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HE-BREWS: A Micro View into A Microbrew

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Introduction

If there is a word that can be used to describe the unprecedented growth of microbreweries it is 'explosive'. There are more microbreweries than ever in the U.S., accounting for \$22.3 billion of revenue and 21% of market share. In 2015, the brewery count stood at 4,269 breweries: 2,397 microbreweries; 1,650 brew pubs; and 178 craft breweries. In essence, this dynamic growth has in essence reshaped the playing field, both in quality and new offerings. Of course, the success of the microbrewery is changing the face of the beer industry from traditional to innovative, which obviously impacts the typical *kashrus* perception of a microbrewery.

It was previously assumed that microbreweries were more purist than their 'big brother' counterparts. This means that they would not deviate from the strict rules of the *reinheitsgebot*-German Beer Purity laws. Is this still true today? And if not, what is the kosher status of a contemporary microbrewery?

Kashrus Kurrents has the extreme pleasure of interviewing two former brewmasters of The Boston Beer Co., Head Brewmeister Grant Wood, now of Revolver Brewery, and Brewmeister Colin Willard. Below are their answers and perceptions on this dynamic and changing industry.

KK: What qualifies a brewery to be classified as a microbrewery?

Grant: This definition varies. I think most people consider a "Microbrewery" to be under 15,000 bbl [Imperial measurements actually include the measure of barrels. A 15 barrel system is 15 bbl.] of production per year. Some may put it at 30,000 bbl/year.

Colin: There is a definition from the Brewers Association of what qualifies as a craft beer. They have guidelines around being small, independent, and traditional. "Small" meaning brews less than 6 million barrels/year. "Independent" means that a brewery cannot be more than 25% owned by an alcohol industry member who themselves are not craft. And finally, "traditional" means you are adhering to standard must-follow historic brewing processes and ingredients. They have loosened this part of the definition in the past two years to accept the use of adjuncts (corn, rice, oats, etc.) as traditional ingredients.

KK: What is the difference between a "microbrew", "craft beer" and "artesian beer"?

Grant: Not much difference. I think they are all describing the same thing, though artesian beer might be a very small batch brewery.

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The Mitzvah of SHILUACH HAKAN

RABBI ZVI GOLDBERG
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*Shiluach Hakan*¹ (sending away the mother bird before taking her young) is a *mitzvah* that is infrequently performed. Its reward is the blessing of a long life – similar to the *mitzvah* of honoring one's parents. Let's examine how, when and where to perform the *mitzvah* of *Shiluach Hakan*.

"If a bird's nest happens to be before you...young birds or eggs, and the mother is roosting...you shall not take the mother with the young. You shall surely send away the mother and take the young for yourself, so that it will be good for you and will prolong your days."²

Possible Reasons for the Mitzvah

The Rabbis ruled that a person may not state that the reason for the *mitzvah* is compassion for the mother bird. One commentator interprets the *Talmud*'s prohibition as applying strictly to reciting this in one's prayers, as if to establish compassion as the definitive, sole reason. In reality, there are many reasons for the *mitzvah*, and compassion is but one facet.³

The *Ramban* states that compassion for the mother bird herself is not a motive for this *mitzvah*, since human needs override those of animals. Rather, the *Torah* wishes us to act compassionately so that we instill this trait in ourselves. He also references a profound *kabbalistic* reason (*sod*) for this *mitzvah*. *Rabbeinu Bachya* states that taking the mother and her offspring at the same time is analogous to destroying the entire species.

Rewards for The Mitzvah

Rashi comments that *Shiluach Hakan* is a relatively easy *mitzvah* to carry out, involving little hardship or cost. One earns the tremendous reward of long life through its performance. We can, therefore, only imagine how great the reward will be for more difficult *mitzvos*.

