

Shilu'ach Hakein (YD 292)

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Introduction

- I. The pesukim in Ki Seitze (22:6-7¹) introduce this mitzvah, such that there's a lav of "לא תקח" שלח תשלח, "האם על הבנים" and a mitzvas asseh of לשלח תשלח.
 - A. In terms of how to translate the lav, **Rashi** says the Issur is to take the mother alone. **Chizkuni** says it means to take her *with* her children. **SHC 545** also says the lav is to take the mother when she's on top of the nest.
 1. See Minchas Chinuch who is ma'arich about this and concludes there's a lav to take just the mother alone, based on the gemara's שקלא וטריא by עדל"ת and Rashi on Chumash.
 - B. There's a machlokes in the **Mishnah + Gemara 141a** whether the asseh is מעיקרא משמע, such that it's not a lav hanitak la'asseh (R' Yehuda), or that the Asseh is to send away the mother (even) after you violated the lav, and then it is nitak la'asseh (Chachamim). We paskin the latter.
 1. Is there even an asseh to send away the mother beforehand for the Chachamim?
 - a) **Rambam in the Koteret** (לשלח האם אם לקחה על הבנים) and throughout makes it sound like it's *just* לעשה, ניתק חיוב until after you violate the lav (like והשיב את הגזילה). **RAW** makes this point – there's no asseh for the Rambam until after you violate the lav.
 - b) In contrast, **SHC 545** clearly says the mitzvah is "לשלח האם מן הקן קודם שיקח" לשלח האם. But that the lav is also ניתק to this asseh.
- II. How to pronounce it? People often pronounce it שילוח הקן because the Torah calls it a קן שילוח. However, the **Melo Haro'im** at the beginning of Perek הקן (138b) quotes the Shlah that the correct pronunciation is שילוח הקן with a tzeirei. The reason it's *kan* in the Torah is just because it's written belashon *semichut* (*kan-tzipor*). But when קן is written alone, it's a *kein*, as evidenced by **Tehillim 84:4** that גם צפור מצאה בית ודרור קן לה אשר שְׁתָּה אֶפְרָחִיהָ וכו' שְׁתָּה אֶפְרָחִיהָ וכו'.
- III. Rambams are in **Hilchos shechitah 13**. It's clear from halacha 1, 6, and 18 that a) you can't take the mother alone. b) You can't take the eggs alone until after you send the mother. C) If you took them both, it's ניתק לעשה to send away the mother beforehand.
- IV. There are also various segulohs associated with this mitzvah, which might relate to why people are so excited to do it:
 - A. Obviously, the Torah says למען ייטב לך והארכת ימים.
 - B. **Sefer Hachinuch 515** quotes Chazal that it's a segulah to have children, and darshins this from ואת הבנים תקח לך.
 - C. **Kli Yakar 22:7** says it's also a segulah for getting married, as well as for acquiring a new house, based on the juxtaposition to כי יבנה איש בית + כי יקח איש אשה.

¹ כי יקרא קן-צפור לפניך בדרך בכל-עץ או על-הארץ, אפרחים או ביצים, והאם רבצת על-האפרחים, או על-הביצים--לא-תקח האם, על-הבנים. **כבז**, שלח תשלח את-האם, ואת-הבנים תקח-לך, למען ייטב לך, והארכת ימים.

Reasons for the Mitzvah

- I. **Rambam in Moreh 3:48²**: Reason for the mitzvah is since animals love their young like people. That's why **אסור** **אותו ואת בנו** is **אסור**, and that's also the reason for **שילוח הקן**, that you should send the mother away so she doesn't see when you take the children, as that causes a lot of **tza'ar**.
 - A. He quotes the gemara which says the reason we're **משתקין אותו** if someone says that **שעושה מדותיו של הקב"ה רחמים ואינן אלא גזירות** is because **על קן צפור יגיעו רחמין**. And then he says we reject that **amora**, since that's the opinion that we shouldn't seek **ta'amei hamitzvos**. However, we **paskin** you *should* look for **ta'amei hamitzvos**, and so the reason *is* because of the **tza'ar** it causes to the animal. He further notes the goal is that we don't take the chicks or eggs at all, since most of the time the eggs that are going to hatch or the little chicks aren't even **לאכילה**.
- II. **Ramban al Hatorah 22:6**: it's not because **הקב"ה** cares about the animals, but so that we create a **middah of rachmanus in ourselves**. The point of the mitzvah is for us, not the animals.
- III. **Zohar (Megillas Rus 29b)**: Has the opposite approach: When the bird is **בצער**, it causes a **malach** of the **Ofos** to complain to **הקב"ה**, and that actually causes **הקב"ה** to have **rachamim** on *his* children, i.e. us. Specifically, He has **rachachmim** on the fact that we've been kicked away from our homeland / we're in **galus**, in the same way the bird was forced to fly away. The person who shooed away the mother bird thus brought **rachamim** on the whole world, which is why the Torah says **למען ייטב לך והארכת ימים**.

