

אָלְמָא: גְּבִי שְׂמַחַת יוֹם טוֹב בֵּית שְׁמַאי  
לְחוּמְרָא וּבֵית הַלֵּל לְקוּלָא, וּרְמִינָהּ:  
הַשּׁוֹחֵט חֲזָה וְעוֹף בְּיוֹם טוֹב. אָמַר רַבִּי  
יֹחָנָן: מוּחַלְפֵת הַשִּׁטָּה.

Apparently, with regard to rejoicing on the Festival, the opinion of Beit Shammai is stringent and that of Beit Hillel is lenient. And the Gemara raises a contradiction as above: With regard to one who slaughters an undomesticated animal or a fowl on a Festival, Beit Shammai are lenient and allow one to dig with a shovel to cover the blood, due to the joy of the Festival, whereas Beit Hillel do not permit one to slaughtering at all, unless there was a shovel ready from the day before. It was with regard to this contradiction that Rabbi Yoḥanan said: The attribution of the opinions is reversed.

וְדִלְמָא לֹא הִיא: עַד כְּאֵן לֹא אָמְרֵי בֵּית  
שְׁמַאי אֶלָּא הֵיכָא דְאֵיכָא דְקָר נְעוּץ.

The Gemara challenges this explanation: But perhaps that is not so, as a different explanation is possible: Beit Shammai only state their lenient opinion, that it is permitted to cover the blood, where there is an embedded shovel.

Perek I  
Daf 10 Amud a

NOTES

Alternatively, they say only here, etc. – אי נמי עד כאן – **וכו**: This whole section, until the mishna, in which the Gemara repeatedly points out inconsistencies between the mishna about slaughtering fowl or undomesticated animals on Festivals and other *mishnayot*, appears in several versions of the Talmud. However, there are many texts that omit the entire passage, with significant ramifications. If the section is included, Rabbi Yoḥanan's statement is ultimately rejected and the opinions are not reversed, which means that the rulings in all the *mishnayot* remain as they are. Even without this section, apparently some Sages decided that these *mishnayot* should not be adjusted based on logic alone, as they also appear in tractate *Eduyyot*, and it is better to accept some sort of interpretation rather than change all the texts (see Rif and Rambam). However, Rashi, *Tosafot* and many others did not include this section and fundamentally accept the claim that the opinions should be reversed, and they rule likewise in practice.

אָבֵל הֵיכָא דְלֵיכָא דְקָר נְעוּץ – לֹא, אִי  
נָמִי: עַד כְּאֵן לֹא קְאָמְרֵי בֵּית הַלֵּל הַכָּא  
אֶלָּא בֵּינָן דְּמוֹקְצָה הוּא, בְּעוּמֵד וְאוֹמֵר  
זֶה וְזֶה אֲנִי נוֹטֵל סָגִי, אָבֵל הֵתָם – לֹא.

However, where there is no embedded shovel, even Beit Shammai did not permit it. Alternatively, it is possible that Beit Hillel say their opinion only here,<sup>N</sup> since a dove is *muktze*, which is prohibited by rabbinic law, and therefore when he stands and says: I will take this and that, it is enough. However there, where the prohibition applies by Torah law, they did not say so.

אֶלָּא, אִי קְשִׁיָּא הָא קְשִׁיָּא: בֵּית  
שְׁמַאי אוֹמְרִים: אִין נוֹטְלִין אֶת הַעֲלִי  
לְקַצֵּב עָלָיו בְּשֶׁר, וּבֵית הַלֵּל מְתִירִין.  
אָלְמָא: גְּבִי שְׂמַחַת יוֹם טוֹב בֵּית שְׁמַאי  
לְחוּמְרָא וּבֵית הַלֵּל לְקוּלָא, וּרְמִינָהּ:  
הַשּׁוֹחֵט חֲזָה וְעוֹף בֵּית שְׁמַאי וְכוּ. אָמַר  
רַבִּי יֹחָנָן: מוּחַלְפֵת הַשִּׁטָּה.

Rather, if there is a difficulty involving a contradiction, this is the difficulty, from a different mishna (11a): Beit Shammai say: One may not take a large pestle from a mortar, which is normally used for crushing wheat in the preparation of porridge, for any other purpose on a Festival, e.g., to cut meat on it; and Beit Hillel permit it. Apparently, with regard to rejoicing on the Festival, the opinion of Beit Shammai is stringent, and that of Beit Hillel is lenient. And the Gemara raises a contradiction: With regard to one who slaughters an undomesticated animal or a fowl on a Festival, Beit Shammai say: He may dig earth with a shovel and cover the blood, and Beit Hillel say: He may not slaughter an undomesticated animal or a fowl, unless he had earth prepared for that purpose while it was still day. It was in this regard that Rabbi Yoḥanan said: The attribution of the opinions is reversed.

מִמָּאִי? דִּלְמָא לֹא הִיא: עַד כְּאֵן לֹא  
קְאָמְרֵי בֵּית שְׁמַאי הֵתָם אֶלָּא הֵיכָא  
דְּאֵיכָא דְקָר נְעוּץ, אָבֵל הֵיכָא דְלֵיכָא  
דְקָר נְעוּץ – לֹא. אִי נָמִי: עַד כְּאֵן לֹא  
קְאָמְרֵי בֵּית הַלֵּל הַכָּא אֶלָּא דְאֵיכָא  
תּוֹרַת כְּלֵי עָלָיו, אָבֵל הֵתָם – לֹא.