A number of *Midrashim* state that fulfillment of this *mitzvah* is a *segulah* for having children.⁴ The *mitzvah* is also a *segulah* for getting married, as well as for acquiring a new house.⁵

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1. See *Meloh Ha'roim* (*Chulin* 138b) quoting the *Shalah Hakadosh* that the proper pronunciation is *Shiluach Hakein*, with a *tzeirei*. The word for 'nest' is pronounced 'kan', with a *patach*, when it is *smuch* (connected) to another word, as in '*kan tzipor*', the nest of a bird. If there is no *smichus* then the word for 'nest' is pronounced 'kein' (as in *Tehillim* 84:4). Nevertheless, common usage is '*Shiluach Hakan*', apparently going back as far as the *Shalah* (16th century).

2. *Dvarim* 22:6-7.

3. *Tosafos Yom Tov Berachos* 5:3. The *Rambam*, in fact, writes that the reason for the *mitzvah* is to spare the mother bird anguish upon seeing her young being taken.

4. Derived from the words, "*Ve'es habanim tikach lach*", *Midrash Rabba Ki Setzei* 6:6, *Yalkut Shimoni* 930. This *segulah* is cited in the *Sefer HaChinuch* (545), as well. The *Chinuch* and *Ksav Sofer Al Hatorah* explain how this is a function of *midah k'neged midah*.

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HE-BREWS:

A Micro View *into* A Microbrew

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Colin: For me there is no difference, as the process and ingredients are the same. The only difference is the scale at which they are produced. All three of these beer “categories” are likely going to produce interesting, full flavored, and traditional beers. Again, the brewers association provides some perspective and definition here.

KK: Typically, is the equipment in a microbrewery new or used?

Grant: There is no ‘typically’. If I had to guess, I’d think that there is a good market for used brewery equipment and that small companies tight on money will go the used route.

Colin: The startup capital costs for a brewery are significant because of all the tanks and vessels which are required for brewing. I would guess brewers that started up 10-20 years ago often sourced used or repurposed equipment and tanks. As the industry has exploded in the past 5 years, the number of equipment manufacturers making brewing-specific equipment at all size ranges has increased, such that most new breweries are starting with new equipment. However, I am aware of several brewers that sell equipment as they grow bigger. For example, since one local craft brewer was growing they bought equipment from a larger brewer who was looking to trade out their smaller stuff for larger.

It’s like when I moved with my family as it became larger and we bought a bigger house. A family with younger kids almost always ended up buying the house we were leaving behind.

KK: Describe a boilout.

Grant: What you call a ‘boil-out’ we will call a CIP, or Clean in Place. In the brewhouse, this means rinsing with hot water (180°F) and then cleaning with a pump and sprayballs with 2-3% caustic solution for 30 minutes, followed by a water rinse with hot water. Once a week we will also run a hot (170°F) dilute phosphoric acid solution through the kettle and other brewing equipment. Fermentation tanks are cleaned after every usage: Rinse, caustic CIP (160°F), Cool Acid rinse, sanitize with peracetic acid solution.

Colin: For us, a boil-out is making a cleaning solution inside the kettle/vessel, recirculating it through associated piping and then back into the kettle so there is some turbulence in the cleaning process, as well. The cleaning solution is a caustic (NaOH-sodium hydroxide) based solution which is sourced specifically for cleaning and has other additives to assist in the breakdown of soils.

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START



MALT MILL

1. Roasted barley malt is milled to a suitable size.



MASH KETTLE

2. Milled barley malt mixed with treated water for enzymatic reactions converting starch to a sugary liquid called wort.



LAUTER TUN

3. The whole wort is transferred to Lauter Tun where the liquid is separated as completely as possible from spent grain.



BOILING

6. The clear wort is brought up to a boil. Now the wort is ready for fermentation.



WHIRLPOOL

5. The products from Wort Kettle is transferred to Whirlpool for further settling to get clear wort.



WORT KETTLE

4. Wort from Lauter Tun is collected and boiled with sugar and hops.



FERMENTATION

7. Yeast is added and wort is fermented for 7-9 days.



LAGER VESSEL

8. During maturation, various chemicals/additives can be added.



FILTRATION & CONDITIONING

9. Beer is filtered and carbonated and sent to filler for bottling/canning.

FINISH (L'CHAIM)





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The Mitzvah of SHILUACH HAKAN

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The *Zohar*⁶ explains the mystical reason behind the vast rewards of this *mitzvah*. The bird's distress elicits *Hashem's* compassion, and He showers His mercy on *Klal Yisroel* and individuals in need. In turn, *Hashem* then rewards the person who brought this about.