To Which Birds + Nests Does it Apply

- I. **SA 1**: Only applies to an **Of Tahor**. Also only applies when the female bird on the nest, and not the male. Some common examples of kosher bird are doves, pigeons, sparrows, geese, ducks, and robins.
 - A. From **Star-K**: "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"
- II. Where is the nest?
 - A. **Mezuman: SA 2** paskins that one is only **חייב** on a nest/eggs which don't exist in your house. This is based on **פרט למזומן** **כי יקרא פרט למזומן**.
 1. It's clear from the first Mishnah in **Shilu'ach Hakein**, as well as the **gemaras** at the end of the **Perek**, that **mezuman** is a **פטור** if **either** the birds are domesticated/don't run away from humans *or* you have a **kinyan** on the eggs.

² אין הפרש בין צער האדם עליו וצער שאר ב"ח, כי אהבת האם ורחמיה על הולד אינו נמשך אחר השכל רק אחר פעל הכח המדמה הנמצא ברוב בעלי חיים כמו שנמצא באדם, והיה זה הדין מיוחד בשור ושה, מפני שהם מותר לנו אכילתם מן הבייתות הנהוג לאכלם, והם אשר תכיר מהם האם את הולד, וזהו הטעם ג"כ בשלוח הקן, כי הביצים אשר שכבה האם עליהם והאפרוחים הצריכים לאמם על הרוב אינם ראויים לאכילה, וכשישלח האם ותלך לה לא תצטער בראות לקיחת הבנים, ועל הרוב יהיה סבה להניח הכל, כי מה שהיה לוקח ברוב הפעמים אינו ראוי לאכילה, ואם אלו הצערים הנפשיים חסה תורה עליהם בבהמות ובעופות כל שכן בבני אדם, ולא תקשה עלי באמרם על קן צפור יגיעו רחמין וגו', כי הוא לפי אחת משתי הדעות אשר זכרנום, ר"ל דעת מי שחושב שאין טעם לתורה אלא הרצון לבד, ואנחנו נמשכנו אחר הדעת השני

2. Further, the gemara at the end of the perek says that even when a nest is in your reshut, so long as the bird hasn't left the eggs/nest, one still has a mitzvah. Because it's אסור for you to take the eggs while the mother is there, your chatzer can't be koneh for you either. However, if you get the bird to fly up above the nest a bit (טרף אקן), then your chatzer will be koneh the eggs, and the mitzvah no longer applies. All this is paskined in **SA 2**. [See below that **RAW** thinks this no longer applies.]
 - a) In the case where the bird lifted a bit, **Shach 5** argues that the bird lifting up by itself is only if it flies enough away that it's יצא מתחת ידו, per seif 4, that this is how you fulfill the mitzvah of shilu'ach. Otherwise, once you start the process, you're still doing/chayav in the mitzvah of שילוח הקן and mimeilah you can't be koneh the eggs. Lifting a little over the eggs only helps if it does so on its own.
 3. **Shach 3** argues if a bird regularly lives with people and makes its nest in your חצר המשתמרת, that's also considered mezuman. **Zaki** explained that's not considered as if the bird was מרד בו.
 - B. Once the above condition is met, **SA 3** says one is חייב in just about any place. Whether it's in a רה"י or a רה"ר, in a nest on the sea or anywhere else, including on top of someone or an animal's head.
- III. Where is the bird relative to the nest?
- A. The bird has to be *on* the eggs, though and not to the side of them (**SA 12**).
 - B. If the bird is hovering over its nest, and not touching the nest, one is פטור as well, since that's not called רובצת (**SA 11**).
- IV. There are also rules about the eggs and chicks, all paskined in **SA 7**.
- A. If the eggs are non-viable (מחורות / מוחרות), the Mishnah says that there's no mitzvah. [See **Tifferes Yisrael** for a long discussion about how the word "מחורות" must mean spoiled and not only that they aren't fertilized.]
 - B. Chicks need to be able to be taken לכלבים, לך ולא, so if they're treifos, there's no mitzvah.
 - C. If the chicks are able to fly on their own, there's no longer a mitzvah to send away the mother first.