The Gemara rejects this: From where do you know this? Perhaps it is not so. Rather, Beit Shammai say their opinion only there, where there is a shovel embedded and prepared the day before, but where there is no embedded shovel, they did not rule leniently. Alternatively, one can say that Beit Hillel say their opinion only here, with regard to a pestle, which at least has the status of a vessel, and therefore it is not completely *muktze*. However, there, in the case of slaughtering, Beit Hillel did not issue a lenient ruling.

אֶלָּא, אִי קְשִׁיָּא הָא קְשִׁיָּא: בֵּית שְׁמַאי  
אוֹמְרִים: אִין נוֹתְנִין אֶת הָעוֹר לְפָנֵי  
הַדּוֹרְסָן, וְלֹא יִגְבִּיהֶנּוּ אֶלָּא אִם כֵּן יֵשׁ  
עָלָיו כּוֹבֵת בְּשֶׁר, וּבֵית הַלֵּל מְתִירִין.

Rather, if there is a difficulty, this is the difficulty: It is taught in a mishna (11a): Beit Shammai say: One may not place an unprocessed hide before those who will tread on it, as this is an instance of the prohibited labor of tanning on a Festival. And one may not lift the hide from its spot, as it is considered *muktze*, unless there is an olive-bulk of meat on it, in which case it may be carried on account of its meat. And Beit Hillel permit one to place a hide before those who will tread upon it.

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רַבִּי יֹחָנָן: מוּחַלְפֵת הַשִּׁטָּה.

Once again the Gemara states: Apparently, with regard to rejoicing on the Festival, the opinion of Beit Shammai is stringent, and that of Beit Hillel is lenient. And the Gemara raises a contradiction: With regard to one who slaughters an undomesticated animal or a fowl on a Festival, Beit Shammai say, etc. Concerning this case, Rabbi Yoḥanan said: The attribution of the opinions is reversed.

Alternatively, they say only here, etc. – אי נמי עד כאן וכו' – This whole section, until the mishna, in which the Gemara repeatedly points out inconsistencies between the mishna about slaughtering fowl or undomesticated animals on Festivals and other *mishnayot*, appears in several versions of the Talmud. However, there are many texts that omit the entire passage, with significant ramifications. If the section is included, Rabbi Yoḥanan's statement is ultimately rejected and the opinions are not reversed, which means that the rulings in all the *mishnayot* remain as they are. Even without this section, apparently some Sages decided that these *mishnayot* should not be adjusted based on logic alone, as they also appear in tractate *Eduyyot*, and it is better to accept some sort of interpretation rather than change all the texts (see Rif and Rambam). However, Rashi, *Tosafot* and many others did not include this section and fundamentally accept the claim that the opinions should be reversed, and they rule likewise in practice.

Unless he shook – אלא אם כן נענע – In the Jerusalem Talmud, it is noted that in this case both Beit Shammai and Beit Hillel are concerned about *muktze*. The Gemara there explains there is more reason to deem animals *muktze* than other types of objects. The *muktze* status of animals has been compared to that of figs that have been set aside to dry, where even Rabbi Shimon is stringent (*ge'onim*; see 40a–b).

I will take this and that – זה וזה אני נוטל – Both the act of shaking and oral designation are effective only in the case of small fledgling doves that cannot yet fly. It is prohibited to take doves that can fly, due to the prohibition against trapping animals. The subsequent mishna should be explained in a similar manner (Rabbeinu Peretz and others).

We issue a decree, as perhaps – גזרין דלמא – Some commentaries point out that the term decree is inappropriate here, as a decree prohibits one action due to a similar action that is prohibited by the Torah. To be more precise, the Gemara should have stated: We are concerned, etc. (Rabbi Aharon HaLevi).

Perhaps he will come to reconsider – דלמא אתי לאמלוכי – According to Rashi and others, the concern is that one might reconsider the choice of fledglings on the Festival itself, and consequently the handling of the fledglings would have been for no purpose. The Rambam, in his Commentary on the Mishna, explains that the concern is that one might reconsider on the eve of the Festival, rendering all the birds *muktze*, which means that he may not handle or use any of them on the Festival.

#### HALAKHA

I will take this and that – זה וזה אני נוטל – The doves of a dovecote and a loft are considered *muktze*. The same applies to birds nesting in rafters and the like. One must designate them the day before the Festival by saying: I will take this one and that one. In addition, one must either leave a sign on them or remember a distinguishing feature. One may do so even by means of a nonverbal declaration (*Shulḥan Arukh HaRav*). It is not necessary to shake them.

However, it is not enough merely to say: I will take a pair of doves from here. All of these *halakhot* are in accordance with the opinion of Beit Hillel (*Shulḥan Arukh, Orach Hayyim* 497:10).

#### BACKGROUND

First brood – בריכה ראשונה – Domestic doves, and wild doves that have been domesticated, lay eggs and incubate eggs virtually throughout the year, one pair of eggs at a time.

It is possible that the custom to leave at least the first pair with the parents is to gauge the quality of the offspring of the pair, to determine whether they should be slaughtered or cultivated.