Who May Perform the Mitzvah

The *mitzvah* can be executed by men, women,⁷ and children. It may not be carried out on *Shabbos* or *Yom Tov*.⁸

A person who comes across a nest is not obligated to send away the mother, unless he actually wants the offspring. Nevertheless, it is commendable to carry out the *mitzvah* and even to seek out the opportunity to do so.⁹ Even if one does not eat the offspring after taking them, and his sole motivation is to perform the *mitzvah*, he has properly fulfilled the *mitzvah*.¹⁰

Eligibility of Birds

Only kosher birds are eligible for this *mitzvah*. When determining which birds are kosher to eat, we require a clear *mesorah*, tradition, that our ancestors ate these birds.¹¹ However, when determining which birds are fit for the *mitzvah* of *Shiluach Hakan*, we may rely on the physical signs of kosher birds as delineated by *Chazal*.¹²

Therefore, we can distinguish among three categories of birds: 1) Kosher birds which we eat and may use to fulfill the *mitzvah*, for example certain species of pigeons, doves, geese, and ducks; 2) Birds which exhibit kosher signs,¹³ yet do not have a clear *mesorah*, for example sparrows, robins, cardinals, and orioles. These birds may be used to fulfill the *mitzvah*, but they are not considered kosher to eat; and 3) Birds which are definitely non-kosher with which we should not perform *Shiluach Hakan*. This includes eagles, ravens and other birds of prey.

Eligibility is also determined by gender and age as follows:

A. Gender

The *mitzvah* can be fulfilled only when the mother bird is roosting.

Since the male also roosts at times, one should determine the gender of the bird before sending it away. However, there is generally no way the layperson can distinguish between genders of birds. Of note, the male dove, pigeon and sparrow will usually sit during the day while the female sits at night. Therefore, the *mitzvah* should be fulfilled at night. The female American Robin, Canada Goose and Mallard Duck sit both day and night. If the roosting habits are unknown, one should fulfill the *mitzvah* at night, as we assume it is the mother on the nest.¹⁴

B. Age

One may fulfill the *mitzvah* any time the mother is incubating her eggs or brood.¹⁵ However, once the chicks develop the ability to fly on their own, the *mitzvah* may no longer be fulfilled.¹⁶ Chicks usually develop this ability approximately two weeks after hatching, depending upon the species.

Location of Nest

The *mitzvah* can be done in any country in the world, and even at sea.¹⁷ However, the *Mishna* states that a *kan mezuman*, a prepared nest, is excluded.¹⁸ This means that the mother bird and her offspring must be ownerless. Since the *halacha* states that a *chatzer*, private property, acquires objects on behalf of its owner even without his knowledge, a nest in one's yard would generally be ineligible for this *mitzvah*. This is because the nest and offspring would automatically belong to the owner. Therefore, some authorities hold that one could fulfill the *mitzvah* only with nests in public places, such as parks.¹⁹

However, according to other authorities it is possible to remove the offspring from the owner's possession by making them *hefker*, ownerless and available to all.²⁰ One may follow these opinions and declare in front of three people²¹ that the eggs or chicks on his property are *hefker*. He may then proceed to fulfill the *mitzvah*.²²

Brocha Requirement

No *brocha* is recited on this *mitzvah*.²³ One reason given for this is



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5. Since this *parsha* is followed by "Ki yivneh ish bayis" and "Ki yikach ish isha" – *Tanchuma Ki Setzei* 1. See *Kli Yakar Dvarim* 22:7.