Shiluach Haken on Shabbos

- I. **Chasam Sofer 100** paskins that it's אסור to do this mitzvah on Shabbos if one doesn't want the eggs/chicks; a) According to the Zohar, we aren't supposed to cause crying on Shabbos (צ"ע), and b) according to nigleh, you're being מצורר שלא לצורך, especially since you can't be mekayem shilu'ach in the way that Rambam says to do so, as it's a problem of tzeidah or muktzah.
 - A. **RAW** thinks you *could* be mekayem this on Shabbos. He notes the Chasam Sofer saying we can't cause tza'ar to הקב"ה on Shabbos is a big chiddush, and doesn't think even Rambam would say you need to grab the animal, but just to touch it, as noted above.
 - B. Note that it seems **Chasam Sofer** was only talking about doing it for no reason, and saying why he thought that was a problem. If one wanted the eggs, it's not clear to me even he thought this would be a problem.

How to send away the mother?

- I. **SA 4** spells out, based on **Chulin 141b**, that you need to send the bird far away that it's אינו תחת ידו. If it just lifts up a bit, you haven't fulfilled the mitzvah. See there that you also can't cut off its wings before sending it away, based on the gemara there.
 - A. It's אסור to take the mother alone, even if one doesn't take the eggs/chicks (SA 5).
- II. **Chasam Sofer OC 100, Gra on seif 4 + ARUH 6** note there's a machlokes **Rashi + Rambam** about how to be mekayem shilu'ach haken. **Gemara 141b** says במאי משלחה and has a machlokes if it's ברגליה or באגפיה.
 - A. **Rashi** learns this just means they're having a machlokes if you're mekayem shiluach haken if you snip its wings off first (i.e. is its ability to run away ברגליה sufficient).
 - B. However, **Rambam Shechita 13:5** learns this is saying how to do shilu'ach, that you have to actually grab it by the wings as part of the process of sending it away.
 1. **RAW** argues even Rambam doesn't mean you have to literally grab it, but just to touch it in order to fulfill the mitzvah; it wouldn't make sense that you need to grab it as part of the shiluach, as that's the opposite of what the definition of shiluach is. He thinks that's so פשוט that he's matmihah on the Chasam Sofer who thinks it's a muktzah or tzeidah issue on Shabbos.
 - a) However, His פשט doesn't read well in the Rambam who says to be "ochez" it.
 - b) I think the פשט might be that Rambam thinks you have to grab it Davka because he thinks it's a ניתוק לעשה; you already own the bird (be'issur), so you now have to actively send it away. If you never had ba'alus, this indeed would be strange.
 - c) [See also **Birkei Yosef** who quotes from earlier sources that when one grabs the bird (like the **Rambam**), one should have da'as not to be zocheh, so that one doesn't run afoul of the lav of taking the mother first.]
 - C. However, **Tur + SA 4** don't even quote the shitas HaRambam that you have to actually grab it, which is a bit of a peleh.
 1. Further, **Chazon Ish 175:2** writes without noting any disagreement that you're yotze ואין נפקותא בשילוח אם לוקחה ביד ע"מ לשלחה, או שמגרשה עד שתברח [Unclear how he deals with the Rambam.] **Torah Lishmah 278** similarly says you can even just make noise to be mafri'ach them, and doesn't even mention the Rambam, and **Yam Shel Shlomo Chulin 12:7** writes all the mechabrim are sosem like this second פשט of Rashi; none of them quote the Rambam!
 - a) **RAW**: They must have thought Rambam was just giving practical Eitzah on how to get the bird to fly away, but not that this was actually necessary to fulfill the mitzvah (very dochak, וצ"ע). He notes that **Gra + Chasam Sofer** though read it as a machlokes, as noted.
- III. If one sends the bird away and it comes back before one takes the eggs or chicks, one now has a mitzvah to do it again (**SA 5**). [**Shach 10 + Taz 7** both note that if the nest was in a private reshus, you wouldn't have a mitzvah a second time, since the person's chatzer is immediately koneh the eggs for them.]
 - A. See below for whether you were mekayem the mitzvah at all in this case. If you are, and you think there's a mitzvah when you don't want the eggs, one could shoo away the mother bird, and the next person could do the mitzvah again.