ממאי? דלמא לא היא; עד כאן לא קאמרי בית שמאי התם אלא היכא דאיכא דקר נעוץ. אבל היכא דליכא דקר נעוץ – לא. אי נמי: עד כאן לא קאמרי בית הלל הכא אלא דחוי למנא עלייהו, אבל התם – לא.

Here too, the Gemara rejects this: From where do you know this? Perhaps that is not so. Rather, Beit Shammai say their opinion only there, where there is a shovel embedded and prepared the day before, but where there is no embedded shovel, they did not rule leniently. Alternatively, Beit Hillel say their opinion only here, with regard to a hide, which is suitable for people to recline upon, and therefore it is not completely *muktze*. However, there, in the case of slaughtering, they were not lenient.

אלא. אי קשיא הא קשיא: בית שמאי אומרים: אין מסלקין את התריסין ביום טוב ובית הלל מתירין אף להתחור, אלמא: גבי שמחת יום טוב בית שמאי לחומרא ובית הלל לקולא. ורמינהי: השוחט חיה ועוף ביום טוב וכו'!

Rather, if there is a difficulty, this is the difficulty, as it is taught (11a): Beit Shammai say: One may not remove the shutters of a store on a Festival, to open the store by raising them, due to the prohibition against building and demolishing on a Festival; and Beit Hillel permit not only to open the shutters, but even to replace them. Apparently, with regard to rejoicing on the Festival, the opinion of Beit Shammai is stringent, and that of Beit Hillel is lenient. And the Gemara raises a contradiction: With regard to one who slaughters an undomesticated animal or a fowl on a Festival, Beit Shammai say, etc.

בשלמא בית שמאי אבית שמאי לא קשיא, התם – דאיכא דקר נעוץ, הכא – ליכא דקר נעוץ. אלא בית הלל אבית הלל קשיא!

Granted, the contradiction between one statement of Beit Shammai and the other statement of Beit Shammai is not difficult, as it can be explained as follows: There, in the slaughtering case, it is referring to a situation where there is a shovel embedded and prepared the day before; here, there is no embedded shovel, and therefore Beit Shammai are stringent. However, the contradiction between one statement of Beit Hillel and the other statement of Beit Hillel is difficult.

אמר רבי יוחנן: מוחלפת השיטה. (אי נמי): עד כאן לא קאמרי בית הלל הכא אלא משום דאין בנין בכלים ואין סתירה בכלים, אבל התם – לא.

It is with regard to this contradiction that Rabbi Yoḥanan said: The attribution of the opinions is reversed. The Gemara comments: Alternatively, one can suggest a different answer without reversing the opinions: Beit Hillel say their lenient opinion only here,<sup>N</sup> in the case of the shutters, because they maintain that there is no prohibition against building with regard to vessels and there is no prohibition against dismantling with regard to vessels, which means that no Torah prohibition is violated in removing the shutters. However, there, in the case of slaughtering, where there are no extenuating circumstances, Beit Hillel did not permit it. Consequently, there is no contradiction that necessitates a reversal of the opinions.

מתני' בית שמאי אומרים: לא יטול אלא אם כן נענע מבעוד יום, ובית הלל אומרים: עומד ואומר "זה וזה אני נוטל".

**MISHNA** Beit Shammai say: One may not take fledgling doves from a dovecote on a Festival, unless he shook<sup>N</sup> the ones he wished to take while it was still day, thereby preparing them. And Beit Hillel say: It is not necessary to shake; rather, it is sufficient if one stands the day before and says: I will take this fledgling and that one.<sup>NH</sup>

גמ' אמר רב חנן בר אמי: מחלוקת בבריכה ראשונה, דבית שמאי סברי: גזרין דלמא אתי לאמלוכי,

**GEMARA** Rav Ḥanan bar Ami said: The dispute between Beit Shammai and Beit Hillel applies to the first brood,<sup>B</sup> the first pair of fledglings hatched in the first month of the year from a pair of doves. Those fledglings are usually left in the nest and are not used for food. As Beit Shammai hold: We issue a decree prohibiting taking them, as perhaps<sup>N</sup> on the Festival he will come to reconsider<sup>N</sup> after handling them and decide to leave them in their place, in which case he has moved them unnecessarily. However, once he has already shaken them, there is no further concern that he might change his mind on the Festival itself.

ובית הלל סברי: לא גזרין. אבל בבריכה שניה – דברי הכל בעומד ואומר "זה וזה אני נוטל" סגיא.

And Beit Hillel hold: We do not issue a decree, as there is no concern that one might change his mind, and therefore a verbal commitment is sufficient. However, with regard to the second brood, the fledglings born on the second cycle in the following month, everyone agrees that it is enough for one to stand and say: I will take this one and that one.

## The ritual impurity of entrances – טומאת הפתחים

The Ramban holds that this case must be referring to entrances that were barred or closed up, as the *halakha* is that all open entrances leading out from a room that contains a corpse become ritually impure immediately, not because the dead might be brought out through them but by a Torah law. By contrast, the ritual impurity of closed entrances discussed here is a separate issue. It is a *halakha* transmitted to Moses at Sinai that as long as it is possible for the corpse to be removed via any entrance, all of them are ritually impure. The final conclusion is apparently that this is not a rabbinic decree but a Torah law, albeit one not detailed in the verses themselves. The commentaries explain that this must be the case, as an entrance would not be declared ritually impure merely due to uncertainty.