6. *Zohar Chadash Rus* pg. 94, *Tikunei Zohar* 6, pg. 23a, cited in *Rabbeinu Bachya*.

7. *Sefer HaChinuch* 545

8. Responsa *Chasam Sofer* O.C. 100. One issue is that of *muktzah*, and another is that according to the reasoning of the *Zohar* cited above, it is improper to arouse Heavenly distress on *Shabbos*.

9. *Aruch Hashulchan* 392:1, *Birchei Yosef* 292:8 quoting the *Arizal*. Rav Shmuel Kamenetsky (*Am Hatorah Journal* 5:7, pg 12) recommends trying to perform the *mitzvah* at least once. See, however, Responsa *Chasam Sofer* O.C. 100 and Responsa *Torah Lishmah* 27710. See Responsa *Minchas Elazar* 3:43 and *Aruch Hashulchan* Y.D. 292:3.

10. See Responsa *Minchas Elazar* 3:43 and *Aruch Hashulchan* Y.D. 292:3.

11. *Ramo* Y.D. 82:3. The *Torah* lists twenty-four species of non-kosher birds; all others are deemed kosher by the *Torah*. However, our translation of the Hebrew names for birds is not always accurate.

12. Responsa *Minchas Elazar* 3:43. Rav Shmuel Kamenetsky (*Am Hatorah Journal* 5:8, pg 20).

13. Briefly, kosher birds that are sitting on a branch place three toes in front and one in back; non-kosher birds place two in front and two in back. Kosher birds also have a crop, and their gizzards can be peeled. In general, birds of prey are not kosher (*Chulin* 59a). Another sign of kosher birds is that their eggs are not symmetrical; one end is wider than the other.

14. *Sefer Shalayach Teshalach* pg. 57

15. The eggs and chicks go through stages during which it is forbidden to eat them (e.g. while the chick is forming inside the egg). Nevertheless, the *mitzvah* still applies, since they could be re-incubated to a point where they could be *shechted* and eaten. (*Ran Chulin* 150a, *Birchei Yosef* Y.D. 292, Rav Shmuel Kamenetsky (*Am Hatorah Journal* 5:8 pg 16)).

16. *Shulchan Aruch* Y.D. 292:7.

17. *Chulin* 139b

18. This is derived from the *pasuk* which states, "Ki yikarei" – when you happen upon a nest. *Chulin* 138b, *Shulchan Aruch* Y.D. 292:2.

19. *Birchei Yosef* 292:3, Rav Shlomo Zalman Auerbach (*Minchas Shlomo* 2:97:26), Rav Yosef Shalom Elyashiv, quoted in *Kovetz Torani Mevakshei Torah*, chap. 106. See *Chochmas Adam* 105:3. Some authorities hold that before the eggs are laid, one may have in mind that he does not want his property to acquire on his behalf (*Sefer Shalayach Teshalach* pg. 66. See *Chasam Sofer Chulin* 141b, and *Igros Moshe* Y.D. 4:45).

20. The Steipler Gaon, Rav Aharon Kotler, Rav Chaim Pinchas Scheinberg, Rav Chaim Kanievsky and other contemporary *poskim*. (Quoted in *Sefer Shalayach Teshalach* pg. 71, and *Shiluach Hakan*, Feldheim, pg. 79).

21. In front of three men who are not related to him or each other.

22. If the mother has not yet left the nest since laying her eggs, all would agree that one may fulfill the *mitzvah* on his property (*Shulchan Aruch* Y.D. 292:2). Since the owner himself is forbidden to take the eggs while the mother is incubating them, the property cannot acquire on his behalf at that point. However, it would be extremely difficult to determine that the bird has never left the nest.



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KK: Do the kettles require boilouts between production of products?

Grant: No. The brewhouse side of the brewery that makes the wort (the liquid extracted from the mashing process during the brewing of beer or whiskey) will not always be completely cleaned between types of brews.

