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Digest
Mishna Berura
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סימן שט"ז סעיף י"ב

Halacha Highlight

Grasping an animal by the neck

Shulchan Aruch Siman 316 Seif 12 (a)
אסור לתפסם אפילו בחצר
It is prohibited to grasp even in the yard

Shulchan Aruch rules that it is permitted to trap animals that are in one's property. Mishnah Berurah (ס"ק נ"ב) explains that Shulchan Aruch includes in this ruling any animal that became domesticated by being raised in one's home. He then adds that this ruling applies when the animal has not rebelled, but if the animal rebelled it is prohibited to grasp it even if it is in one's yard if the yard is large enough that if the animal was not domesticated he would not be able to trap it in one pursuit. In other words, since the animal was raised amongst people, a trap is unnecessary to capture it since it will return at night on its own. Nevertheless, since the animal is behaving rebelliously and is difficult to trap, it appears as though one is trapping the animal and the act is prohibited, at least Rabbinically (מ"ב ס"ק נ"ו).

Biur Halacha (ד"ה לתפסם) notes that when Shulchan Aruch declares that one may not grasp a rebellious animal he does not mean that it is prohibited to grasp the animal because it rebelled. As mentioned above (סימן ש"ח סע' מ'), it is prohibited to grasp any animal since animals are regarded as *muktzah*. Shulchan Aruch's intent is that it is prohibited to trap it and direct it to a narrow place so that it would be easy to trap. Alternatively, Shulchan Aruch refers to assisting the animal by grasping its neck or side but without lifting the animal off the ground which Shulchan Aruch above (סי' ש"ח סע' מ') permitted. What is interesting is that although it is accurate that Shulchan Aruch permitted grasping an animal by its neck to assist it to walk to a particular location, Mishnah Berurah there (ס"ק קנ"א) adding an important qualification. He ruled that it is permitted only in a circumstance of *tza'ar ba'alei chaim* – where the animal would suffer if not moved but if the animal is not in potential harm one may not grasp an animal by the neck to assist it to walk.

Overview

Siman 316 Seif 12 (a):

An undomesticated animal and bird that are in one's possession may be trapped. This assumes that it is not rebelling but if it is rebelling it is prohibited to grasp it even in one's yard if the yard is large enough that if it had not been raised amongst people it would be necessary to use a trap to capture it.

- Since they are accustomed to living in a house and return at night it is easy to grasp them, therefore, even when they are out of the house it is considered as though they are already trapped and thus the prohibition does not apply. (M.B. 53)
- One may not grasp the animal by hand since it is *muktzah*, instead one may pursue them until they enter a room and then close the door. (M.B. 54)
- Since they rebelled and are difficult to capture it appears as though one is trapping them and it is prohibited, at least Rabbinically. (M.B. 56)