## Perhaps one will move and put down – דלמא מטלטל וישיב

Many early authorities point out that one may not declare the entire dovecote prepared for the Festival and later choose only the doves he desires, as certainly he does not intend to remove all of the fledglings from his dovecote but actually has only one in mind (Rabbeinu Peretz; Rabbeinu Yeruham; see *Shitta Mekubbetzet*). Other commentaries, however, are not convinced, and maintain that if one did designate an entire dovecote, there is no longer any need to select one particular pair of doves (Rashba).

## HALAKHA

## The ritual impurity of entrances – טומאת הפתחים

If there is a corpse in a house that has many entrances, all of which are locked, they are all ritually impure, and anyone sitting under an entrance is rendered impure with ritual impurity imparted by a corpse. If one of the entrances is opened, or if a decision has been made to remove the corpse through one of the entrances, including a window four by four handbreadths in size, this spares all the other entrances from ritual impurity, even if the decision was made after the person died. This ruling is in accordance with the opinion of Beit Hillel (Rambam, *Sefer Tahara, Hilkhot Tumat HaMet* 7:2).

ובית הלל, למה ליה למימר "זה וזה  
אני נוטל"? לימא "מכאן אני נוטל  
למחר".

וכי תימא: בית הלל לית להו בריה,  
והתנן: המת בבית ולו פתחים הרבה –  
בולן טמאים.

נפתח אחד מהן – הוא טמא וכולן  
טהורין. חשב להוציא באחד מהן, או  
בחלון שיש בו ארבעה על ארבעה –  
מצלת על כל הפתחים בולן.

בית שמאי אומרים: והוא שחשב  
להוציא עד שלא ימות המת, ובית  
הלל אומרים: אף משימות המת.

הא אתמר עליה, אמר רבה: לטהר  
את הפתחים מכאן ולהבא. וכן אמר  
רבי אשיעיא: לטהר את הפתחים  
מכאן ולהבא. מכאן ולהבא – אין.  
למפרע – לא.

רבא אמר: לעולם למפרע, והכא היינו  
טעמא: דלמא מטלטל ושיבוק, מטלטל  
ושיבוק, וקא מטלטל מידי דלא חזי  
ליה.

והא אמרת "בעומד ואומר זה וזה אני  
נוטל סגיא". הני מילי מערב יום טוב,

The Gemara asks: **And** according to the opinion of Beit Hillel, why does one need to say: I will take this one and that one? Let him say: From here, this dovecote, I will take tomorrow. Why does one have to specify exactly which fledglings he plans to remove from the dovecote?

**And if you say that Beit Hillel do not accept** the principle of retroactive designation, i.e., they reject the idea that a person's original intention can be clarified retroactively, and therefore it cannot be said that the fledglings one takes on the Festival were the ones he had in mind beforehand, **but didn't we learn** in a mishna (*Ohalot* 7:3): **If a corpse is located in a house, and the house has many entrances, whether they are open or closed, not only is the inside of the house ritually impure as a tent of the dead, but all the entrances are likewise ritually impure and impart impurity to the vessels they contain?** The reason is that the corpse might be removed via any of the entrances, and therefore they all contract impurity.

If only **one** of the entrances was open after the person died, that entrance alone is ritually impure, as the corpse will certainly be removed through it, and all the other entrances remain ritually pure. The same applies if **one** decided from the outset to remove the corpse through one of the entrances, or to carry it out through a window that is four by four handbreadths in size, which is large enough for a corpse. This intention spares all the other entrances from ritual impurity, as it is clear that the corpse will not be removed through them.

With regard to this case, Beit Shammai say: This *halakha* applies only if one had decided to remove the corpse by a particular entrance before the person died, so that the entrance through which the body would be removed was already determined at the time of death. **And Beit Hillel say:** This *halakha* applies even after the person died, as the principle of retroactive designation is invoked, which means that the entrance through which the deceased will be removed is retroactively designated. This indicates that Beit Hillel do accept the principle of retroactive designation.<sup>NH</sup>

The Gemara refutes this proof: **Wasn't it stated by amora'im with regard to this mishna that Rabba said:** In this case, Beit Hillel referred only to purifying the entrances from that point forward. In other words, after one has decided on an entrance that he will use to remove the dead, any vessels in the space of the other entrances do not become ritually impure. However, vessels that were located inside the space of the other entrances before the decision was made remain impure. According to these *amora'im*, Beit Hillel do not accept the principle of retroactive designation. **And, so too, Rav Oshaya said:** This *halakha* is referring to purifying the entrances from that point forward, which indicates: **From here onward, yes, the entrances are ritually pure; retroactively, no, they are not considered pure.**

Rava said that there is a different way to resolve the conflicting rulings of Beit Hillel: **Actually, in the case of ritual impurity, Beit Hillel maintain that all the entrances are ritually pure retroactively. And here, with regard to fledglings, this is the reason why Beit Hillel insist that one designate which particular fledglings one plans to take on the Festival: Perhaps one will move fledglings, and put them down,<sup>N</sup> and again move them, and put them down until he finds the pair he wants, thereby moving an object that is not suitable for him, i.e., which is *muktze*.**

The Gemara raises an objection: **But** if this is indeed the concern, didn't you say that it is enough if one stands and says: I will take this one and that one. In this case, too, he does not touch them. It is therefore possible that he may reconsider his choice of fledglings on the Festival after he handles them. The Gemara answers: **This applies only when one made his choice on the eve of the Festival.** Since he knows that he may not alter his decision on the Festival itself even if he does not like the ones he chose, he definitively decides to take those fledglings and will not handle others.

