The Mitzvah of Shiluach Hakan

RABBI ZVI GOLDBERG
KASHERUS ADMINISTRATOR

Shiluach Hakan (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.”

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. There are, in reality, many reasons for the mitzvah of Shiluach Hakan.

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. The mitzvah is also a segulah for getting married and for acquiring a new house.

The Zohar 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, and children. It may not be carried out on Shabbos or Yom Tov.

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Shmitta 5768

RABBI DOVID STEIN
STAR-K REPRESENTATIVE IN ISRAEL

For over nineteen hundred years, the Jewish people have longed to return to Eretz Yisroel, the land of Israel. It is only there that we can realize our full potential as a nation, and the Torah’s blueprint for life can be completely fulfilled. Throughout the millennia, the most important dimension of this yearning was to once again be able to fulfill the mitzvos ha’aretz (agricultural laws), the commandments that can be observed only in the land of Israel. With Hashem’s help, many of us in this past generation have realized part of this two thousand year-old dream. Yet, this realization has presented us with new challenges.

Without a doubt, one of the greatest challenges of all times is the fulfillment of shmita, the year of Sabbatical rest for the land of Israel. The Midrash perceives this multifaceted mitzvah as being so challenging and difficult, that it calls one who meets the challenge of shmita in all its details an “angel”. This article will outline some practical insights so that we can gain a greater understanding and appreciation of this beautiful mitzvah.

The laws of shmita can be divided into three major categories: laws regarding working the land.

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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. 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.

Eligibility of Birds

Only kosher birds are eligible for this mitzvah. When determining which birds are kosher to eat, we require a clear kosher sign. For example, certain species of pigeons, doves, geese, and ducks.

However, when determining which birds are fit for the mitzvah of Shluchat Hakkan, we may rely on the physical signs of kosher birds as delineated by Chazal.

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, 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. 3) Birds which are definitely non-kosher with which we should not perform Shluchat Hakkan. This includes eagles, ravens, and other birds of prey.

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.

B. Age

One may fulfill the mitzvah any time the mother is incubating her eggs or brood. However, once the chicks develop the ability to fly on their own, the mitzvah may no longer be fulfilled. 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. However, the Mishna states that a kan mezuman, a prepared nest, is excluded. This means that the mother bird and her offspring must be ownerless. Since the halacha states that a charter, 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

1 See Midah Mekom (Ch. 133b) quoting the Shaloh Hakadosh that the proper pronunciation is Shluchat Hakkan, with a pause. The word for “nest” is pronounced “nest,” with a pause, when it is preceded (connected) to another word as “in the nest”, the nest of a bird. If there is a pause then the word for “nest” is pronounced “nest” as in Exodus 64:4. Nevertheless, common usage is “Shluchat Hakkan”, apparently going back as the Shluchat (16th century).
2 Deut. 22:6,7
3 Exodus from lavo Avot 5:3. The Arucham, in fact, writes that the reason for the mitzvah is to spare the mother bird anguish upon seeing her young taken.
4 Derived from the words “We are forbidden Misch Matchot”...Mishnah Kiddush 6:6, Yadaim Shinnun 250. This regulation is cited in the Safed Midrash (545) as well. The Chazon and Kli Yakar Al Aharon explain how this is a function of mishah (a verbal modality).
5 Since this pathos is followed by “Ki yineh ah bayot” and “Ki yekush ah chel” - Nekhuma Ki Satce 1. See Rambam Hizer 22:7.
6 Zohar Chadah Av. pg. 94. Minnhe Zohar 6, pg. 23a, cited in Ribbeino Bachya.
7 See Rambam Midrash 545.
8 Responsa Chazon Safed O.C. 100. One issue is that of mishah, and another is that according to the meaning of the Zohar cited above, it is improper to ensure Heavenly distress on Shabbat.
9 Avush Hashulchan 292:2, Birchei Yosef 292:2 quoting the Aruch. See, however, Responsa Chazon Safed O.C. 100 and Responsa Kikar Lashonah 277.
10 See Responsa Minchah Zanah 3:43 and Aruch Hashulchan 292:3.
11 Kosher 52:2. The bird has 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 Minchah Zanah 3:43.
fulfill the mitzvah only with nests in public places, such as parks. 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. Many follow these opinions, and declare in front of three people that the eggs or chicks on his property are hefker. He may then proceed to fulfill the mitzvah.

Brocha Requirement

No brocha is recited on this mitzvah. One reason given for this is that the bird may fly away of its own volition after the brocha is recited, and the mitzvah will not have been fulfilled.