Colin: Yes, however the frequency will vary based on the brewery and specific design elements. We use external wort heaters, which are cleaned frequently to avoid fouling and getting dirty. This allows us to clean the kettles less frequently because the heating doesn't actually occur in the kettle. We clean the kettles once per week currently and never go more than 2 weeks during our busiest part of the year.

KK: Is there a boilout after each 'specialty' brew?

Grant: Highly likely. I imagine most brewers would want to make sure they were clean after such a brew.

Colin: Again, it is hard for me to say. It likely depends on the brewer. However, while some cleaning of the kettle is likely it may not be a full boil-out.

KK: Are boil-outs at or above cook temp?

Grant: Likely below. Wort is boiled at 212°F. Most brewery brewhouse cleaning occurs at 160°-180°F with 2-3% caustic solution. The fermentation vessel, which contains the cooled wort/beer, will likely be cleaned above the fermentation temperature.

Colin: No, it is not likely the boil-outs are higher than the cook temp especially if chemicals are used that may become less effective at high temperatures.

KK: Do microbreweries adhere to the Reinheitsgebot German purity laws?

Grant: Typically, no.

Colin: Often times yes they do. However, the use of flavors, fruits, spices, and other novel ingredients is increasingly popular so it is safe to say the Reinheitsgebot is not strictly followed in most American craft breweries.

KK: Are there any regulations that must be followed for microbreweries that don't follow the purity laws? If yes, what are they?

Grant: We must follow Federal TTB¹ regulations that are primarily tax based regulations. Breweries are not covered under the FDA or USDA directly. Brewers do mostly follow sanitation guidelines and Good Manufacturing Practices to maintain sanitation. Larger breweries will often use FDA style inspections for accessing sanitation procedures. The brewery may also be subject to state and local sanitation inspections.

Colin: The regulations which apply to all breweries regardless of size, are that of the TTB. They have regulations on what is considered a beer and which types of things must be declared in a statement of process before a beer can be sold. I do not think all of these regulations apply if beer is sold only at a microbrewery on tap and not actually packaged. I am not an expert on these regulations by any means.

KK: What percentage of microbreweries use 100% barley vs. other grain additives, such as rice?

Grant: Unknown, but many breweries use other malted grains aside from barley, like wheat and rye. Many use sugars of various origins. I use some flaked maize, agave, and honey in a few of my brews.

Colin: The use of adjuncts, rice and corn predominantly, requires specialized equipment in most cases. It is my guess that most microbreweries do not have this equipment and are, therefore, brewing with predominantly malted barley. However, malted wheat is very

popular and is likely used in all microbreweries. I would expect to find oats and rye in most microbreweries, as well.

KK: What percentage of microbreweries use flavors and spices?

Grant: Unknown, but many will.

Colin: I would guess most microbreweries are using these in some frequency in a portion of their beers.

KK: When a flavored variety says "honey porter" or "spiced", are other flavorings added other than 100% honey or pure spices?

Grant: Perhaps. It can be hard to know. Many beers are simply listed as "brewed with natural flavors". Natural flavors is a pretty broad collection of things.

Colin: The TTB provided expectations on what you can call a beer and how it can be labeled. For example, 'brewed with honey' means the honey is added in the hot side or brewing part of the process, but if it says 'flavored with honey' it is added in the cold side, or finishing of the beer. If other flavorings are added and the package is labeled, it would have to declare in some way that the beer was made with flavorings.

KK: It is rumored that lactose (milk sugar) is typically used as an additional ingredient. Is lactose used only in milk stouts, or is lactose used in other varieties?

Grant: Lactose is sometimes used to add body and a mild sweetness, particularly to stouts. It would rarely be used in other styles.

Colin: Yes, lactose is an ingredient several breweries use. I would guess that yes, lactose is primarily used in milk stouts; however, we are using it in a different style. I think in general it would be out of place in other beers. It could, however, be used.

KK: What is the purpose of adding lactose?