Is there a Mitzvah even if I don't Want the Eggs?

- I. Does one have a mitzvah to go and send away the mother even if they don't have any interest in the young or eggs?

- A. In the Rishonim, there are many ra'ayos that you don't need to:
1. As noted, **Rambam in the Koteret** (לשלח האם אם לקחה על הבנים) and throughout makes it sound like it's *just* לעשה, and there's no חיוב until after you violate the lav (like והשיב את הגזילה). He starts the halachos in **Perek 13** all about nituk la'asseh, and never mentions a מצות שילוח beforehand. Finally, **Rambam SHM Shores 6** spells out that some mitzvos asseh are קדמו לאו, and gives the example שלח תשלח. **RAW** makes these points – there's no asseh for the Rambam until after you violate the lav.
 2. Similarly, **Rashba 1:18** quotes the Ri Ben Palat that we don't make a Bracha on this mitzvah because it's עבר בעבירה א"א לקיימה א"א. **Ran Chullin 141** says the same.
 3. **Chiddushei HaRan 139a³ + Rabbeinu Bechayei AHT** say explicitly you're only חיב if you want to take the Banim.
 4. Similarly, **Meiri⁴** learns the gemara explicitly rejects that one would have a mitzvah to send away the mother when one didn't want the children
 5. See also below that RSZA, Ha'emek Davar + RAW prove that **Tosfos + other Rishonim in Kiddushin 34** hold this way from their question about why women aren't chayavos in Shilu'ach Haken just from the lav alone.
 - a) According to all the above, there's no mitzvah to go and do שילוח הקן just for the mitzvah.
- B. Despite the above, the Acharonim debate this question:
1. **The Chavos Ya'ir 67** is the first to discuss, and he concludes it's a machlokes Rishonim, and one should at the very least be מחמיר like any other 'ספק דאורי'. He's quoted by both the **Pischei Teshuva** and **RAE** beshem **Chacham Tzvi** without any cholkim.⁵ This is also the approach of the **Birkei Yosef 292:8** (based on the Ari), **Chacham Tzvi 83, ARUH, + others**.
 2. On the other hand, a number of acharonim argue one is פטור, and maybe even *shouldn't* do it, including the **Chasam Sofer 100, Miknah Kiddushin 41a, Avnei Nezer OC 481:6, Chofetz Chayim Mitzvos Katzar 74, + Meromei Sadeh 139b** (who says this is in fact the minhag). **Chazon Ish 175:2** paskins this way,⁶ and this is also משמע from **RSZA in Minchas Shlomo 2:100**
 3. It's noteworthy that the machlokes is really הקצה אל הקצה; according to some, you have a חיוב to do so at least midin safek deoraisah lechumrah. According to others, not only is there no חיוב, but it could actually be לצורך שלא לעבור and צעב"ח דאורייתא to do so!
- C. **Psak halacha:**

³ חדושי הר"ן מסכת חולין דף קלט עמוד א

אבל שלוח מי הוה מצוה המוטלת עליו הרי אם לא רצה ליקח הבנים פטור מלשלח

⁴ "מצות שילוח הקן אינה מצוה שיהא צריך לחזר אחריה, ר"ל שאם ימצא לו קן שיטול את הבנים כדי לקיים מצות שילוח באם, או שיחזר אחר מצוה זו בהרים וגבעות, אלא לכשידמן לידו יקיים שנאמר כי יקרא".

⁵ It's a peleh that the Pischei Teshuva doesn't quote the Chasam Sofer's teshuva at all.

⁶ R' Chaim Kanievsky in Orchos Yosher in מצוה של שמחה (pg. 342) quotes that the Chazon ish thought one should try and be mekayem every mitzvah at least once, except for שילוח הקן, since יקרא קן צפור when it said מיעטו קרא כי.