אבל ביום טוב אסור, דזימנין דמשתבחי שמנים כחושים, וכחושים שמנים, וקמטלטל מידי דלא חזי ליה. אי נמי זימנין דמשתבחי בלהו כחושים, ושביק להו, ואתי לאמנועי משמחת יום טוב.

**מתני'** זמן שחורים ומצא לבנים, לבנים ומצא שחורים, שנים ומצא שלשה - אסורים. שלשה ומצא שנים - מותרים.

בתוך הקן ומצא לפני הקן - אסורין, ואם אין שם אלא הם - הרי אלו מותרים.

**גמ'** פשיטא. אמר רבה: הכא במאי עסקינן - בגזון שזמן שחורים ולבנים, והשבים ומצא שחורים במקום לבנים, ולבנים במקום שחורים. מהו דתימא: הני אינהו נינהו, ואתה פוכי אתה פוך, קא משמע לן: הניגד אודו לעלמא, והני אחריני נינהו.

לימא מסייע ליה לרבי חנינא, דאמר רבי חנינא: רוב וקרוב - הלך אחר הרוב.

However, on the Festival it is prohibited, as sometimes those that seemed to him to be fat ones will be found<sup>N</sup> to be thin, and thin ones will be found to be fat, and he will move an object that is not suitable for him, thereby transgressing the prohibition against moving *muktze* objects. Alternatively, sometimes they will all be found to be thin, and he will leave them all, and he will come to neglect the rejoicing of the Festival. If, however, one announces the day before: I will take this one and that one, he will indeed take only those fledglings, thereby enhancing his Festival joy.

**MISHNA** If, on the eve of a Festival, one designated black fledglings to be slaughtered, and on the following day found white ones in the dovecote, rather than the birds he had designated, or if one designated white ones to be slaughtered and found black ones, or if one designated two fledglings to be slaughtered and found three, they are prohibited, as these are not the same fledglings he had designated earlier. If, however, one designated three to be slaughtered and found only two, they are permitted, as it is presumed that one of the fledglings escaped.<sup>H</sup>

If one designated them inside the nest and the next day he cannot find them there, and he found fledglings before the nest, they are prohibited, as they might be fledglings other than the ones he designated and left inside the nest. But if there are only those fledglings in the immediate vicinity, they are permitted, as it can be assumed that these are the ones he designated inside the nest.

**GEMARA** The Gemara asks: But it is obvious that if one designated black ones to be slaughtered and found white ones, they are not the same birds. **Rabba said: With what are we dealing here?**<sup>N</sup> The mishna is referring to a case where one designated both black and white ones to be slaughtered, and he arose and found<sup>N</sup> black ones in the place where the white ones had been, and white ones in the place of the black ones. **Lest you say: These are those same fledglings and they simply exchanged places,** the mishna teaches us that this claim is not accepted. Instead, it is assumed that these ones that he designated have gone to the outside world, and these ones that he found are others that have come from elsewhere.

The Gemara suggests: **Let us say that this mishna supports Rabbi Hanina, as Rabbi Hanina said:** When resolving an uncertainty with regard to the identity of an item, if the majority indicates one ruling but the item in question is proximate<sup>HN</sup> to a source that indicates otherwise, one follows the majority. In this case, the majority of fledglings are prohibited, as they were not designated for use on the Festival. Consequently, the found fledglings are prohibited, despite the fact that the nearest fledglings are the designated ones.

#### NOTES

Sometimes fat ones will be found, etc. – זימנין דמשתבחי שמנין – וכו': It is not necessary to designate chickens, geese, and the like before the Festival. However, doves must be designated because they are usually kept in a dovecote for breeding purposes rather than as ready food. Furthermore, one is generally reluctant to take fledglings, due to the risk of spoiling the dovecote (Rabbi Aharon HaLevi). Also, chickens and geese are always at hand, which means one regularly comes into contact with them and knows which are the fat ones; this is not the case with doves (*Shitta Mekubbetzet*). Other commentaries follow the opinion of several early authorities that one should be stringent and designate even chickens and geese before the Festival (*Yam Shel Shlomo*).

With what are we dealing here, etc. – הכא במאי עסקינן וכו': Some commentaries explain that Rabba was troubled by the wording of the mishna: Black ones and found white ones; white ones and found black ones. The second clause is apparently

superfluous. He therefore explains that it is referring to a case where one designated both black and white ones (*Tziyyun LeNefesh Hayya*).

He arose and found – השבים ומצא – Because doves do not usually stray from their nest during the dark, the Gemara emphasizes: Arose. One might cite this as a reason to conclude that the doves did not come from outside this dovecote. The Gemara teaches that this possibility is nevertheless taken into account (*Hatam Sofer*).

