



Parshas Toldos 5763

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*If a bird flies into the house through an open window, am I permitted to shut the window?*

*That's fine in the summer but what am I to do in the winter when it's cold?*

One of the 39 *melachos* of Shabbos is Trapping – *Tzeida*. We will try and encompass some of the many rules which govern this *melacha* and are decisive in ascertaining whether the Trapping is a biblical one or only *d'rabanan*.

An animal or creature is considered trapped *mid'oraisso* when under a human's total control. (This does not mean that you must hold a line by its tail, it is sufficient to ensnare it into its cage).<sup>1</sup> This is accomplished when enclosing an animal into a confinement where one is able to catch it with one dash.<sup>2</sup>

*Chazal* broadened the biblical prohibition and forbade trapping into even larger confinements. This does not mean though that closing the gate on a deer roaming in a field would be a rabbinical prohibition, because the trapping must at least enhance the ability to fully trap the animal and in such a case it does not.<sup>3</sup>

*Chazal* tell us that a bird is called biblically trapped when encaged in a small cage and rabbinically trapped in a house etc. Therefore when a bird flies into a house through an open window, it is forbidden to shut the window because you will be trapping the bird!

The *Chayei Adam* deals with this question<sup>4</sup> and says that if the cold causes distress and the sole purpose for shutting the window is to shut out the cold, it is permitted based on the fact that it is a *p'sik reisha d'lo nicha lei bid'rabanan*, meaning that since it is only a rabbinical trap (because it is in a large house or room) and one is only inadvertently trapping the bird by shutting the window, being that his reason for shutting the window is to bar out the cold, it is permitted.

Obviously if you wanted to shut the window in order to offer your son a new pet, it would be forbidden.

*Does the same halacha apply to flies and insects?*

Flies and insects are one level lower than most birds and animals due to another factor. The *halacha* is that Biblical trapping applies only to species that are usually trapped; either for their skin, their milk, or any other practical use humans have for animals. Flies and insects do not fall into that category and therefore their trapping, even into small confinements, would merely be a rabbinical prohibition.

Therefore automatically the severity of the question drops a peg lower when dealing with such a question.

<sup>1</sup> M"A 3 *Shulchan Aruch HaRav* 316:5.

<sup>2</sup> M"B 316:4.

<sup>3</sup> See the *Shulchan Shlomo* 316:3.

<sup>4</sup> The M"B quotes him in *simon* 316:5.

Shutting the door or window on flies or insects does not have much effect on their trapping and it should not be a problem whatsoever. If, one would argue and say that it makes it easier to trap them, then nevertheless it is permitted because the *Mishna Berura* says that shutting closed the lid of a large box on flies and insects is permitted because a) they are not a trapped species, b) you do not want to trap them. This is halachikally called a *p'sik reisha* where two rabbinical prohibitions are involved and therefore it is permitted.<sup>5</sup>

*What about a bread box with flies or bees flying inside, am I permitted to shut it?*

A bread box is already a small confinement and when closing the box on flies or other insects inside you are in effect trapping them, albeit only *mid'rabanan*.<sup>6</sup> Although the *Rama* mentions another opinion that says that since upon opening the box the flies will escape and therefore it is not called trapping, the *Achronim* rule in accordance with the first opinion mentioned in the *Rama* which says that since the box confines them and inside they can be caught, it is called trapping.<sup>7</sup>

*If the flies are in the bread box, how then am I able to shut it?*

The *Taz* offers a *chidush* and says that it suffices to shoo away whatever you can and if you think that there are no flies left you may shut the box. The *chidush* is that even though there still might be flies left in the box and unknowingly you might be trapping them, nevertheless since you are unaware of

that fact, it is called a *safeik p'sik reisha*, i.e. a doubt whether the prohibition will indeed be infringed and hence permitted.

Other *poskim* disagree with the *Taz*, but the *Mishna Berura* concludes that the *Taz* is correct and that therefore would be the answer.<sup>8</sup>

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## Vort on the Parsha

The famous *Possuke* says that the voice is the voice of Ya'akov, which *Rashi* explains to be referring to the manner of speech, i.e. **please** father...

Rav Sternbuch shlita points out that we see Ya'akov Avinu would not (or was incapable) of altering his subdued and gentle manner of speech even when it risked his being caught as Eisav's imposter.

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## Food For Thought

*If a bee (the honey maker) is disturbing me in my succah am I permitted to trap it?*

*Is there an issue of Tzeida (trapping) fish in a fish tank?*

*If a big fish is about to devour the smaller fish, is one permitted to remove the small fish from the tank?*

*If a fish dived out of the tank, is one permitted to return it on account of Tsa'ar Ba'alei Chayim?*

Answers coming next week.

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<sup>5</sup> M"B 316:15 and *Sha'ar Ha'tsiun* 18.

<sup>6</sup> *Simon* 316:3 in the *Rama*.

<sup>7</sup> M"B 316:16.

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<sup>8</sup> See the *Bi'ur Halacha* 'velachen'.

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Dedicated in memory of Rav Aharon Kotler, 2nd of Kislev.

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**Note:** The purpose of this series is intended solely for the clarification of the topics discussed and not to render halachic decisions. It is intended to heighten everyone's awareness of important practical questions which do arise on this topic. One must consult with a proper halachic authority in order to receive p'sak.