition, once we learn any location, why does the verse have to state *Ifanecha – before you*.

The Gemora answers that *Ifanecha* teaches that even if they were in your domain, if they have now left, you are obligated to send the mother away, and the word *baderech* teaches that if one found a nest in the sea, he is obligated to send the mother away, as the verse states that Hashem places in the sea a *derech – path*.

The Gemora asks why one should not also be obligated to send away the mother from a nest in the sky, as the verse says that the *derech* of the eagle is in the sky.

The Gemora answers that the sky is called the *derech* of the eagle, but not a plain *derech*, as opposed to the sea.

The Gemora says that the people of Papona asked Rav Masna the following questions:

1. Is one obligated to send away the mother from a nest on top of someone's head? He answered that one is, as the verse refers to soil on a person's head as *adama – land*.
2. Where is there a hint to Moshe in the Torah? He answered that the verse before the flood states that Hashem will not endlessly debate what to do with mankind, *beshegam – inasmuch* as he is flesh, and his days will be 120 years. The numerical value for the word *beshegam* is 345, the same as Moshe, hinting that there will be a man who will live for 120 years.
3. Where is there a hint to Haman in the Torah? He answered that the verse of Hashem inquiring whether Adam ate from the tree of knowledge states *hamin ha'etz – if from the tree* that I proscribed for you have you eaten? The word *hamin* can be read as *haman*, referring to the Haman, who was hung on a tree.
4. Where is there a hint to Esther in the Torah? He answered that Hashem says that in the exile, I will

haster astir – surely hide my countenance, hinting to the persecutions in the time of Esther.

5. Where is there a hint to Mordechai in the Torah? He answered that the first spice listed the incense refers to *mor deror*, which is translated by Onkelos as *maira dachya*, which can be concatenated to sound like Mordechai, hinting to his high position as a leader of the Jews.

Hardis doves

The Gemora discusses the *hardis* doves mentioned in the braisa. Rabbi Chiya and Rabbi Shimon each had a slightly different version of the braisa. One version is "hardis" doves, referring to Hordos, who raised them, while one is "hadris" doves, referring to their locale. Rav Kahana says that he saw Hordos's doves, which were lined up in 16 lines, each a mil wide, and each said *kiri kiri – my master, my master*, paying homage to Hordos. One was not saying anything, and when its neighbor chided it, it responded that it would be more appropriate to say *biri – slave*, as Hordos was originally a slave. Hordos's servants then took this dove and slaughtered it.

Rav Ashi says that Rabbi Chanina told him that this story was just a story, as birds don't talk.

The Gemora challenges this, as Rav Kahana related the story, and instead says that Rabbi Chanina told him that the birds spoke using sorcery.

Only kosher birds

The Mishna said that one is not obligated to send away the mother from a nest of non-kosher birds.

Rabbi Yitzchak says that while the word *of – bird* include both kosher and non-kosher birds, the word *tzipor – bird* used in the verse of *shiluach haken* only refers to kosher birds.

The Gemora challenges this from many verses:

1. The verse forbidding one from replicating the form of a creature for worship refers to the form of *kol tzipor kanaf – any bird of wing*. As one may not replicate the form of any bird, even non-kosher, this implies that the word *tzipor* includes all. The Gemora deflects this, saying that the word *tzipor* only

includes kosher birds, while the word *kanaf* includes all non-kosher birds and grasshoppers.

2. The verse listing the creatures that praise Hashem lists *tzipor kanaf* – *birds of wing*. Since all birds praise Hashem, this implies that *tzipor* includes all. The Gemora deflects this, again saying that the word *kanaf* includes non-kosher birds and grasshoppers.
3. The verse listing the birds that came to Noach's ark refers to *kol tzipor kol kanaf* – *all birds, all wings*, implying that *tzipor* includes all. The Gemora gives the same answer as above.
4. Hashem tells Yechezkel to tell *tzipor kol kanaf* – *birds of all wing*, implying that *tzipor* includes all. The Gemora gives the same answer as above.

The verse describing Nevuchadnezzar's dream states that in the tree's branches live *tziporai shemaya* – *the birds of the sky*, implying that *tzipor* includes all, as all birds live in tree branches. The Gemora answers that non-kosher birds are included in the more general term *birds of the sky* but not in the term *tzipor* itself.

INSIGHTS TO THE DAF

When does *shiluach haken* apply?

The mitzvah of *shiluach haken* (to chase away the mother bird and then take the eggs or chicks) is one of the only mitzvos about which there are such polar opinions that some say it is a mitzvah that comes about only by means of a transgression! But some says that it is like any other mitzvah that must be observed. This article will explain these opinions and more.

The Torah commands: "If you come across the nest of a bird...**do not take** the mother with the offspring; **chase away** the mother and take the offspring for yourself" (Devarim 22:6-7). We thus have a negative mitzvah – "do not take" – and a positive mitzvah – "chase away". All agree that one who takes the mother with the offspring transgresses the prohibition of "do not take the mother with the offspring"

but he must chase away the mother. From this point on opinions differ, as follows.