Sending Away The Mother

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

Taking Eggs or Chicks

Once the mother bird has flown away, one must take the eggs or chicks. 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). Upon completion of the mitzvah, one may put back the eggs or chicks and need not keep them.

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

The Cornell Lab of Ornithology notes that contrary to popular belief, most birds will come back to the nest even after their offspring have been handled by humans. 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.

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

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.

Brief Summary Guide to Shiluach Hakan

When one sees a bird nesting 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 maftir. 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.

Studying the intricate laws of Shiluach HaKan brings us closer to fulfillment of this special mitzvah. May we merit to carry it out properly.
laws pertaining to the produce of the land, and consumer halachos of paires sheviis, fruit grown during the shmita year.

I. Working The Land—What Is Prohibited?
The laws regarding the land are extremely complicated and not very relevant to people who don’t own land in Israel, so we will deal with this only briefly. In general, all work intended to enhance the land, to prepare the land for producing a yield, or to enhance vegetation is forbidden. Therefore, one may not plow the land, plant seeds or saplings, or even prune trees because these activities promote growth and are considered forbidden forms of work.

Some other prohibited activities include watering, fertilizing, weeding and other essential fieldwork. If the purpose of the work is to protect what has already grown from becoming ruined, or if trees are in danger of dying, certain activities are generally permitted. Since these laws are very complicated, a posek, Torah authority familiar with these laws, should be consulted.

Flower pots at home in the land of Israel present their own problems. A posek should be consulted for instruction on proper shmita plant care.

II. The Produce of the 7th Year — Paires Sheviis
In order to facilitate an understanding of fruits and vegetables that are permitted or forbidden, we must clearly define the four Ws: Which produce are we speaking about? When was the produce grown? Where was the produce grown? Who owns the land?

WHICH produce? There are essentially three categories of produce concerning shmita. 1. Vegetables, e.g. tomatoes, lettuce, carrots, 2. Legumes (kitnyos), pulses and grains, e.g. corn, peanuts, wheat, and 3. Fruits of a tree, e.g. dates, figs, pomegranates.

WHEN was the produce grown? There are different time frames in effect for the different types of produce.

FRUIT OF A TREE • New fruit trees cannot be planted 44 days or less before Rosh Hashanah of a shmita year (there are many details as to when this prohibition applies. A reputable posek should be asked if one wants to plant after that date). Fruit that starts growing during shmita is considered shmita produce that is vested with kedushas sheviis and may be consumed. (Fruit is considered to start growing after the flower falls off.) The different halachos regarding the consumption of shmita produce will be dealt with in Section III.

VEGETABLES • Vegetables cannot be planted after Rosh Hashanah during the entire shmita year. Vegetables planted before Rosh Hashanah, which start growing before shmita and are picked during shmita, do not get a shmita prohibition. This means they may be eaten, but the laws of kedushas sheviis discussed below still apply to them. Therefore, practically speaking, if someone has tomatoes growing in his backyard, they can be eaten on the condition that the plant started growing in the sixth year. (He must observe all the laws pertaining to working the ground during shviis.) Similarly, vegetables one buys immediately after Rosh Hashanah may be eaten.

Vegetables that start growing by themselves during sheviis are known as sfichin. Vegetables grown during sheviis may not be eaten at any time, since there is a Rabbinical prohibition against eating sfichin. This was instituted to deter dishonest people from planting vegetables and then claiming that they are wild.

LEGUMES (KITNIYOS), PULSES AND GRAINS • These generally have the same rules as vegetables, except that legumes and grains planted before Rosh Hashanah will be permitted during shmita only if they reached

WHO owns the land? There is a difference of opinion among the poskim as to whether produce grown on land owned by a non-Jew in the land of Israel is considered produce of sheviis. The custom in Jerusalem is not to consider it produce of sheviis, the custom in Bnei Brak is to consider it produce of sheviis.

