

HALOCHOSCOPE

This week's question:

A live ant is found floating in the toilet-bowl water on *Shabbos*. May it be flushed?

The issues:

- A) *Tzad* and *Netilas Neshama*, the *melachos* of trapping and killing
- B) *Melechus Machsheves*, limitations and qualifications for *melacha* on *Shabbos*
- C) Drowning insects

A) *Tzad* and *Netilas Neshama*

Trapping living creatures is Scripturally forbidden on *Shabbos*. To be considered the Scriptural *melacha* two main considerations must be satisfied. The creature concerned must be *yesh bemino nitzod*, a species that is usually trapped for its uses, such as its meat, hide or other products, or to be held in captivity. This would include honeybees, but exclude hornets. Some insects are used for medicinal purposes. It must also be forced into a state of *aino mechusar tzeidah*, such that it will not be able to escape. Restricting it to a space big enough for it to dodge the trapper's hands would not be considered *tzad*. If it is already so restricted, restricting more movement is not *tzad*.

The Talmud discusses two types of bird. One type is inactive indoors. Once brought indoors *tzad* has been done. The other flies around indoors as it does outdoors. It is not considered trapped until restricted to a small area where its freedom is fully restricted. Domestic animals on one's property, such as farm animals or pets, are *nitzudim veomdim*, already trapped. Scripturally, one may further restrict their movements. House cats are the exception. They are wild enough to escape in a relatively restricted space. Accordingly, it is Scripturally forbidden to pick up a cat on *Shabbos*, or to shut it into a small space.

Rabbinically, creatures that are not usually trapped for their use is forbidden. This includes hornets, mosquitoes and houseflies. Animals that are *nitzudim veomdim* could be forbidden to trap Rabbinically, according to some if they were originally wild, such as deer or birds now in captivity. Controllable farm animals are never forbidden to trap.

Tzad includes picking the creature up with one's hands or using a net, catching it by part of its body, or chasing it into a space where its movement is sufficiently restricted. Shutting the door of a cage is included. Closing a box or bottle with an insect inside is debated. If the insect could escape as soon as the cover is removed, some poskim permit closing it. Note that picking up a creature can also involve moving *muktzeh*.

Killing a creature on *Shabbos* is forbidden as part of *Shochet*, the *melacha* forbidding slaughtering, or *netilas neshama*, removing the life. All species are included in this *melacha*, except species that do not reproduce normally [but without mating with a male]. Killing is forbidden Scripturally even if the dead animal will not be used, such as stepping on an ant. According to many poskim, injuring a creature is also included in this *melacha*. These *halachos* vary according to species, but shedding blood or bruising is

considered a *melacha* of some sort. [See Shabbos 75a-b, 106a-107b, 121b, 128b, Poskim. Tur, Sh. Ar. OC 308:39, 316:1 3 8 12, commentaries. Halochose III:5.]

B) Meleches Machsheves

The deciding factor that qualifies *melacha* on *Shabbos* is whether the activity was involved in the construction of the *mishkan* built in the wilderness. These two matters are discussed in the Torah in juxtaposition and both involve '*melacha*'. However, whereas we know which *melachos* were done to construct the *mishkan*, for *Shabbos* it is vague. Accordingly, the activities for one are the basis for the other. *Melacha* means constructive activity. The Torah uses a more limiting guideline, *meleches machsheves*. This comes from the Hebrew root, *chashav*, to think. The *melacha* must result from planned activity. The same root denotes importance or prominence. In context, this refers to professional work. Either way, only *melacha* fitting these guidelines is forbidden Scripturally.

Some exclusions from the definition of *melacha* are directly connected to *meleches machsheves*. Others could be part of a general limitation on the definition of a transgression. If a *melacha* is not done for constructive results, but is destructive, *mekalkel*, it is usually not considered *machsheves*. What if a definite *melacha* was planned but it did not work out? For example, one threw an item in public domain four *amos* (cubits) away, sufficient to qualify as carrying. It landed eight *amos* away. *Lo niskyma machshavto*, his plans did not materialize. It is not considered *melechas machsheves*, and he is not held liable for Scriptural *melacha*.

