The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Sun, May 29 2022 ■ כ"ח אייר, תשפ"ב
סימן תצ"ז סעיף י'-י"ג

Halacha Highlight

Davar she'yesh lo matirin

Shulchan Aruch Siman 497 Seif 12
זמן שנים ומצא שלשה
If he designated two and discovered three

Shulchan Aruch (סעי' י"ב) discusses what happens when someone designated birds before Yom Tov only to discover on Yom Tov that something changed. For example, if a person designated two birds before Yom Tov and when he went to take the birds on Yom Tov there were three birds present. In such a case the three birds are prohibited since there is no doubt that there is a bird that was not designated within this group (מ"ב ס"ק ל"ט). Mishnah Berurah (ס"ק ל"ו) wonders why all three birds are prohibited in this case. Seemingly two of the birds are the ones that he designated before Yom Tov and a third bird joined since then. The non-designated bird should be nullified by the other two birds and it should be permitted to take at least two of the birds. He gives two answers to this question. His first answer is that living creatures are important and as such do not become nullified in a majority. His second answer is that since the birds will be permitted after Yom Tov it is considered to be a case of davar she'yesh lo matirin – a mixture with a prohibited item that will become permitted at some point in the future - and as such the rules of nullification do not apply.

Rav Shlomo Zalman Auerbach (דיני יום טוב סי' י"ז סק"ה) questions why the principle of davar she'yesh lo matirin applies in this case. Shulchan Aruch (סי' ש"כ סע' ב') rules that when grapes are in a barrel of wine exuding grape juice on Shabbos the grape juice is permitted, even though juice that exudes from grapes on Shabbos is prohibited, and the principle of davar she'yesh lo matirin does not apply. The reason is that the grapes were already intermingled before the prohibited substance came into existence. In our case as well if the non-designated bird joined the other two before Yom Tov when it would become prohibited it should be nullified. The difference between the two cases, he explains, is that the grapes in the grape juice involve liquid mixtures as opposed to the birds that involve solids. The principle established regarding the grape juice is limited to liquid mixtures as opposed to solid mixtures.

When this question reached Rav Shlomo Zalman Auerbach, he permitted their use. "There is no problem with using Pesach dishes on Shabbos or Yom Tov during the year, even though one did not think of this before and these were put away for Pesach. מקצה מחמת חסרון כיס is only relevant for something with which one does a forbidden labor. Something which is used for permitted purposes is irrelevant.

שלחן שלמה, הל' שבת, ח"ב, ע' א'

Overview

Siman 497 Seif 10:

How does one designate? He must declare, "I will take these tomorrow," and it is unnecessary to move them. If, however, one says, "I will take one from here tomorrow," it is not sufficient.

- Even if one stands at a distance and visually chooses a bird or animal it is effective but one has to clearly identify the bird or animal that he will choose the following day. (M.B. 31)
- Chazal were concerned that when the time comes to choose a bird or animal he will pick one up and decide it is too small and will place it down to choose another and it will turn out that he violated the prohibition of muktzah. In contrast, when he specifically designates a bird or animal were are not concerned that he will decide the one he chose was too small since he had time erev Yom Tov to choose the one of his liking. (M.B. 32)

Siman 497 Seif 11:

If one designated the entire dovecote and one only needs a pair of birds the designation is ineffective. If one may need all the birds in the dovecote he may designate them all and on Yom Tov take what he needs.

- The same halacha is true if one designated two birds and requires only one. (M.B. 33)
- Since he designated more than he would need it is likely that on Yom Tov he will search for the fattest one. (M.B. 34)
- In this case one may even select the one he prefers since they are all designated. (M.B. 35)

Siman 497 Seif 12:

If one designated two birds and then discovered three or if he designated black and white birds in separate compartments separated by a wall and discovered the black ones where the white ones were and the white ones where the black ones were, they are prohibited unless he recognizes the birds that he designated.

- Since it is clear that there is a bird in the group that was not designated they are all prohibited since living creatures cannot be nullified. Later authorities explain that this applies when the birds were either tied or untied and the additional bird was also either tied or untied. If one designated two birds that were tied together and then found a third bird not tied to the two birds the two birds remain permitted. (M.B. 36)
- Shulchan Aruch refers to where there was another dovecote within fifty amos because if that were not the case we would assume that the birds just switched sides. (M.B. 39)

Siman 497 Seif 13:

If one designated three birds and discovered two they are permitted (even if they were tied together since birds will loosen themselves from the knot.)

- The same halacha applies if two birds were untied. Taz disagrees with this halacha and contends that whenever one finds the birds in a different circumstance than they were left one must assume these are different birds. Many later authorities agree with Rema's ruling. (M.B. 41)

Stories to Share

Yom Tov Finery

מ"ב, ס' תצ"ז, ס"ק ל"ד: "ואיכא חשש דטלטול מקצה..."

Today's amud discusses the halachos of muktzeh on Yom Tov.

One person was very careful to only use the very best for Shabbos and Yom Tov. He had a special set of dishes which he used for these special days that greatly enhanced his joy on Yom Tov. Obviously, he had a separate set of special dishes set aside for Pesach. He kept them in his storage room in a special closet, except on Pesach when he would take them out.

One Shavuos night, to everyone's dismay, a family member broke a few pieces of china. This man wished to make up his loss for the day meal, when he had many guests, but he did not know how. He obviously could not purchase new vessels.

But then he had a great idea: why not take from the vessels he had set aside for Pesach? He could replace them with new vessels after Yom Tov. But he wondered whether this might be problematic because of muktzeh. After all, he had certainly not prepared these valuable vessels for use before the chag. Perhaps they constituted מקצה מחמת חסרון כיס?