Grant: To add mild sweetness to beers that are very astringent or bitter. Lactose is not fermentable by brewer's yeast.

Colin: Lactose helps give the beer a "creamier" or fuller body. Some of the unfermented portion of the lactose also helps give the beer a little sweetness.

KK: Do any varieties of beer use grape wine as an ingredient?

Grant: No specific varieties, but some brewers may use barrels that previously contained grape wine. You can't really clean a wooden barrel.

Colin: I am aware of some beers which are aged with wine grapes, but I am not aware of any blending wine and beer together. Some beer is aged in used wine barrels. While this beer is likely not kosher, it is delicious.

KK: It has been rumored that specialty brews use actual oysters or bacon as flavorings. If used, what percentage is comprised of oysters or bacon flavoring?

Grant: There are beers occasionally made with oysters or shellfish-Oyster stouts. I have heard of 'bacon' beers, but it is unlikely that it's actually bacon. Bacon is very fatty. Lipids and beer do not go well together. Bacon flavor is often derived from smoked barley malt.

Colin: Yes, these sorts of things have definitely happened. I would expect they are a very minor portion of these beers and that the solids are removed from the final beer, so only the flavor or essence is left behind. I am not an expert here and would hate to hazard a guess on percentages.

KK: Does the oyster or flavoring go into the brew tank or is it added later?

Grant: It is usually added raw to the brew kettle and is cooked by the heat of the boiling wort.

Colin: Flavors can be added to the brew kettles on the hot side, but more likely true flavors are added on the cold side as the beer is

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1. Tobacco Tax & Trade Bureau



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being finished. There may be non-kosher ingredients added to kettles. However, things added to the kettles are more likely natural ingredients because there is an advantage to the label stating that it is brewed with an ingredient rather than flavor. Of course, oysters would be considered natural from a labeling perspective. Perhaps we should study the TTB labeling rules a bit more closely. For instance, if a beer states “Brewed with Oysters”, my guess is these were added to the hot side.

KK: *Are isinglass finings typically used in a microbrewery as a clarifier? If not, what is used as a clarifier?*

Grant: Typically no, though some do. There are other methods of clarifying: mechanically by centrifugation or filtration, non-animal derived finings, etc.

Colin: Yes, some brewers may still be using isinglass. I know it can be purchased but am not sure how prevalent its use may be. Some use chill proofing aids such as silica gel and PVPP,² which help bind with impurities in the beer so we can then remove both the impurities and the chill proofing aids.

KK: *What GMPs (Good Manufacturing Practice) are generally employed to clean the kettles after a variety using non-kosher ingredients?*

Grant: CIP with hot water and caustic solution.

Colin: We would perform a kettle boil out or brewhouse CIP. The brewhouse CIP is more comprehensive and would include all tanks and vessels in the brewhouse. Additionally, we would clean the wort line from the brewhouse to the fermentation vessel.

KK: *Aren't beer products subject to ingredient declaration?*

Grant: I don't think they always are. “Other Natural Flavors” covers a lot. There are more that will issue allergen statements, such as for wheat, nuts, peanuts, or shellfish.

Colin: As discussed above, there are labeling regulations associated with the label panel and name of a beer, but the TTB regulations do not specifically require labeling beer with an ingredient statement. Beer does not fall under FDA (Food & Drug Administration) regulations, so not all FDA laws and regulations apply to beer as defined by the TTB.

KK: Thank you, gentlemen.

SUMMARY OF STAR-K MICROBREWERY STANDARDS:

1) When a microbrewery ‘deviates’ from the German beer laws, it generally means that they will use cereal grains other than barley, (i.e., rice or corn) that would not affect the *kashrus* status of a microbrewery.

2) When a microbrewery brews other ingredients in the brew kettles, the product label will state, “With Natural Ingredients” or “Brewed With Natural Ingredients”. This could include non-kosher ingredients (e.g., oysters). There is no set limit or percentage for additional ingredients. This could affect the *kashrus* of a microbrewery that brews these varieties.

