

HALOCHOSCOPE

This week's question:

May one remove a rabbit from its cage on *Shabbos*? May one return it to its cage? If the cage is raised so that the rabbit cannot reach it, may one place items to form a ramp?

[Reproduced in large part from Halochoscope Vol IV No 40.]

The issues:

- A) *Tiltul muktzeh*, the restriction on moving *baalei chaim*, live animals
- B) *Tzad*, trapping animals on *Shabbos*
- C) *Tzaar baalei chaim*, preventing pain to animals
- D) Issues with making a ramp

A) *Tiltul muktzeh*

The Rabbinical prohibition against moving *muktzeh* was instituted in stages, for reasons ranging from *kavod Shabbos* to *hotza'ah*. *Kavod Shabbos*, honoring the spirit of *Shabbos* is itself a possible Scriptural *mitzvah*. *Hotza'ah*, carrying outside, seems to have little to do with *muktzeh*. However, there was a need to apply restrictions on moving things around, to prevent the possibility of *hotza'ah*. Not everything could be restricted, although in an early stage almost everything was. Therefore the guidelines of *muktzeh* were put in place. Some original decrees were short-term, to heighten awareness of *Shabbos*, and were repealed once this was accomplished.

The model and basis for *muktzeh* is a concept of *muchan*, prepared. This Scriptural idea forbids certain things for use on *Shabbos* if they were not ready for such use before *Shabbos* began. The idea is expanded to items that one has no intention to positively use on *Shabbos*. One is *maktzeh*, puts them out of mind for the duration of *Shabbos*, sub-consciously, consciously or according to one Talmudic view, actively. Thus common forms of *muktzeh* apply to items that have no use on *Shabbos*. This is often because their normal use involves activity forbidden on *Shabbos*.

Of the various forms of *muktzeh* our discussion pertains to *muktzeh machamas gufo* and *basis ledavar heasur*. *Muktzeh machamas gufo* applies to things that are not a *kli*, utensil, but are commodities or raw materials, with no permissible use on *Shabbos*. A stone not designated for use as a doorstep or the like is *muktzeh*. *Baalei chaim*, living creatures fit this category because their uses are forbidden. They may not be slaughtered, milked or put to work. One may not pick up the animal, even if it does not involve *tzad* [see below]. It may be led on a leash. It is not being moved by the leader but under its own steam. One may coax or push it forwards, even by picking up its feet, provided one does not lift the animal. The exception is a chicken. By nature it lets itself be carried. It will try to raise itself into one's hands. Petting an animal is also permitted.

In the opinion of one posek, just as domestic animals are not included in the prohibi-

tion of *tzad*, because they are already 'trapped', they are also excluded from *muktzeh*. It is hard to reconcile this minority view. The commentators debate whether a chick is *muktzeh*, as it is a child's plaything. Most conclude that it is *muktzeh*. There is some speculation on the concept of a house pet purely for play in Talmudic times. Domestic animals had a food or work purpose, and exotic creatures were kept for show. The former were not exclusively for play, and were therefore *muktzeh*. The latter were not handled either. A pet kept strictly for play might not be *muktzeh*. At the onset of *Shabbos* one knows that he intends to play with it, which is its normal use. This theory alone is insufficient to support a general dispensation for handling all pets.

When the animal is shedding, petting it involves *gozaiz*, the *melacha* forbidding removal of hair. [Some hair might not be loose until it is stroked.] If it is uncertain whether any hair will come out, the activity is deemed a *davar sheaino miskaven*, unintended *melacha* resulting from a permissible act, and is permitted.

Accordingly, picking up a pet rabbit is forbidden according to most poskim. Is the cage *muktzeh*? A *basis ledavar heasur* is something serving as a base or a container for something *muktzeh* at the onset of *Shabbos*. While the basis itself is not *muktzeh*, it assumes the status of the item it serves, if it was knowingly left this way when *Shabbos* began. In the knowledge that the *muktzeh* would not be moved, the person was *maktzeh* the basis as well. The rabbit's cage is at the very least a *basis lebaal chai*. This forbids moving the cage, but one may push the door since it does not move the entire cage. According to one posek, the cage is *muktzeh* in its own right. It has no other permissible use. This forbids moving the door as well.