A majority but the item is proximate – רוב וקרוב: The Gemara could have cited other *mishnayot* to support the claim that one generally follows the majority. However, the proof from this case is particularly convincing. It involves a visibly proximate source, which one would think would be the deciding factor, and yet the principle to follow the majority is still applied (Rabbeinu Peretz).

#### HALAKHA

**Designated black ones and found white ones – זימן וסחורים ומצא לבנים:** If one designated black fledglings on the eve of a Festival and discovered white ones in their place when he came to take them on the Festival, they are prohibited. However, the *halakha* is different if one designated two fledglings and found three; if one designated three and found two; or if one designated black ones next to white ones and found the black ones in the place of the white ones. In all of these cases, the ruling is as follows: If he recognizes the ones he designated, he may take them; if not, they are all prohibited. This applies in a case where either there are other dovecotes within fifty cubits or the fledglings can fly a little, as stated by the mishna and in accordance with the opinion of Rabba (*Shulhan Arukh, Orach Hayyim 497:12*).

**A majority but the item is proximate – רוב וקרוב:** If there is a conflict between a majority and an object that is near, one follows the majority, in accordance with the opinion of Rabbi Hanina. Consequently, in a case where one finds a fledgling that can hop but cannot yet fly, the ruling is as follows: If it is found within fifty cubits of its dovecote, it belongs to the owner of the dovecote; if it is found beyond that range, it is the property of the finder; if it is found between several dovecotes, it belongs to the nearest one; and if it is midway between two, the two owners must share it. This applies in a case where the various dovecotes contain the same number of doves. However, if there are more doves in one particular dovecote, one follows the majority although it is farther away (*Shulhan Arukh, Hoshen Mishpat 260:8*).

BACKGROUND

Ledge – דף: In the mishnaic period, as today, a ledge was affixed to the entrance of dove-cotes. The doves perch on the ledge when entering and exiting.



Dovecote with ledges

Second tithe – מעשר שני: The second tithe is separated from produce after teruma has been given to a priest and the first tithe to a Levite. Second tithe was given during the first, second, fourth, and fifth years of the Sabbatical cycle. After second tithe was separated, it was brought to Jerusalem and eaten there by its owner. If the journey to Jerusalem was too long, which made it difficult to carry all of the second-tithe produce there, or if the produce became ritually impure, it could be redeemed for an equivalent sum of money. This redemption money was brought to Jerusalem, where it was spent on food (see Deuteronomy 14:25). Second tithe may be redeemed only with minted coins bearing an imprint; unstamped coins and promissory notes may not be used. Today, the second tithe is still redeemed, but only for a nominal sum, as it is no longer brought to Jerusalem. The halakhah of second tithe are discussed in tractate Ma'aser Sheni.

בְּדֹאמְרוֹ אַבְיָי: בְּדָף, הָבָא נְמִי בְּדָף.

The Gemara refutes this suggestion: Perhaps it is as Abaye said with regard to a different issue: We are dealing with fledglings located on a ledge,<sup>b</sup> a flat piece of wood protruding from the dove-cote, around which many doves congregate. Here too, the mishna is referring to a ledge. Since other doves are regularly found there, the principle that one follows the majority rather than the proximate source does not apply, as both the majority of doves and the proximate source of doves are not the original ones, and therefore all the fledglings are prohibited.

”שְׁנַיִם וּמֵצָא שְׁלֹשָׁה אֲסוּרִין.” מֵה נִפְשָׁךְ, אִי אַחֲרֵינִי נִנְהוּ – הָא אַחֲרֵינִי נִנְהוּ, וְאִי לֹא אַחֲרֵינִי נִנְהוּ – הָא אִיכָּא חַד דְּמַעֲרַב בְּהוּ.

The mishna taught that if one designated two and found three, they are prohibited. The Gemara explains: Whichever way you look at this matter, the fledglings are prohibited. If these are others, they are others<sup>n</sup> that have not been designated. And if they are not others, i.e., two of the fledglings that one designated are still there, nevertheless there is one that he certainly did not designate and that is mingled with them, which renders the others prohibited as well.

”שְׁלֹשָׁה וּמֵצָא שְׁנַיִם מוּתָרִין.” מֵאִי טַעֲמָא? הֲנִי אֵינְהוּ נִנְהוּ, וְחַד מִנֵּיהוּ אֹל לְעֵלְמָא.

The mishna taught that if one designated three and found two,<sup>h</sup> they are permitted. The Gemara asks: What is the reason for this? The Gemara explains: These are the same ones, and one of them has gone to the outside world,<sup>n</sup> leaving two behind.

לֵימָא מִתְנַתִּין רַבִּי הִיא וְלֹא רַבְנָן, דְּתַנְיָא: הַנִּיחַ מְנָה וּמֵצָא מֵאֲתָם – חוּלִין וּמַעֲשֵׂר שְׁנֵי מְעוּרָבִין זֶה בְּזֶה, דְּבָרֵי רַבִּי. וְחֻכְמִים אוּמְרִים: הַכֹּל חוּלִין.

