



Parshas Devarim 5768

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In the previous shiur we concluded with the *halacha* that says 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!

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

The *Chayei Adam* deals with this question<sup>1</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 making 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 trapping them, 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.

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 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 called a *p'sik reisha* where two rabbinical prohibitions are involved and therefore it is permitted.<sup>2</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 you are in effect trapping them, albeit only *mid'rabanan*.<sup>3</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

<sup>1</sup> The *M"b* quotes him in *siman* 316:5.

<sup>2</sup> *M"b* 316:15 and *Sha'ar Ha'tsiun* 18.

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

that since the box confines them and inside they can be caught, it is called trapping.<sup>4</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 *safek 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>5</sup>

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

We mentioned that hunted species are biblically prohibited to trap and non-hunted species are rabbinically prohibited. Fish fall into the first category and are biblically prohibited to trap. This is because they are hunted for food or as 'pets' for household fish tanks.

*Does this apply to fish in a fish tank as well?*

Notwithstanding the *muktze* issue, it depends on the size of the tank. A fish in the sea or a lake is subject to the fundamental prohibition because in its present state it is totally free. A fish in a small fish tank would not be subject at all to the prohibition of trapping being that it is already trapped. This of course is relative to the size of the fish and the size of the tank.

A small fish in a large tank might be categorized as totally free or semi free,

depending on the tank size. If it is semi free it would involve an *issur d'rabanan*.

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

The answer to this question is comprised of two separate issues. The first being *Tzeida* – trapping. If it is difficult to fish out the fish it is a sign that they are not totally in one's control and the prohibition of trapping is applicable. If it is easy to fish then it is probably called trapped and this *issur* would not apply.

The second issue is *muktze*. All animals are considered *muktze* and therefore removing the fish would not be possible because of *muktze*. One could argue that maybe when *Tsa'ar Ba'alei Chayim* is involved it should be permitted. The answer is that true, *muktze* might be waived when *Tsa'ar Ba'alei Chayim* is involved as we will soon see, however HaRav Shlomo Zalman Auerbach זצ"ל<sup>6</sup> learns that natural phenomena are not classified as *Tsa'ar Ba'alei Chayim*.

Accordingly there is no *Mitzvah* of *Tsa'ar Ba'alei Chayim* to save a mouse from a cat. Therefore one would not be permitted to incorporate the *mitzvah* of *Tsa'ar Ba'alei Chayim* to save the small fish.

A Rav should be consulted whether it is permitted to ask a non-Jew to transfer the fish.

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<sup>4</sup> M"B 316:16.

<sup>5</sup> See the *Bi'ur Halacha* 'velachen'.

<sup>6</sup> SS"K 27:58 footnote 179.

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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.