1. As noted, **Chofetz Chaim, Chazon Ish + others** think you have no reason to do it. This is how **Rav Bednarsh** paskins.
 2. **RAW⁷**: Better not to shoo away the bird for no reason, but if you have a bird near your property and you're worried about bacteria or you want it away anyways, then do so in a way which is mekayem the mitzvah and have the kavana leshem mitzvah.
 - a) [RAW thinks even if you don't want the Banim, assuming it's not due to achzaryus, one still gets a mitzvah kiyumis בכל ענין by shooing the mother bird, like Shechita is a mitzvah even if you aren't hungry for meat.]
 3. **Rav Shmuel Kamenetsky (Am Hatorah Journal 5:7, pg 12)** recommends trying to perform the *mitzvah* at least once.
- II. Some of the ra'ayos to each side:
- A. Chavos Ya'ir** main ra'ayah is from a gemara on **140b**: The gemara has a question when you have two layers of eggs and the mother is on top whether the 2nd layer is a chatzitza. What's the gemara's question?
1. **Rashi** says the question is that when you're mechaven to take the bottom eggs, do you have a mitzvah to do shilu'ach hakein or are you פטור from the mitzvah.
 2. **Tosfos though** learns the question is whether it's מותר to take the bottom eggs prior to doing שילוח.
- a) The simple פשט is that it's muchach from Rashi I have no mitzvas shilu'ach unless I want the eggs; if I did, who cares that I'm mechaven for the bottom eggs, I should still have a mitzvas shilu'ach because the bird is on top of the 2nd layer of eggs! From Tosfos who doesn't say the shailah is about whether you're פטור from שילוח (but just whether I can take the bottom eggs *before* doing shilu'ach,) it could be there's still a mitzvah.
- (1) **Meromei Sadeh 139b** says exactly this.
- (2) In contrast, the Chavos Ya'ir thinks the ra'ayah is exactly the opposite. He notes that **Rashba** understood **Rashi** to mean that I'm taking the mother bird in this case, and the shailah is that if I want the bottom eggs, can I take the mother bird as well (it's not muchach in Rashi this way at all, but Rashba definitely learned this way). The **Rashba** is masig that of course that's אסור, since you aren't allowed to take the mother bird alone, even if not taking any eggs. [See **Shach 14** who reads like us/**Meromei Sadeh**, and not like the Rashba/Chavos Ya'ir.]
- (a) He argues that Tosfos who said the shailah is whether you can take the bottom ones must think that there's *not* a mitzvah to do שילוח הקן for no reason. If he thought there was such a mitzvah, what's the shailah about taking the bottom ones – even if you do so, you'll still have to shoo the mother bird away right afterwards due to the top ones! The obvious dechiya of this is that there's still a נפקא מינה for whether it was מותר to take the bottom ones first, so not sure why he thought this was a ra'ayah. **Meromei Sadeh** says he was מהפך the Rishonim from their intended kavana
- B. Chulin 139b** says יכול יחזור בהרים ת"ל כי יקרא במאורע. **Chavos Ya'ir + Chacham Tzvi** both ask that if there's no mitzvah to just do this mitzvah, what's the הו"א that you're supposed to go בהרים? It must be there *is* a mitzvah, and the Torah is being מחדש that

⁷ ומשום כ"ז נראה להכריע דאם מצא קן ציפור ביער ובשדה הפקר וכדו' לא ישלח כשא"צ לבנים ושוא"ת עדיף אבל אם מצאו במרפסת ביתו וכדו' במקום שבלא"ה רוצה לסלקו משום חשש כינים ומחלות וכדו' ודאי יעשה באופן קיום המצוה ויכוין לשם מצוה דאף אם אין חיוב בכה"ג יש מצוה, ודו"ק בכ"ז.

it's not a mitzvah you need to search out, but when you happen upon a קן ציפור, you should do the mitzvah. **ARUH** compares it to the mitzvah of השבת אבידה – there's no mitzvah to go looking for aveidahs, but you have a chiyuv to pick it up once you see it.