The Gemara suggests: Let us say that the mishna is in accordance with the opinion of Rabbi Yehuda HaNasi, and not that of the Rabbis, as it is taught in a baraita: If one placed one hundred dinars of tithe money in a safe place and found two hundred<sup>h</sup> there, it is assumed that this is non-sacred money and second-tithe<sup>b</sup> money mingled together. Someone must have come and added another hundred to his tithe money. Therefore, he separates one dinars from the total and states: Whatever part of this is the tithe, is fine; whatever part of it is non-tithe money, let it be used to redeem the tithe money, and this should be sanctified as tithe money in its place. This is the statement of Rabbi Yehuda HaNasi. And the Rabbis say: It is all non-sacred<sup>n</sup> money. Since the money is not as he left it, the assumption is that someone took the original one hundred dinars; and he, or someone else, replaced it with two hundred dinars of regular money.

הַנִּיחַ מֵאֲתָם וּמֵצָא מְנָה – מְנָה מוּנָח וּמְנָה מוּטָל, דְּבָרֵי רַבִּי. וְחֻכְמִים אוּמְרִים: הַכֹּל חוּלִין.

Conversely, if one placed two hundred dinars and found one hundred dinars, it is presumed that one hundred dinars has been left in its place and is tithe money, and one hundred dinars was removed. This is the statement of Rabbi Yehuda HaNasi. And the Rabbis say: It is all non-sacred money. It is assumed that someone removed all the money, and the one hundred dinars he found must have been placed there by someone else, and is not connected to the money he left. The halakha with regard to the case of fledglings apparently follows Rabbi Yehuda HaNasi's opinion in the case of second-tithe money.

אֶפִּילוּ תִימָא רַבְנָן, הָא אֲתָמְרוּ עֲלֵה, רַבִּי יוֹחָנָן וְרַבִּי אֶלְעָזָר דְּאָמְרֵי תְרוּוּיָהּ: שְׂאֵי גוּזְלוֹת הוּאִיל וְעִשׂוּיִן לְדָדוֹת.

The Gemara refutes this claim: Even if you say that the mishna is in accordance with the opinion of the Rabbis, it can be explained, as it was stated with regard to this mishna that Rabbi Yohanan and Rabbi Elazar both say: Fledglings are different, since they typically hop from place to place. Therefore, it is possible that one of them escaped. By contrast, a money pouch cannot move of its own accord and must have been taken by someone.

NOTES

They are others, etc. – הָא אַחֲרֵינִי נִנְהוּ וכו': According to the Rambam, the mishna rules as it does because this is a case of uncertain preparation, which is prohibited on a Festival. Apparently, the Rambam rules in accordance with the opinion of Rabbi Hanina, despite the Gemara's rejection of his opinion (see Maggid Mishneh and other later authorities).

and no harm seems to have befallen them, one can be lenient and assume that they are the same birds (Meiri).

One of them has gone to the outside world – חַד מִנֵּיהוּ אֹל – לְעֵלְמָא: Tosafot who explain that since two fledglings are still there,

It is all non-sacred – הַכֹּל חוּלִין: This case involves uncertainty pertaining to a Torah prohibition; as such, how can the money be entirely permitted? The commentaries suggest two answers: Either this is a case of a tithe by rabbinic law, in which case the uncertainty pertains to a rabbinic prohibition, or, alternatively, since the money has evidently changed from its previous state, one can certainly assume that it is non-sacred money (Rashba).

HALAKHA

Three and found two – שְׁלֹשָׁה וּמֵצָא שְׁנַיִם: If one designated three doves and found two, they are permitted, even if all three were initially tied together (Rema; Shulhan Arukh HaRav). Some authorities hold that whenever the doves are found in a different state from the way one left them, they are prohibited (Taz; Shulhan Arukh, Oraḥ Hayyim 497:13).

Placed one hundred dinars and found two hundred – הַנִּיחַ מְנָה וּמֵצָא מֵאֲתָם: If one left one hundred dinars of second-tithe money and found two hundred in its place, or if one left two hundred dinars and discovered one hundred, all the money is non-sacred. The halakha is in accordance with the opinion of the Rabbis (Rambam Sefer Zera'im, Hilkhoh Ma'aser Sheni 6:3).

כִּסְיֵי כֶסֶף – Money pouch



Leather money pouch from the Roman period

## NOTES

גוזלות מנתחי – גוזלות can release themselves, etc. – **וכי:** This discussion also appears in the Jerusalem Talmud, with several variations. One opinion cited there is that this *halakha* applies not merely to fledglings but to eggs as well, and the Gemara therefore concludes that this mishna is certainly in accordance with the opinion of Rabbi Yehuda HaNasi.

וְלָמָּה לִי לְשֹׁנֵי עֵלָה שְׂאֵי גֹזְלוֹת הוֹאִיל וְעֲשׂוּיֵי לְדָדוֹת? וְהָאֵתְמַר עֵלָה דְהֵיא דְרַבִּי יוֹחָנָן וְרַבִּי אֶלְעָזָר; חֵד אָמַר: בְּשֵׁי כִּסְיֵי מַחְלוּקָתָא. אֲבָל בְּכִּסְיֵי אֶחָד – דְּבָרֵי הַכֹּל חוֹלִין. וְחֵד אָמַר: בְּכִּסְיֵי אֶחָד מַחְלוּקָתָא, אֲבָל בְּשֵׁי כִּסְיֵי – דְּבָרֵי הַכֹּל מִנָּה מוֹנָח וּמִנָּה מוֹטֵל.