Two exclusions to the *muktzeh* might apply here. *Tiltul kileachar yad*, in an unusual way, is permitted. This actual term is borrowed from the manner of doing real *melacha*, (and its use in *muktzeh* contexts is questioned by some). This could permit opening the door in a backhanded manner, or somehow tipping the cage to let the rabbit out. Similarly, *tiltul begufo*, using other parts of the body, such as kicking, is permitted.

Tiltul min hatzad, indirect moving, is permitted for a permissible purpose. One may not do it for the sake of the *muktzeh* item, such as to move it into the shade, but may do it to clear the space. Some poskim include in this dispensation using both hands to move a small item, normally moved with one hand, or having two people move it. Consideration of the rabbit's pain might be a permissible purpose. [See *Shabbos* 42b-47b 122b-126b 128a-b 141a 142b-143a, Poskim. Tur Sh Ar OC 303:27 308:3 32 39-43 (TZ 22) Ar Hash 65-68, 311:8 316(TZ11) 326:9-10, commentaries. ShShK 17:14n138*.]

B) Tzad

Assuming one finds a way to release it, returning the rabbit poses a second issue. One may not trap an animal on *Shabbos*. To be in violation of the Scriptural *melacha*, one must fulfill two conditions. The animal must be *yesh bemino nitzod*, of the type usually trapped for its uses, such as food or hides or to be held captive. This includes honeybees, but excludes hornets. Secondly, the method of trapping must be *aino mechusar tzaida*, bringing the animal under the total control of the trapper. Thus, depending on the animal, it may be restricted in a large area where it can still dodge the trapper.

Tzad includes: picking up a creature using the hands or a net; catching it by a body

part; and leading it into a trap or an area where it is sufficiently enclosed to restrict its escape from the trapper's hands. Setting a trap is forbidden. If the animal is caught immediately, the one who set the trap violated the Scriptural *melacha*. Shutting the door of a cage or trap or of a restricted area is also forbidden.

Domestic animals on private property are *nitzudim veomdim*, already trapped. A notable exception is a house cat. It will run away inside a house. One may not shut it into a small area. Captive wild animals are *nitzudim veomdim*. However, it is Rabbinically forbidden to trap creatures that have no use, *ain beminam nitzud*. Some also forbid further restricting movements of captive wild animals. A pet rabbit is really a wild animal in captivity. Therefore, one may not chase it into its cage on *Shabbos*. If the purpose is to prevent damage in the house, the activity turns into *melacha sheaina tzricha legufah*, done for incidental reasons. This is forbidden Rabbinically, and may be relaxed under special circumstances. One may block its escape by standing in front of it. Once it enters the cage, if it is trained to stay put, the door may be shut. If it is untrained, it probably has the status of an untrained bird, whose cage door may not be shut. [See *Shabbos* 106a-b, *Poskim*. *Tur* BY Sh Ar OC 316, commentaries. *ShShK Miluim* 14. *Beer Moshe* II:28.]

C) *Tzaar baalei chaim*

The consensus of the *poskim* is that cruelty to animals is Scripturally forbidden, based on conclusions drawn by the Talmud. No single *mitzvah* directly forbids it, but some *mitzvos* have a theme of prevention of cruelty. They include: unloading a burden from an animal unable to carry it, when there is otherwise no obligation to help its owner. There is always an obligation to help the innocent animal; to refrain from taking an animal's offspring away for slaughter as an offering in the first seven days after birth; to send away a bird before removing its eggs or fledglings; to slaughter an animal in the least painful body part so it will die painlessly; to refrain from muzzling an animal while it threshes. *Mitzvos* refine character. These *mitzvos* refine the attitude to other creatures in general. In addition, we are to emulate Hashem, Who is merciful to all of His creations.