1. **Meromei Sadeh** thinks אה"נ this is a good ra'ayah, but the gemara elsewhere darshins כי יקרא פרט למזומן specifically because it's clear our Mishnah doesn't hold this way (see below)
 2. **Chazon Ish 175:2** also says there's certainly no חיוב, and argues the הו"א in our gemara is that you should have to try and fulfill this mitzvah at least once in your life. אי הוי אמרינן יחזור בהרים היה כל אדם חייב פעם א' בחייו לקיים מצות שילוח, אבל (השתא כי יקרא לא קרינן רק אם רוצה ליקח הבנים).
 - a) **RAW:** Unclear what this הו"א is: Where else do we find a mitzvah you have to do once in your life?
 3. **Meiri**⁸ writes the הו"א is that you should decide to take the Banim even though you don't need them in order to do the mitzvah, קמ"ל that you only need to do the mitzvah if you want the children. **Chazon Yechezkel Chulin 10:pg. 39** says the same.
- C. Mishnah** says the mitzvah of שילוח הקן only costs an איסר (the price of the bird). If it were true that you have a חיוב to do this when you have the opportunity, why don't we say it costs a lot more due to bittul melacha involved? **Chasam Sofer + Meromei Sadeh** both bring this as a ra'ayah that it must be the only possible loss involved is the mother itself, because you were going to take the time and energy to get the eggs/chicks anyway.
- D. Chasam Sofer** notes that according to the Chachamim that the asseh is לאוי לנתוקי, it can't be there's a mitzvas asseh to send away the mother, as the whole asseh is just to fix a case where you already did the Issur! [See above for more on this, and that SHC clearly didn't learn this way.]
- E. Chazon Ish 175:2** brings a ra'ayah from **141b** where Shmuel told Rav Yehuda that before buying a שובך (dovecoat) from someone, knock on the nests so that the birds jump, and the seller will acquire all the eggs before you buy the שובך from him.
1. **Chazon Ish** notes it can't be that's a mitzvas shilu'ach, as the birds which jump are still within your ability to capture. Rather, this was just an Eitzah to cause the seller to be koneh the eggs with a kinyan chatzer. He argues that you see there's no mitzvah to do shilu'ach hakein without needing the eggs, or Shmuel would have advised Rav Yehuda to do so. Further, he notes that various gemaras which assume one should leave the birds of a שובך alone due to darkei shalom must assume there's no mitzvah deoraisah, since we wouldn't waive a mitzvah deoraisah because of darkei shalom.
- F. Darshinan Ta'ama Dikra** becomes one of the reasons to paskin:
1. **Chavos Yair** argues that based on the Zohar's reason, it makes sense to do שילוח

⁸ "מצות שילוח הקן אינה מצוה שיהא צריך לחזור אחריה, ר"ל שאם ימצא לו קן שיטול את הבנים כדי לקיים מצות שילוח באם, או שיחזור אחר מצוה זו בהרים וגבעות, אלא לכשידמן לידו יקיים שנאמר כי יקרא".

2. In contrast, **Chasam Sofer**⁹ says that according to Rambam and Ramban's reason, not only should there not be a mitzvah, but it's the opposite of the ratzon haTorah to capriciously shoo away the mother bird when there's no to'eles for people. That's just צער בעלי חיים and אכזריות.
- a) He then¹⁰ notes the gemara in **Chulin 138b** clearly doesn't assume the Zohar's reason, as the first Amud in Shilu'ach Haken says that the Mishnah which says that it applies לפני הבית בין שלא בפני הבית teaches no chiddush. According to the Zohar that the whole reason for the mitzvah is to be me'orer rachamim about the Jewish people's status in galus, there's a big chiddush that it applies even לפני הבית! He says we therefore paskin the Rambam + Ramban, since היכי דפליגי הנגלה עם הנסתר, אין לנו עסק בנסתרות.
- b) He notes that we regularly don't say דרשינן טעמא דקרא, but here where we paskin like R' Shimon and not R' Yehuda with respect to whether the asseh is לנתוקי לאוי or שלח מעיקרא, it's OK to darshin ta'ama dikra.¹¹
- G. The **SHC** might imply there *is* a mitzvah, as he thinks the words את הבנים תקח לך are extraneous to teach a segulah for banim. Why not learn simply that there's only a mitzvah when one wants the children?
1. **Chasam Sofer** addresses this and argues even without a pasuk, it's a מילתא דפשיטא that the Torah doesn't want you to capriciously torture the mother bird and shoo her away, so we'd know even without תקח לך הבנים that you shouldn't do so.
- H. **RSZA 2:100, RAW + Ha'emek Davar on Devarim 22:6** bring a ra'ayah from **Tosfos + others on Kiddushin 34a**, where the Rishonim ask why we need the gemara to be מחייב women because it's an גרמא; why not be מחייב them because a lav is written?
1. **RSZA + RAW** spell this out – if the asseh teaches me that you're מחייב to go trying to do this mitzvah, then why would I think the lav alone would suffice to teach this – that just teaches not to take the mother, but not that I have to try and do this mitzvah! You see Tosfos + others there assumed there's no bittul asseh unless I take the הבנים אם, but there's no חיוב to just shoo away the mother for no reason.

