The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Shabbos, May 28 2022 ■ כ"ז אייר, תשפ"ב
סימן תצ"ז סעיף ח'-ט'

Overview

Siman 497 Seif 8:

If a deer or hart that took residence in one's orchard and gave birth to foals that are still small enough that they do not have to be trapped, the foals are permitted to be captured without prior designation. This applies only in an orchard near the city, meaning within seventy amos so that one's mind is on them. The mother may not be captured even if one had in mind to capture her on Yom Tov since trapping is required to capture her.

- The orchard must be enclosed. (M.B. 21)
- The assumption is that one had these foals in mind for whenever they would be needed. (M.B. 22)
- Shulchan Aruch means that they are within 70 amos and 4 tefachim. (M.B. 23)
- If the orchard is not nearby it is necessary to designate them for use on Yom Tov. (M.B. 24)

Siman 497 Seif 9:

Pigeons in a dovecote or attic or birds that nested in tefichim (meaning, earthenware utensils built in walls for birds to nest) **may not be trapped on Yom Tov. Therefore, designation will not be effective. This ruling applies to adult birds but young birds that do not fly may be captured on Yom Tov but require designation before Yom Tov.**

- Shulchan Aruch refers to where they fly around during the day and return at night to sleep. (M.B. 27)
- These birds are not similar to the birds that live and eat in one's home that are considered to already be captured. (M.B. 28)
- They do not fly but they hop around. The same halacha applies if they fly but it is easy to capture them. (M.B. 29)

Stories to Share

A Cruel Pastime

ש"ע, סי' תצ"ז, ח': "כיון שמחוסרת צידה..."

Today's amud continues discussing the halachos of hunting.

A certain wealthy man wondered if he was permitted to hunt in his forests. They were resplendent with game and various wild animals that would ensure that he would have a pleasant time. He wondered if this was permitted to a Jew. He had heard it was forbidden, either because of צער בעלי חיים or בל תשחית.

When this man put his question to the Nodah B'Yehudah, he was stunned by the gadol's sharp reply. "I honestly do not even understand this question. In Chumash we don't find anyone righteous who hunted. The only examples of hunting are Nimrod and Eisav, since this is not the way of the children of Avraham, Yitzchak and Yaakov. The Rama even brings the מהרי"ו who writes that one should not say תבלה ותתחדש for something made of an animal's skin or other body parts because this shows a marked lack of sensitivity, since an animal was killed to fashion the garment. Although the Rama writes that this reason is weak, that is only because it is not necessary to kill an animal to fashion a garment. Perhaps the animal died on its own or the garment was made from furs already cured and prepared to fashion the garment. Nevertheless, the Ramah concludes that most people are careful in this regard. How can a Jew kill animals for no reason at all—just to squander what he thinks is an overabundance of spare time?!"

The Nodah B'Yehudah concluded, "How can one go into the wild and hunt down animals that are not a danger to humans for the pleasure of killing these hapless beasts! Although animals were given to us to be used for our needs, this does not include hunting unless one is required to do this to make a living. If one's main thought is not his livelihood, this practice is nothing less than cruelty!"

שו"ת נו"ב, מ"ת, ח' יו"ד, סי' י'

Halacha Highlight

Designating small birds for capture

Shulchan Aruch Siman 497 Seif 9

אבל זמון צריכים

But designation is necessary

Shulchan Aruch (סעי' ט') discusses pigeons that live in a dovecote or attic and other birds that live in nests built in earthenware extensions that are affixed to a wall. His ruling is that it is prohibited to capture them on Yom Tov and for that reason it is not even effective to designate them before Yom Tov. The reason these birds may not be captured on Yom Tov is that they are not fed in the owner's home. As such they are not accustomed to people and when a person reaches to grab hold of them they will flee (מ"ב ס"ק כ"ח). Shulchan Aruch then notes that this restrictive ruling is limited to adult birds that fly but baby birds that do not yet fly may be captured on Yom Tov but it is necessary to designate which bird one will take before Yom Tov. Mishnah Berurah (ס"ק כ"ט) mentions that even if they can fly a little bit they are considered babies, as long as one can grasp them with one reach.

Mishnah Berurah (סק"ל) points out a contradiction between two halachos. In seif 8 Shulchan Aruch ruled that foals that are too young to escape may be captured on Yom Tov and it is not even necessary to designate them before Yom Tov. In our seif Shulchan Aruch rules that young birds may be captured but it is necessary to designate them before Yom Tov. What is the basis for the distinction? He answers that since the birds are capable of hopping they may hop a great distance from the nest, as opposed to the young foals that are not going to wander out of their enclosure. Sha'ar HaTzion (סק"נ) mentions that Bais Meir suggests a different distinction. The nature of the pigeons is that when they realize some of the birds that lived in their "home" are no longer present they may leave and not return. Since there is the possibility that taking some of the birds will cause the others to flee, one is more likely to exclude the birds from his mind, therefore, designation is necessary. Since other animals do not react the same way when some of the group is missing, designation is not necessary.

בס"ד
Mishna Berura DIGESTS
מרכז תורה וחסד דשיקאגו
CHICAGO CENTER for Torah & Chesed
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Monday, May 29 2017 ■ ד' סיון, תשע"ז
סימן תצ"ז סעיף ח'-ט'

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