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Send the Mother Bird Away

The third *perek* discusses different prohibitions, which if violated, are punishable with lashes. One of the prohibitions that are debated is the prohibition of taking the mother bird when it is sitting on its eggs or young – *shliuch ha'ken*. R' Yehuda maintains that it would be punishable with lashes while the *Chachamim* disagree. The *Mishnah* continues by explaining that a negative commandment that is remedied or followed with a positive commandment – *lav ha'nitak le'aseh* - is not punishable with lashes. Since the *Torah* continues with the instruction to send the mother bird away, the *Chachamim* maintain that this qualifies as a *lav ha'nitak le'aseh*.

Rashi (*Pesachim* 84a) provides two reasons for the exemption. The first is that since the situation can be remedied, the person can be saved from punishment. The second is that this category of prohibition is not similar to the prohibition of *chasima* (muzzling), which is the source for lashes for negative prohibitions.

There is a debate however in the *Gemara*, between R' Yochanan and *Reish Lakish* about what qualifies fulfilling the *aseh* that detaches the *lav*. This is important since even in a case of a *lav ha'nitek le'aseh*, if the "*nitek le'aseh*" disappears, then the person can be liable to lashes. One opinion is that it is dependent on whether the *aseh* is or can be fulfilled (*kaimo ve'lo kaimo*). The other position is that it is dependent on whether the person has annulled the *aseh* (*bitlo ve'lo bitlo*). There are however two versions of the *Gemara* found in the *Rishonim* that thereby provide different understandings of these two positions.

Rashi understands that R' Yochanan takes the position of *bitlo ve'lo bitlo*, while *Reish Lakish* *kaimo ve'lo kaimo*. The *Gemara* explains that their debate is connected to another argument of theirs regarding whether a doubtful warning is

considered a warning. In other words even if the person having been warned performs the act, it is doubtful whether they will be punished. As we know in order for one to be liable to lashes they must be forewarned. *Rashi* explains that if the liability hinges on *bitlo*, the active removal of the possibility to perform the *aseh*, it is doubtful from the outset whether this will occur. Consequently, the warning prior to the action is doubtful since even if the person does not send the mother way, we are not sure if he will, e.g. slaughter it. Since R' Yochanan maintains that a doubtful warning still qualifies as a warning, he has no problem with taking the position of *bitlo*. *Reish Lakish* who maintains that a doubtful warning is not adequate, takes the position of *kaimo*.

The *Ramban* and *Ritva* however find *Rashi's* understanding difficult, since even if the exemption hinged on *kaimo* - whether the person fulfilled the *aseh* - that outcome is also doubtful.¹ They therefore explain the positions of R' Yochanan and *Reish Lakish* differently: R' Yochanan understand that it is dependant on *kaimo ve'lo kaimo*. As just explained even though whether or not he will be *kaimo* is doubtful, R' Yochanan is satisfied with a doubtful warning. *Reish Lakish* however holds that that is dependent on *bitlo ve'lo bitlo*. Since *bitlo* involves an act, a warning can be given at that specific time and if the *aseh* is annulled he is liable to lashes.²

The *Ritva* adds in the name of *Ramah* a slightly different answer. Since the *aseh* was written in the *Torah* with the *lav*, the *lav* is like the beginning of the prohibition and the *aseh* the end – they are one concept. If the person is warned when he takes the mother bird and then later slaughters it, it as if he was warned at that point.

Yisrael Yitzchak Bankier

¹ The *Tosfot* R' Akiva Eiger however explains that according to the position of *kaimo*, if *Beit Din* instructs him to fulfil the *aseh* and he does not do so immediately he can be liable to lashes. It is not considered a doubtful warning since an action must be performed to exempt himself.

² The *Tosfot* R' Akiva Eiger finds this difficult since a negative prohibition was not violated at that point, only a positive one (which is not liable to lashes).

Revision Questions

מכות ב' ח' ג' י"ג

- Would the *rotzeach* need to pay rent in the *ir miklat*? (ב' ח') (ג' ח')
- Explain the debate regarding the *rotzeach* once he returns home. (ב' ח')
- For which offences does one receive lashes relating to:
 - Forbidden relationships (12)? For which relationship does one receive two sets of lashes? (א' א')
 - The *Beit Ha'Mikdash* (8)? (ב' ג')
 - Fruit of *Eretz Yisrael* (4)? (ב' ג')
 - One's body (4)? (ה' ג')
- When is one who breaks a bone of a *korban pesach* not liable for lashes? (ג' ג')
- Explain the debate regarding lashes and *shilu'ach ha'ken*. (ד' ג')
- Explain the debate regarding the prohibition of tattooing. (ו' ג')
- If a *nazir* drinks wine for the entire day, when would he receive multiple sets of lashes? (ז' ג')
- What other two prohibitions that apply to a *nazir* share the same law? (ח' ג')
- When is one liable for multiple sets of lashes for wearing *shatnez*? (ח' ג')
- For what single action can one be liable for eight sets of lashes? (ט' ג')
- Describe the debate regarding the previous question. (ט' ג')
- How many lashes constitutes a "set" of lashes? (י' ג')
- According to *R' Yehuda* where was the extra blow administered? (י' ג')
- What is the limitation given when determining how many lashes a person can receive? (י"א' ג')
- What is the law if it was determined that a person could receive a full amount, but once the lashes begun, it was clear the person could not bare the full amount? (י"א' ג')
- If someone was to receive two sets of lashes, how was the evaluation of how much the person could bare determined? (Provide both scenarios.) (י"א' ג')
- Describe how the person was prepared for lashes? (י"ב' ג')
- Describe the whip that was used for lashes? (י"ב' ג')
- How long was the whip? (י"ג' ג')
- Where was the offender struck? (י"ג' ג')

Local Shiurim

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
 Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Beit Ha'Roeh
 Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
 9:00am
Kollel Magen Avraham
 Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
 In US dial: 718 906 6400
 Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
18 th August י"ב אלול	19 th August י"ג אלול	20 th August י"ד אב	21 st August ט"ו אלול	22 nd August ט"ז אלול	23 rd August י"ז אלול	24 th August י"ח אלול
Makkot 3:14-14	Makkot 3:16 – Shevuot 1:1	Shevuot 1:2-3	Shevuot 1:4-5	Shevuot 1:6-7	Shevuot 2:1-2	Shevuot 2:3-4