An act of *melacha* can sometimes have dual purposes. Digging a hole could be for the hole or for its dirt. In the *mishkan* the purpose was to dig foundations, the hole. If one dug it for dirt, the Talmud debates whether this *melacha she'aina tzricha legufah* is held liable Scripturally. The poskim are split on the conclusion. Ashkenazic Jewry follows the opinion that it is not forbidden Scripturally, but Rabbinically. Accordingly, in cases where there is bodily pain or for other considerations, there could be a dispensation, permitting the *melacha* outright. Killing could be done to be rid of a danger. The intent is not to kill, and it fits the guidelines of *aina tzricha legufah*.

Davar she'aino miskaven, where a *melacha* might result as a by-product of a permissible act is also subject of Talmudic debate. The poskim follow the lenient view. For example, while dragging a chair across a dirt floor one might 'dig' a groove. Since the *melacha* will not necessarily result, it is permissible. There is some question whether this applies to the whole Torah or is a limitation due to *meleches machsheves*. If the resulting *melacha* is unavoidable, such as dragging a sharp pointed object across the same floor, it is forbidden. This is known as *psik raisha [velo yamus?]*. Literally, if one cuts off the head of a chicken he can not claim "I did not mean that it should die!" According to most, this case is forbidden Scripturally. However there are two, and possibly three cases of *psik raisha*. *Psik raisha denicha lai*, is a case where the resulting *melacha* was desired. The activity was done for another reason but one is pleased to have done the *melacha* as well. *Psik raisha delo nicha lai* is an undesirable resultant *melacha*. This case is not forbidden as a *psik raisha*. Some say that this is based on the principles of *melacha she'aina tzricha legufah*, and would be forbidden Scripturally according to one view. Some add a case of *psik raisha delo ichpas lai*, where the result was not desired, but not unwanted either. [See E.g. Shabbos 73b etc., 75a 102b 106a 110b, Sukah 33b, Kesubos 6a, Poskim.

Rambam, Shabbos, 1, 9:13. Tur, Sh. Ar. OC e.g. 337:1, commentaries.]

C) Drowning insects

The Talmud discusses delousing one's clothing or hair. Two issues arise: when removing and killing the lice one might disgust onlookers; and if it is done on *Shabbos* it involves the *melachos* mentioned. [When done by lamp-light it also involves a Rabbinical precaution to prevent tilting the lamp, which involves the *melacha* of burning.] The Talmud cites one sage who threw the lice into water. Some say this was during the week. This manner of killing would not disgust people. Others maintain that this was on *Shabbos*. Non-reproducing lice are sometimes mixed with others. If one kills them all, he will inevitably violate the *melacha*. However, if the item being deloused only has lice that may be killed, or one is easily able to tell the difference, he may kill them. Even so, throwing them into a bowl of water is preferable. Thus, some derive that throwing them into water is indeed less stringent. One is not considered killing them with his hands directly. Others disagree, maintaining that it is exactly the same. They interpret the passage differently, or do not rule like this sage. In summary, the sage who threw the insects into water could have been referring to indirectly killing them, since they might have been forbidden insects, but not necessarily so. He might have done this during the week, for decency. He might have done it to insects that are permissible to kill on *Shabbos*, but did not want to do so with his hands. He might have held that throwing them into water is not forbidden at all, because they do not drown.

In the vast majority of cases, the insects we are familiar with will not die when thrown into water. One can try the children's trick of 'drowning' a fly or bee and then letting it dry out and watching it fly away. We also know that when checking vegetables for bugs, if they are steeped in salty water, the bugs separate from them. The salt kills them, and they loosen their grip on the leaves. On *Shabbos*, this is forbidden, if there are known bugs. If the water is not salty, they stay attached, because they stay alive! The exterminator commercials say that cockroaches can hold their breath for forty minutes or longer. This is actually an over-simplification. The following three factors are really at work.