Should every mother bird be chased away or only if one wants to take the chicks? The author of *Chavos Yair* zt"l and the Chasam Sofer are among the Acharonim who participated in the complex halachic discussion about the mitzvah of *shiluach haken*. The main question is if every person who sees a nest must chase away the mother bird or perhaps only if one wants the chicks or the eggs, he has a mitzvah to chase away the mother and observe the mitzvah of *shiluach haken*.

The *Chavos Yair* and the Chasam Sofer each present many proofs to his opinion, one way or the other, many of them from our chapter. *Chavos Yair* says that our Gemara (139b) interprets from a special verse that a person is not obliged to search out nests to observe the mitzvah. We must conclude that a person who finds a nest must chase away the mother, such that we need a special concession that we are not required to search for nests.

The Chasam Sofer contends that it could be that this fine inquiry is in fact a difference of opinions among the Tanaim! In his opinion the Tanaim disagreed about these two aspects in the mishnah (141a, as explained by Ravina 141b): According to Rabbi Yehudah, one must chase away the mother as a first obligation in any situation. According to the Chachamim, however, *shiluach haken* is an advisory mitzvah to save us from sin. Just as if someone wants to eat an animal, he must slaughter it but he's certainly not commanded as a first obligation to slaughter – if he wants, he should slaughter and eat and if not, he won't slaughter and won't eat – in the same way, he who wants to take the chicks or the eggs must not do so without chasing away the mother. If he wants, he'll chase away the mother bird and take the chicks but if he doesn't want, he won't chase her away and won't take the chicks (see his explanation).



The Chasam Sofer's approach is supported by the Rashba (Responsa, I, 18; III, 283), who wrote that the aim of the positive mitzvah to chase away the mother is to prevent the prohibition not to take the mother with the offspring – a negative mitzvah connected to a positive one (*lav hanitak la'aseh*). We thus see that there's no mitzvah to chase away the mother aside from if one wants her chicks.

The Zohar: The pigeons' cooing arouses Hashem's mercy on Israel: If we examine the reasons for the mitzvah stated by our ancient *chachamim*, writes the Chasam Sofer, we notice an essential difference between them. The Zohar states that when a pigeon is chased away from its nest it coos and whines for her offspring and arouses Hashem's mercy on His children in exile.

The Rishonim: Chasing away the mother is meant to instill mercy in us: On the other hand, Rambam (*Moreh Nevuchim*, III, 48), Ramban (on the Torah) and *Sefer HaChinuch* (mitzvah 545) state that this mitzvah is meant to instill mercy in us, that we shouldn't be cruel to uproot the mother with her offspring.

We can understand the Zohar's reason also according to those who hold that it is an obligation to chase away any mother bird from its nest as the aim is to arouse Hashem's mercy on us. However, their opinion does not fit that of the Rishonim, that the mitzvah is meant to instill mercy in us, since if a person doesn't need the pigeon's chicks, what mercy will be instilled in him if he merely chases away the mother? However, if the mitzvah concerns someone who wants to take the pigeon's chicks, we well understand that Hashem wanted to instill mercy in us, that before we take the chicks we should chase away the mother so that she won't see the action.

The Chasam Sofer concludes his long discussion with proof from our Gemara that it disagreed with the Zohar, and that if the "revealed Torah" disagrees with the "hidden Torah", we follow the revealed Torah because "we have no affair with

the hidden" and "that which is revealed is for us and our children" (Devarim 29:28). *Mishnas Chachamim* writes (cited in *Pischei Teshuvah*, Y.D. 292:1) that in his opinion though someone who sees a nest does not have an obligation to chase away the mother, someone who doesn't observe the mitzvah is punished "at a time of (Heavenly) anger" (see *ibid* and *'Aroch HaShulchan*, *ibid*, *se'if* 1 and 4, and *Chazon Ish*, Y.D. 175, S.K. 2). Indeed, we know about great Torah leaders who were meticulous to observe this mitzvah.

Should one grasp the chicks to observe the mitzvah? Till now we have treated the topic of chasing away the mother. We still must clarify, if the mitzvah does apply to anyone who sees a nest, how should he observe it. Does it suffice to chase away the pigeon or perhaps one must take the chicks, as the verse states: "and take the offspring for yourself"?

DAILY MASHAL

Shiluach haken is a segulah to have children: The *chachamim* of Lublin were in doubt about this question and presented it to the Chacham Tzvi, who replied (83) that there's no need to take the chicks. The Chasam Sofer supports his statement with the famous *segulah* mentioned by *Sefer HaChinuch* (*ibid*), that observing the mitzvah of *shiluach haken* is a *segulah* to have children, as we are told: "and the offspring you will take for yourself". We thus see that the verse does not command us to take the chicks but indicates the merits of those who observe the mitzvah. But *Birkei Yosef* wrote (Y.D. 292, and so wrote *'Aroch HaShulchan*, *ibid*; see *ibid*) that according to Kabbalah one should take the eggs. We mention for your interest that some say in the name of Rabbi Pinchas of Koritz zt"l that reading the verses of the mitzvah is also a *segulah* for the same (*Kan Tzipor*, 188).