The principle of *tzaar baalei chaim* is invoked with regard to feeding animals. On *Shabbos*, food preparation could involve practices otherwise forbidden Rabbinically. The principle is important in the general care and upkeep of animals, tame and wild. On *Shabbos*, to prevent pain to animals, certain things are permitted. In general, a *melacha*, activity that is intrinsically forbidden even Rabbinically, may not be done for an animal. Something forbidden Rabbinically due to circumstances that could cause a *melacha* are permitted to avoid *tzaar baalei chaim*. This includes *muktzeh*, which is forbidden as a precaution rather than an extension of Scriptural *melacha*. Thus, one could move an animal to alleviate its pain. [See *Emor* 22:28, *Targumin*, *Midrash*, *ki Saitzai* 22:6-7, *Ibn Ezra*, *Ramban*, *Midrash*. *Shabbos* 53b 128b *Baba Metzia* 31a-33a 85a, *Poskim*. *Chinuch* 294 451 545. *Tur* Sh Ar OC 124:9 305:19 332:2-4. *EH* 5:14, commentaries. *Sh Ar Harav*, *Tzaar Baalei Chaim*. *Kitzur Sh Ar* 191. *Beer Moshe* II:28:1.]

D) *Making the ramp*

To coax the rabbit out of its cage without lifting it, one might place an item there for it to jump up onto and to climb out. This might not be an option. It is forbidden to be *mevatel kli mehaichano*, deprive a utensil of its main use, even temporarily. The item

must have a permissible use, or one would not be moving it around. While the animal is on it, moving it will inevitably involve moving the animal, which is *tiltul muktzeh*. Some explain this prohibition as a Rabbinically forbidden form of *sosair*, demolishing. Though it does not actually destroy the *kli*, it is rendered useless. Others compare it to *boneh*, building. Since one has effectively fixed the item in place, it is like making a structure. The same objection would apply to the idea of placing items outside the cage as a ramp.

There is a dispensation to permit placing a *kli* before chicks to let them hop on and off. The reason is that they can be scared off quickly. Therefore, the *kli* is not necessarily being immobilized, at least, not for any considerable time period. However, the poskim debate whether the same laxity applies to a domestic beast. If it falls into a water-hole, one may only use pillows to provide it with a ramp if there is no other way to alleviate its pain. Some say that the concern is that it will remain in place, while others say that the pillows will become wet. Thus, at least some hold that other animals do not move easily. Nonetheless, rabbits are more mobile than large domestic beasts. [See Shabbos 42b-43b 128b 154b, Poskim. Tur Sh Ar OC 305:19 308:39 310:6, commentaries.]

In addition, making the ramp with more than one utensil would raise the issue of *boneh*, building. A temporary structure involves a Rabbinical extension of this Scriptural *melacha*. This applies to a structure that is made for the use of the space inside it. Thus, one could not make a tent-like canopy by placing a board over two barrels. If it is made as a table, it is still forbidden to build it up in the usual manner, if one uses the space underneath. The board may be held in place in the air, and the supporting utensils placed underneath it. Other examples of this prohibition include spreading a cloth over the mouth of a large barrel, or building a pile of eggs or barrels. The spaces between them are needed to prevent stagnation. If the top eggs are placed there first, the bottom eggs may be put underneath. While the space under the ramp is not intended for use, the ramp is intended as a structure. If the nature is very temporary and loose, it might be permitted.

Using a single item would not raise the *boneh* issue. One could place the base items in place before *Shabbos*. Then, on *Shabbos* one may add the top board loosely. [This might not apply to an improvised ramp.] The most practical approach is to set up the ramp before *Shabbos*, or to lower the cage enough for the rabbit to get in by itself. If the ramp is on a hinge, one may open or close it on *Shabbos*. [See Shabbos 137b-138b Beitza 32b-33a, Poskim. Tur Sh Ar OC 315, commentaries.]

In conclusion, one may not pick up the rabbit. One may coax it, or place a utensil for it to climb. One should not build a ramp on *Shabbos*, but should set it up before *Shabbos*. ***On the Parsha ... like a lion, who can rouse him? [49:8] He is not scared by anyone into moving. [Meforshim]*** Why is it only a lion that is unmoved by anyone? Have we not mentioned that domestic beasts are also liable to stay put! Perhaps other wild animals can be roused at any time, to avoid predators. Lions have no predators. A domestic animal has no predator to fear.

Sponsored by Dr. Leon and Mrs. Miriam Kohane in memory of his father Michoel ben

R. Dovid Hakohain z"l, whose yahrzeit is on the 13th of Teves. ☞

© Rabbi Shimon Silver, January 2012.

Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com