First, every land creature has a layer of air on its surface, proportional to its mass and surface. Humans have too small a layer to help them under water. Due to their size, insects can breathe in this pocket for a long time, possibly hours, until they are able to get out of the water. Second, insects have a coating (the chitin) that produces a waxy substance that causes them to float. Thus, even if they did not have the air pocket around them, they would not fall to the bottom and breathe-in water (i.e. drown) as soon as they were tossed into it, like larger animals. Third, insects use survival techniques, such as swimming or, in the case of ants, crowding together in a ball. Ants use this technique regularly, to ride out floods. They also migrate to new areas this way, if they need to. [Special thanks to Shmuel Creeger, ECI Pest Control.]

If it is so difficult to drown an insect, what do the poskim mean? We can easily explain the view that it is permissible to throw them into water, in light of the facts we see. In fact, they could probably interpret the Talmudic passage at face value. One may throw them directly into the water, without concern for killing them. How do we explain the stringent view, which is quoted by some later opinions?

The language used by one of these poskim is that it is *miskaven*, and that the insect

will likely eventually die. The *melacha* is simply delayed, like baking. They consider it *psik raisha* because only a tiny minority survive and climb out. Water is not the insects' natural habitat, and eventually they will drown, unless their survival techniques work. One may not rely on this. *Davar she'aino miskavain* is permitted only when one is engaged in an otherwise permissible activity with the possible *melacha* resulting from it. When drowning an insect, one is engaged in the *melacha, miskavain*, but is unsure whether he will succeed. If he succeeds, *niskyma machshavto*, he is liable for killing it. They could also be referring to throwing it into a body of water so vast that the insect has no hope of getting out before he exhausts himself. Eventually, it will die, as insects do ultimately die in water. If one placed a person in this situation he could be held liable for murder. They could be referring to insects that are easily drowned, for whatever reason. These might have been common insects in their locales. In any event, one may not throw an insect into water, because one or more of these explanations might apply.

If the ant is already in the toilet bowl, one is not 'throwing it into the water' when flushing. It is already trapped, which would be at best Rabbinically forbidden. It is not his intent to kill it. In the sewer the ant will find its way out of the water, especially according to the lenient view. Since the first part of the sewer is not so vast, there is only a small possibility that the insect will die as a result of the flushing. Thus, it is a *davar she'aino miskaven*. If it has been there a while, it might have already used up its energy and might be close to dying of exhaustion. Flushing this insect might hasten its death. May the flusher make use of the doubt about how long the ant was in the water? This is known as a *safeik psik raisha*, doubt about inevitable resulting *melacha*. This is debated by the poskim. Some poskim permit such cases, though others say this only helps in Rabbinical cases. Finally, according to the stringent view, one could argue that in a sense, the ant has already been 'killed' by falling into the water. [See Shabbos 12a, Poskim. Magen Avraham 316:21, Eliyahu Raba, Tosfos Shabbos, Birkei Yosef (Machazik Bracha). Chavos Yair 164. Be'er Hetev OC 316:13. Taz OC 316:3, MB 16. RAE YD 87:6.]

On the Parsha ... *The man [mekoshesh] shall certainly be put to death. The entire congregation shall stone him ... And they stoned him with stones - and he died ... [15:35-36]* In Parshas Emor, regarding the blasphemer, it says 'they stoned him with a stone'. The blasphemer needed to be hung before he was buried. So they would be careful not to mutilate the body. The mekoshesh, according to some, would not be hung, and could be buried on the spot. [See *Meshech Chochma*] There are other differences between the cases. In the case of the blasphemer, it does not say the congregation did it, nor that he died. Why does the Torah tell us about the mekoshesh 'and he died', rather than 'they put him to death'? Perhaps, in the case of the blasphemer, a single heavy stone was aimed directly at him, so that he died immediately. The mekoshesh was stoned less directly, with many stones. The Torah is telling us that even though he just 'died', it was still counted as though they put him to death. Since eventual death was certain, they fulfilled their *mitzvah* to kill him.



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