SELLING THE LAND (HETER MECHIRA) • The system of selling the land was formulated and instituted by many very prominent Rabbanim (including the Gaon HaDor, Harav Yitzchok Elchanan Specter) in the year 1887. Those who proposed the heter claimed that the situation in the land of Israel was so precarious that not working the land for an entire year would endanger the entire Jewish settlement, thus warranting this drastic measure. There was a great deal of controversy surrounding the heter, and it was opposed by many other prominent Rabbanim, the foremost among them being the Netziv (Harav Naftoli Zvi Yehuda Berlin) of Volozhin. Most of the controversy centered around the problem of the Torah prohibition of selling any part of the land of Israel to non-Jews. Some felt that the prohibition of selling the land was worse than the prohibition of working the land. Since then, there were Rabbanim who sold the land every shmita. Harav Avraham Yitzchok Kook institutionalized the sale, although he agreed it was to be done only in situations of grave duress. Since its inception, the Chief Rabbinate of Israel has sold the land every shmita. However, there are many Gedolim who question whether the situation warrants the sale, and whether the sale is effective. In addition, for the consumer there is another more serious problem. The produce that is sold in the regular stores during the year of shmita predominantly comes from non-religious kibbutzim and moshavim, who would never agree to sell their land. This is compounded by the fact that the non-religious kibbutzim don’t observe those prohibitions which Harav Kook instituted, and Harav Kook never permitted their current practices. The Rabbanut Harahsit is trying to see to it that the heter mechira is limited as much as possible.
Even if the laws of shmita are observed, shmita fruit may be eaten only with certain restrictions. Certainly, a tourist who is not knowledgeable concerning the dinim of shmita should buy produce only from shmita-free stores.

WHERE is the location of the land where the produce was grown? The laws of shmita apply only to produce grown within the boundaries of Eretz Yisroel. The boundaries of Eretz Yisroel are defined as those areas which were occupied by the people of Israel in the period of the Second Temple. These boundaries are not the boundaries of the State of Israel. Where these boundaries extend is a matter of great controversy. Some authorities say anything grown south of Ashkelon is outside of the boundaries of Eretz Yisroel. Others extend the boundaries well into the Negev desert until Eilat. In the north, the Golan Heights is questionable. Each supervising organization will follow the psak of its own Rabbis and advise companies and facilities where produce may be purchased. Produce grown outside the boundaries of Eretz Yisroel are not bound to the laws of sheviis.

III. The Practical Laws of Produce of Sheviis:
There are many laws regarding produce of sheviis. They are:

• The Rabbinical prohibition against eating s'fichin As stated above, the prohibition applies only to vegetables, legumes, pulses and grains which started growing during the year of sheviis. The prohibition does not apply to any fruit from trees. Produce grown in a non-Jewish field, even according to those who consider it produce of sheviis, is not s'fichin.

• Produce of sheviis must be used in their usual manner. This means that fruits usually eaten raw may not be cooked, and fruits usually eaten cooked may not be eaten raw. Fruits not usually squeezed may not be squeezed. Fruits usually eaten by people may not be given to animals.

• Produce of sheviis should be treated as hefre, ownerless, and should not be withheld from the public. Ideally, fences should be left open and permission given for anyone to harvest. However, since most people don't know how to pick fruit without ruining the trees, tree owners can insist on picking fruit themselves for those who request it. Fruit under the auspices of an “Otzer Beis Din” (see related article www.star-k.org/kashrus/kk-medi-otzer.htm) should not be taken without its permission. There are some authorities who forbid consumption of any produce that is guarded during sheviis.

• Produce of sheviis is not permitted to be sold in its usual commercial manner. This means that it should not be sold in regular stores, where it is weighed and/or sold for profit in its usual manner. Furthermore, the money used to buy produce of sheviis becomes sanctified, and whatever is bought with that money must be treated in the same sanctified manner as produce of sheviis. Because of these potential complications, a system of shmita produce distribution has been organized to ensure a steady supply of produce for the urban population in a proper halachic manner. The distribution of this produce is administered by the local Beis Din of each city, commonly known as the Otzer Beis Din. Fees are permitted to be charged by the Otzer Beis Din to offset the cost of maintaining the warehouse, picking the produce, and performing work that is permissible in the orchards to maintain the fruit, but not for the fruit itself.

• All authorities agree that it is not permissible to destroy produce of sheviis, as long as it is fit for consumption. Leftover food should be put into a bag and discarded only after it spoils. If this is impossible, it should be put into a sealed plastic bag and discarded. Cooked food may be disposed of if it was left unrefrigerated for an entire night and has spoiled. Similarly, an esrog grown during shmita must be discarded in this fashion after being used during Sukkos.

• Under normal circumstances, produce of sheviis should not be exported. It is for this reason that Israeli fresh produce and Israeli manufactured goods must clearly state that they are shmita-free. Many authorities permit the export of esrogim for Succos. When products come to foreign markets from the land of Israel, one should look for a reliable kosher certification.