⁹ והנה לפי טעם זה מבואר דאם אינו צריך לבנים, לא מיבעיא דאינו מחוייב לשלח האם אלא אכזריות נמי עבד, ובמקום שנלמד שלא נתאכזר אדרבא נרגיל עצמנו באכזריות ולצער בעלי חיים על מגן לגרש האם מעל בניה וצער בע"ח דאורייתא, אלא שכתב רמב"ן שלא הגיעו רחמיו על ב"ח אם הוא לצורך האדם, אבל אם איננו לצורך אדם שאינו צריך לבנים אכזריות היא זו לגרש האם מעל בנים:

¹⁰ אמנם בתשו' חו"י סיים טעם בשם ס' הזהוה בשילוח האם לעורר ייללת אימא עילאה על בניה, אם כן מצוה להדר אחר קן כדי לעורר רחמי אימא עילאה על בניה ולפ"ז ליכא משום אכזריות, דאפילו אם לצורך הנאת אדם לא הגיעו רחמי שמים על בע"ח, מכ"ש לצורך מצוה. אך ש"ס דילן ע"כ לא ס"ל הכי דהרי להנ"ל תינח בזמן שאין בהמ"ק קיים, אך בזמן שבהמ"ק קיים כגון בימי דוד ושלמה דסיהרא קמה בשלימותי' ואם הבנים שמחה ומכ"ש לע"ל במהרה בימינו מאי איכא למימר ואם נדחוק בזה דמ"מ צריכא התעוררות לעילא א"כ ר"פ שלוח הקן [קל"ח ע"ב] דתנן בפני הבית ושלא בפני הבית ומסיק בש"ס שהוא שלא לצורך ע"ש, וקשה הא צריכה רבא כנ"ל דהוה סד"א בפני הבית לא יצטרך לשלח קמ"ל, אע"כ ש"ס דילן לא ס"ל כזוהר הנ"ל, וידוע היכי דפליגי הנגלה עם הנסתר אין לנו עסק בנסתרות והנגלות לנו ולבנינו:

¹¹ **RAW** writes that he's surprised that Chasam Sofer paskined based on דקרא; it seems that it was only דמילתא לרווחא. That doesn't seem to be the case from the Chasam Sofer inside, who explicitly states why he thinks דקרא in this instance.

Do you Need to Take the Eggs/Chicks to Get the Mitzvah?

- I. Do you need to take the eggs to get the mitzvah?
 - A. **Chacham Tzvi 83** says no, and **והבנים תקח לך** is a *reshus*, like **ששת ימים תעבוד**. He argues this from the language of **“הריני נוטל את האם ומשלח את הבנים חייב לשלח”** which he thinks implies one gets the mitzvah since it didn't say **“לא קיים מצוות שילוח”** **הקן**.
 1. **Chasam Sofer 100** notes that it's clear the SHC thought the same way, as he says **את הבנים תקח לך** is extra to teach a *segulah* that you'll have children. If it was teaching that you *have* to take the children, it wouldn't be extraneous.
 - B. However, **ARUH 4** recommends being *mekayem* the קרא nonetheless to be *mekayem* the קרא כדכתיב, especially since a) a *reshus* in the Torah often means it's still a mitzvah (don't understand why this is relevant; no one ever actually used a *Lashon* of *reshus*), and b) The reasons for the mitzvah given mean you should *Davka* take the children. [Don't understand this – *lichorah* that's only true for the *Zohar*.]

If I was Already Koneh the Bird/Eggs, Can I Be Mafkir Them and Get Another Mitzvah?