The Gemara asks: **And why do I need to answer with regard to it: Fledglings are different, since they typically hop? But wasn't it stated with regard to that mishna, which deals with a money pouch, that Rabbi Yohanan and Rabbi Elazar disagree over it: One of them said:** The dispute applies only to a case of **two pouches**, with one hundred dinars in each pouch. **However,** if all of the money was in a **single pouch**, everyone agrees that it is **non-sacred** money, as it is unlikely that only half of the money was removed while the other half was left in its place. **And the other one of them said:** The dispute applies only to **one pouch**, but with regard to **two pouches**, everyone agrees that **one hundred dinars of tithe is left and one hundred dinars has been removed.**<sup>8</sup>

בְּשֵׁלָמָא לְמָאן דְּאָמַר בְּשֵׁי כִּסְיֵי מַחְלוּקָתָא – הֵינּוּ דְּאִי־טְרוּךְ לְשֹׁנֵי הָכָא שְׂאֵי גֹזְלוֹת הוֹאִיל וְעֲשׂוּיֵי לְדָדוֹת. אֵלָא לְמָאן דְּאָמַר בְּכִּסְיֵי אֶחָד מַחְלוּקָתָא, אֲבָל בְּשֵׁי כִּסְיֵי – דְּבָרֵי הַכֹּל מִנָּה מוֹנָח וּמִנָּה מוֹטֵל, הֲשִׁתָּא לָמָּה לִי לְשֹׁנֵי עֵלָה? הָא אָמַרְתָּ בְּשֵׁי כִּסְיֵי לָא פְּלִיגִי.

The Gemara explains: **Granted, according to the one who said that the dispute deals with a case of two pouches, this is why it was necessary to answer here: Fledglings are different, since they typically hop. However, according to the one who says that the dispute involves a case of one pouch, but with regard to two pouches everyone agrees that one hundred dinars of tithe is left and one hundred dinars has been removed, now consider: Why do I need to answer, with regard to it,** that there is a difference between that *halakha* and the case of fledglings? **You said that they do not disagree even with regard to two separate pouches, and therefore they certainly do not disagree in the case of fledglings.**

אָמַר רַב אֲשִׁי: הָכָא בְּגֹזְלוֹת מְקוּשְׁרִים וְכִּסְיֵי מְקוּשְׁרִים עֲסָקִינָּה. גֹּזְלוֹת – מְנַתְחֵי אֶהְדְּדִי, כִּסְיֵי – לָא מְנַתְחֵי אֶהְדְּדִי.

Rav Ashi said: **Here we are dealing with fledglings tied together and with money pouches tied together.** In other words, when it is stated that the dispute applies to one pouch, this refers to two pouches that are tied together, as well. Rabbi Yehuda HaNasi and the rabbis agree only with regard to two pouches that are entirely separate. Consequently, it is necessary to explain that there is a difference between pouches tied together and fledglings tied together: **Fledglings can release themselves<sup>N</sup> from each other,** and therefore it is possible that only one of them escaped, whereas **pouches cannot release themselves from each other.** Therefore, it is evident that someone must have taken them. Since they were tied together, he certainly took both of them.

וְרַבִּי אָמַר לָךְ: כִּסְיֵי נִמְי, וּמִנָּה

The Gemara asks: **But if that is indeed the case, and it is obvious that someone came and took the money, what is Rabbi Yehuda HaNasi's reasoning?** The Gemara explains: **And Rabbi Yehuda HaNasi could have said to you: Pouches, too, sometimes**

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דְּמַתְעַבְל קְטְרִייהוּ.

their knot becomes worn and untied. Consequently, it is possible that someone took only one of the two pouches.

”בְּתוֹךְ הַקֵּן וּמִצֵּא לְפָנֵי הַקֵּן אֲסוּרִין.” לִימָא מְסִיעֵה לִיה לְרַבִּי חֲנִינָא, דְּאָמַר רַבִּי חֲנִינָא: רוֹב וְקָרוֹב – הֵלֵךְ אַחַר הָרוֹב.

**S** The mishna taught that if one designated fledglings **inside the nest and found them before the nest,**<sup>H</sup> they are prohibited. The Gemara comments: **Let us say that this supports the opinion of Rabbi Hanina, as Rabbi Hanina said:** In a case involving a **majority and an item that is near, one follows the majority.** Since doves from the outside world are more numerous than those that one designated, the assumption is that these fledglings are from the majority, and therefore they are prohibited.

## HALAKHA

בְּתוֹךְ הַקֵּן וּמִצֵּא לְפָנֵי – **בתוך הקן ומצא לפני –** If one designated fledglings inside a nest and found them at the entrance to the nest, they are permitted. If one found them before the nest, they are prohibited. However, if there is no other nest in the vicinity, i.e., within fifty cubits (*Magen Avraham*), they

are permitted. In a case where there is another nest nearby, if the fledgling cannot see it, e.g., it is around a corner, they are permitted. All this applies only if the fledglings are able to move merely by hopping; if they are able to fly, they are prohibited (*Shulhan Arukh, Orach Hayyim* 497:14).