At the end of the season, one is required to remove from his possession all produce of sheviis for each type of fruit or vegetable. This requirement is called biur. The custom is to take all produce at the end of the season into the street, in front of three people, and declare it ownerless. The same person may take it back into his own possession. The exact time of biur for most produce varies from one shmita to the next, and for different types of vegetables. Charts have been published in Israel to give the consumers exact dates of biur for each fruit and vegetable.

• There are some authorities who consider it a mitzvah to eat produce of sheviis; most authorities disagree.

Shmita is a mitzvah that lasts for a full year and requires great mesiras nefesh. But if we look at the accomplishment of the mitzvah as the fulfillment of our merit to keep Eretz Yisroel, this will be a source of blessing and spiritual enhancement to us all for eternity.
With the expulsion of Jews from Spain in 1492, Poland became the recognized haven for exiles from Western Europe and the cultural/spiritual center of the Jewish people. Prior to the outbreak of World War II, it housed the second largest Jewish community in the world, with nearly 3.5 million Jews. All that changed rapidly following Nazi Germany’s invasion in 1939. A scant 11 percent (369,000) of the Polish Jewish population escaped the death camps. Many fled their native Poland in reaction to anti-Semitic violence or repression under Communism. Those who stayed often turned their backs on Yiddishkeit. Now, Polish Jews are feeling a new sense of tolerance and security in their post-Cold War democracy. An increasing number are returning to their Jewish roots, which in many cases have been discovered only recently.

Rabbi Mati Kos is the first known religious person in his family in the past 200 years. The 35-year-old native of Warsaw had the first publicly held post-World War II bar mitzvah in Poland. To further discover his Jewish roots, he left his home to attend Yeshiva Ohr Somayach in Monsey, New York. He then worked as Director of Recruitment for Yeshiva Aish HaTorah in Passaic, New Jersey. Rabbi Kos recently accepted a pulpit position in Warsaw because he decided it was time to give something back to his community.

Rabbi Kos was one of 28 attendees present at the intensive annual Kashrus Training Seminar, held in Baltimore’s Star-K offices from July 9 through July 12. He joined fellow rabbonim, kashrus administrators, and aspiring smicha students considering careers in rabbonus, kiruv, and kashrus, in expanding their hands-on knowledge of kashrus. Classroom concepts came to life for the diverse group of participants, who had the opportunity to go behind the scenes of a kosher kitchen at a first class luxury hotel in downtown Baltimore. Additional tours of a local slaughterhouse, flavor factory, confectionary, bakery, restaurant, and butcher shop were arranged. Participants also had the chance to check for less obvious thrips and aphids hiding in vegetables.

“Because I am going back to Poland, I need as much training as I can get,” admitted Rabbi Kos. “I wanted to get it from a big kashrus organization with great rabbonim so it would be on a higher professional level. I needed to learn how to put a system in place from an organization that knows the ins and outs of kashrus. The Star-K program is geared to small communities, like Warsaw.”

Rabbi Kos was impressed with the fact that Star-K’s program covers all of the angles. “It teaches kashrus at the micro-level, from the kashering of the kitchen in your house, to teaching about kashrus on the national and international business level,” remarked Rabbi Kos. “My only criticism of the program is that it is too short,” he chuckled. “I hope to put into practice what I’ve learned from the seminar and maintain close ties with Star-K, tapping into its vast resources.”

Rabbi Zvi Goldberg, Star-K Kashrus Administrator, and coordinator of the seminar, attributes the success of this program to a mutual benefit relationship. “I believe it is advantageous for both groups, the participants and the Star-K staff”, remarked Rabbi Goldberg. “The participants gain knowledge of the inner workings of kashrus, and the staff is energized by the opportunity to teach kashrus to a highly motivated group.”
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We wish to acknowledge those organizations in Eretz Yisroel that dedicate themselves to Shmita observance, and most of all, the farmers, who at great sacrifice, observe the laws of Shmita.

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“Shmita 5768”, an article from Kashrus Kurrents, STAR-K’s quarterly bulletin.

CD Rom of Rabbi Moshe Heinemann’s, shilta, August, 2007 lecture: “Learning to Navigate the Complex Laws of Shmita”.

Power point presentation, August, 2007: “The Land of Israel – Borders for Shmita” by Dr. Shalom Reiman.

Teleconference for Rabbonim with Rabbi Moshe Heinemann, shilta, discussing Yesodes, Otsar Beis Din, Sfichin and practical eitzas, in conjunction with the National Council of Young Israel/ Young Israel Council of Rabbis.

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