- I. Does being mafkir the קן help after you've already shooed away the bird and were koneh the nest/eggs automatically?
 - A. There's a *machlokes* *acharonim* whether *hefker* will make this work: **Hisorerus Teshuva 2:37** thinks one could be mafkir domesticated birds in their *reshus* and get the mitzvah again.
 - B. In contrast, the **Imrei Yosher 1:158** proves from the language of the Mishnah and *gemara* that this isn't the case: The *Mishnayos* use the word *Mezuman* (as opposed to *hefker*), the *gemara* can't come up with a *היכ"ת* for **לפניך** being relevant unless you owned the bird and it ran away. He further notes that the **Melech Shlomo on Mishnayos** says that being mafkir will be insufficient.
 1. **Imrei Yosher** notes it's unclear if he means that if one were mafkir before the bird laid eggs that this would suffice, or that even then you'd be פטור. **RSZA 2:100** reads like the first way. Either way, if the bird already has the nest, being mafkir after you were koneh certainly won't help.
 2. **RAW** argues that R' Meir Arik is mistaken, and adds that the language of the *gemara* on **139b** that **קננו בתוך ביתו** is always פטור; further **Rashi there** **קנו בידך** seems clear that there's two different *peturim* – *kinyan*, and *mezuman*. If you have either one, there's no חיוב. **RSZA** says the same.
 3. **RSZA 2:100** says it's פשוט that if a bird is domesticated, there's no שלוח הקן irrespective of your ownership. This whole *shailah* is only relevant by a bird that's not domesticated, but which you were already koneh the eggs when it flew away. The *shailah* then is whether *hefker* works, and **RSZA** also thinks there's no חיוב; the fact that you *could* be koneh at any point.
 - C. **RAW** notes that if *hefker* works, you don't even need to be mafkir, since no one wants their *chatzer* to be koneh the eggs or nest, which just spread diseases and pests. See **BK 29b** that **סתם גללים אפקורי מפקר להו**, and it's not נוחא ליה for one's *chatzer* to be koneh for them.

- D. To summarize: If you have a domesticated bird, it seems פשוט from all the mekoros that being mafkir it won't help (unlike the His'orerus Teshuva). If you have a bird you shooed away, and we're dealing with a question of whether being mafkir the eggs will help, it's not פשוט in any direction.
1. **RAW** argues that you wouldn't have been koneh the eggs anyway, since you have no desire for them, and we wouldn't say לו אדם קונה here, so there's no need to even discuss hefker.
 2. **Imrei Yosher** seems to think it's תלוי on whether you know about the beitzim and have access to them; once you have access and the mother isn't on them, they're considered mezuman. I'm not sure how to apply this, since once the mother is back on them, lichorah they're not mezuman again.
 3. **RSZA** thinks that if it's in your house (even if not domesticated), there's no mitzvah, as that's considered mezuman. However, he's mechalek between in your house or porch, and on the outside of a window or on the gutter, which he says is not mezuman. It sounds like being mafkir afterwards *would* work in this case.

Bracha on Shiluach Hakein

- I. In Rishonim, there are deios in each direction:
 - A. **Temim Deim 179** and **Roke'ach 366** say to make a bracha.
 - B. **Rabbeinu Bechayei 22:7 + Meiri Megilla 21b** כבר בארנו ד"ה says we don't make a Bracha (amongst a long list of mitzvos asseh we don't make a Bracha on), as does the **Shu"t HaRashba 1:18** (since he thinks it's *only* לעשה a לעשה).
- II. The **Pischei Teshuva 2** quotes the **סמא דחיי ג'** who says one doesn't make a bracha in the case of לעשה, but when doing the mitzvas shilu'ach without violating anything, one would make a Bracha. However, **Toras Nesanel 9** says not to make a Bracha, since maybe the eggs will be inviable (מזורות) and one shouldn't make a bracha misafek. Similarly, **Binyan Tzion 14** says you can't misafek, since the mother might fly away on its own before you approach it.
 1. **ARUH** argues strongly that we *should* make a Bracha, and we don't need to worry about ביצים מזורות. However, most poskim say not to, or to do so without שמ ומלכות.
 2. **Beis Lechem Yehuda on seif 1** says to make the Bracha without Shem umalchus because of the machlokes. This seems to be the consensus.
 3. The Bracha would be "לשלח הקן" according to **Rav Chaim Kanievsky in Nachal Eitan 5:3:1**.
- B. The PT 2 quotes the **סמא דחיי** that one might make a shehechyanu since it's a מצוה which rarely comes up. However, **Birkei Yosef there + ARUH 10** say not to, per **Shach YD 28:2 + others**.