3) Typically, after a specialty production the brew kettles are cleaned. However, a brewery CIP (Clean In Place) does not qualify for a kashering.

4) When a microbrewery states “Flavored With”, ingredients are added cold. Flavors that are added in a cold blend would not affect subsequent productions of non-flavored varieties.

5) If a microbrewery is not venturing into the “sea of oysters”, then stout, standard lagers, IPA's and pilsners are acceptable. Once STAR-K research has determined that the microbrew has met the kosher criteria, the microbrewery is acceptable.

2. Polyvinylpyrrolidone (polyvinyl pyrrolidone, PVPP), is a highly cross-linked version of PVP, making it insoluble in water, a highly cross-linked modification of polyvinylpyrrolidone.

The Mitzvah of SHILUACH HAKAN

COMMON BIRDS FIT FOR SHILUACH HAKAN BY GEOGRAPHICAL LOCATION³⁷

American Robin³⁸ – North America

Canada Goose³⁹ – North America

European Robin – Europe, *Eretz Yisroel*

Mallard Duck⁴⁰ – North and Central America, Europe, Asia

Mourning Dove – North and Central America

Northern Cardinal⁴¹ – Eastern and Central U.S., Central America

Palm Dove – *Eretz Yisroel*, Africa, Europe

Pigeon – Worldwide

Sparrow⁴² – Worldwide



The Mitzvah of SHILUACH HAKAN

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that the bird may fly away of its own volition after the *brocha* is recited, and the *mitzvah* will not have been fulfilled.²⁴

Sending Away The Mother

One need not actually pick up the bird to send it away. Rather, one should create some stimulus to cause it to fly away, such as gently tapping a stick on the nest or nearby tree.²⁵ Even clapping one's hands is satisfactory.²⁶

Taking Eggs or Chicks

Once the mother bird has flown away, one must take the eggs or chicks.²⁷ Even if the mother bird is watching, one still fulfills the *mitzvah*. To perform a *halachic* acquisition, they should be lifted to a height of three *tefachim* (about 12 inches).²⁸ Upon completion of the *mitzvah*, one may put back the eggs or chicks and need not keep them.²⁹

After one takes the eggs or chicks, they may be declared *hefker* by the one who acquired them and then returned to the nest.³⁰ After the mother bird returns, another person may fulfill the *mitzvah*. In this way, the same nest may be used over and over again.³¹

The Cornell Lab of Ornithology notes that contrary to popular belief, most birds will return to the nest even after their offspring have been handled by humans.³² This is due to their poor sense of smell and inability to detect the scent of humans.

A messenger may not be appointed to send away the bird. One who is unable to climb a tree should first send away the bird, and then appoint another person to acquire the eggs or chicks on his/her behalf.³³

One should use a sturdy ladder and exercise caution when climbing.³⁴

Nesting Habits of Birds

By learning more about the nesting habits of birds, a person who wishes to fulfill the *mitzvah* will know what to look for when searching for a nest. For example, a dove gathering twigs with its beak is probably the male who is collecting them for the female while she sits on the site of the future nest nearby.

One may hang a birdfeeder and construct a birdhouse to encourage nesting. Sparrows will nest in birdhouses; however, most other birds fit for *Shiluach Hakan* will not.³⁵

Brief Summary Guide to *Shiluach Hakan*

When one sees a bird building or sitting in a nest, he should determine whether it is a kosher species. If the nest is on private property, it may be necessary for the owner to be *mafkir*. During the day, it is possible that the male may be roosting. The female will be roosting in the evening, so the *mitzvah* should be performed at that time. One should approach the nest quietly.

Usually the nests are higher than an average person's reach, so a stick may be gently used to tap the nest or nearby tree limb. After the bird flies away, one should climb up and gently remove the eggs or chicks. The procedure requires lifting the eggs or chicks approximately twelve inches high. After fulfilling the *mitzvah*, one may keep the offspring or return them to the nest.³⁶

Studying the intricate laws of *Shiluach HaKan* brings us closer to the fulfillment of this special *mitzvah*. May we merit to carry it out properly.



23. Most authorities state that no *brocha* is recited. See *Birchei Yosef* Y.D. 292:1 citing *Rishonim*. However, *Aruch Hashulchan* 292:10 interprets differently and holds a *brocha* is recited.

24. *Responsa Binyan Tzion Hachadashos* 14. See *Pischei Teshuva* Y.D. 292:2.

25. *Rashi* (*Chulin* 141b), *Chazon Ish* (Y.D.175:2). However, many understand the *Rambam* (*Hilchos Shechita* 135) as ruling that one must pick up the bird with his hands and send her away. (*Aruch Hashulchan* Y.D. 292:6. See, however, *Responsa Binyan Tzion Hachadashos* 14 and *Sefer Kan Tzipor* pg. 30). Many contemporary *gedolim* were seen and photographed using a stick, and that is the common custom.

26. See *Responsa Torah Lishma* 278.

27. *Chazon Ish* (Y.D.175:2). See *Chofetz Chaim* in *Sefer Hamitzvos Hakatzar* 74 and *Aruch Hashulchan* 292:4. However, in a minority opinion, *Responsa Chacham Tzvi* (83) holds that one need not take any offspring. He interprets "*Habanim tikach lach*" as optional, similar to "*Sheshes yamim ta'aseh melachtecha*." Even if there is only one egg or chick, the *mitzvah* may be fulfilled, although the *Torah* uses the plural "*Banim*" (*Shulchan Aruch* Y.D.292:1).

28. Based on *Beur Halacha* (O.C. 366 s.v. *tzarich*), they could alternatively be held entirely in one's hand to create a *kinyan chatzer*.

29. *Shiluach Hakan*, Feldheim, pg. 65, quoting contemporary *poskim*.

30. Under certain circumstances, it is possible that if a child fulfilled the *mitzvah* no one else may fulfill the *mitzvah* on those same eggs or chicks since a child cannot effect *hefker*. (See *Mishne L' melech Hilchos Mechira* 29:1, that *hefker m'daas* is considered *da'as acheres makneh*. Therefore, if an adult was *mafkir* and then the child was *koneh*, the child could not be *mafkir*.)

31. If the eggs cool down too many times, they may no longer be viable (University of Arkansas Division of Agriculture). The *mitzvah* is not fulfilled on non-viable eggs.

32. Communication with Anne Hobbs, Specialist, Cornell Lab of Ornithology and at www.birds.cornell.edu. The Lab strongly advises against trying to home-raise a baby bird. One issue noted is that they are ravenous eaters and need to be fed every 15 to 20 minutes, from sunrise to sunset. (Note: This would introduce the *halachic* issue of not eating before feeding your animals. See "Feeding Your Pet-Barking Up the Right Tree" by this author at www.star-k.org. The Lab states that most home-raised birds die, often before being released into the wild.

33. *Rav Chaim Kanievski*, cited in *Sefer Shalayach Teshalach* pg. 123.

34. Proper care should also be taken when handling birds, eggs or nests, as parasites may be present. See *Talmud Kiddushin* 39b stating that in a dangerous situation (*sh'chiach hezeke*) even a *shliach mitzvah* can be harmed.

35. *Shiluach Hakan*, Feldheim, pg. 234. This is an excellent source of practical information.

36. All federal, state, and local laws should be adhered to when performing *shiluach hakan*.

37. As discussed above, sparrows, robins, and cardinals are not to be eaten.

38. Although unrelated to the smaller European Robin, they are similarly named since they both have red chests. (Smithsonian - www.nationalzoo.si.com)

39. Geese are aggressive and can attack when provoked.

40. One can distinguish the gender by color. The male mallard has an iridescent green head.

41. The male cardinal is bright red and the female is light brown.

42. It is difficult to perform the *mitzvah* on sparrows, since they nest in places that are not easily accessible.



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