

Hilchot Shiluach Hakein

הלכות שילוח הקן

The Basis for the Mitzva

Sending Away the Mother When One Doesn't Take the Young

A Nest in One's Property

The Method of Sending the Mother Bird Away

Reciting a Beracha on the Mitzva of Shiluach Hakein

Other Halachot Related to Sending the Mother Away

For quick reference, some long website URLs have been shortened.
For the complete list of referenced websites visit www.tzurbaolami.com.

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|  | Tanach |
|  | Talmud (Chazal) |
|  | <i>Rishonim</i> |
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INTRODUCTION

In this *shiur* we will study the *halachot* of *Shiluach Hakein*, a relatively uncommon mitzva today, but a special one nonetheless for those who are privileged to fulfill it. The Torah teaches us that there is a positive mitzva to send a mother bird away before taking her young or her eggs, for which Hashem promises long life to those who fulfill it. Furthermore, there is a negative prohibition to take the mother together with her young. The source for both of these Torah laws is in *Sefer Devarim*.



Devarim 22:6-7

If you happen to come across a bird's nest on your way, in any tree or on the ground, with chicks or eggs [in it] and the mother [bird] is sitting over the chicks or on the eggs, do not take the mother together with her young.

Send away the mother, and take the young, in order that you may fare well and have a long life.



Rashi, Ibid.

If you happen to come across – This excludes if it is readily available [*mezuman*].

Do not take the mother – While she is still [sitting] on her young.

In order that you may fare well – If for an easy mitzva where there is no loss of money, the Torah states “in order that you fare well and have a long life,” how much more so will the reward be for difficult mitzvot.

1. דברים | כב:ו-ז

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:

שלח תשלח את האם ואת הבנים תקח לך למען ייטב לך והארכת ימים:

2. רש"י | שם

כי יקרא – פרט למזומן.

לא תיקח האם – בעודה על בניה.

למען ייטב לך – אם מצווה קלה שאין בה חסרון כיס, אמרה תורה “למען ייטב לך והארכת ימים” – קל וחומר למתן שכרן של מצוות חמורות.

THE BASIS FOR THE MITZVA

The commentaries offer a few possible reasons for this unusual mitzva. The **Chatam Sofer** cites one reason mentioned by the Ramban that we are enjoined not to be cruel to the mother. He also cites a more mystical explanation given by the **Chavot Yair** (in a responsum we will see in more detail below) in the name of the **Zohar**.¹

Ⓝ Responsa Chatam Sofer 1:100

...See the Ramban in his commentary to the Chumash (*Devarim 22:6*)... that the reason for this mitzva is **in order not to be cruel and uproot the mother while with her young**. For even though it is prohibited to say “your mercy comes upon the nest of a bird” (Mishna, *Berachot 33b*), the reason for that is: G-d’s mercy doesn’t apply to animals where there is a human need, for if so it would be prohibited to slaughter animals. Rather, these are decrees upon us in order that we not learn to become cruel, but [instead] improve our character traits, see there. Now according to this reason, if one doesn’t need the young, not only is one not obligated to send the mother away, but one is also acting in a cruel manner [if one does so]. And instead of learning not to be cruel, the opposite is true, we will accustom ourselves to cruelty and causing animals pain by sending the mother away from her children, and causing pain to animals is a Torah violation...

However, in the Responsa *Chavot Yair*, he cites the *Zohar* that the reason for sending away the mother is **to arouse the crying of the mother for her children...**

We saw previously that the Torah promises a reward of long life for one who fulfills this mitzva. **Rav Shlomo Eiger** writes in his commentary on the *Shulchan Aruch* (based on the *Sefer HaChinuch* citing the *Midrash Tanchuma*) that an additional dimension of reward for this mitzva is that one can merit to have children as a result.

Ⓝ Gilyon Maharsha, Yoreh De’ah 292:1

Due to the reward of this mitzva one can merit to have children... and the *Sefer HaChinuch* writes that they interpret “and the young you shall take” as referring to your own.

3. שו"ת חתם סופר | א:ק

...ועיין רמב"ן בנימוקי חומש שלו (דברים כב, ו), כתב... בטעם המצווה ההיא, **שלא נתאכזר לעקור אם על בנים**, דאף על גב דאסור לומר “על קן ציפור יגיעו רחמיך”, והטעם – שלא הגיעו רחמינו על בעלי חיים כל שהוא לצורך אדם, דאם כן היה אסור לשחוט בעלי חיים, אך גזירות הן עלינו, שלא נלמוד להתאכזר ונתקן מדותינו, עיין שם. והנה לפי טעם זה מבואר, דאם אינו צריך לבנים – לא מיבעיא דאינו מחוייב לשלח האם, אלא אכזריות נמי עביד, ובמקום שנלמוד שלא נתאכזר, אדרבא נרגיל עצמנו באכזריות ולצער בעלי חיים על מנת לגרש האם מעל בניה, וצער בעלי חיים דאורייתא...

אמנם בתשובות חוות יאיר סיים טעם בשם ספר הזוהר בשילוח האם, **לעורר ייללת אימא עילאה על בניה...**

4. גיליון מהרש"א | יו"ד רצב:א

ובשכר מצווה זו אדם זוכה לבנים... וכתב בספר החינוך, דדרש “ואת הבנים תיקח לך” – רצונו לומר “לנפשך”.

1. See also the explanation given by the *Sefer HaChinuch* (mitzva 545).

SENDING AWAY THE MOTHER WHEN ONE DOESN'T TAKE THE YOUNG

Although *Shiluach Hakein* is clearly a Torah requirement, it seems logical that it cannot be the same type of obligation as other positive mitzvot, as one does not frequently encounter a mother bird sitting on a nest. Moreover, even should one see a nest, one does not always wish to take and make use of the young. To what extent must one go out of one's way to fulfill the mitzva? The Gemara clarifies that one does not have to search for a nest in order to perform it.

מ Masechet Chullin 139b

The Sages taught in a *beraita*: “If a bird’s nest happens before you on the way.” What is the meaning when the verse states all the various details contained in it?

Since it is stated: “You shall send the mother [*shalle’ach teshallah*], but the young you may take for yourself;” one might have thought that the doubled verb “*shalle’ach teshallah*” indicates that one must search even in the mountains and hills in order to find a nest with which to perform this mitzva. Therefore, the verse states: “If a bird’s nest happens,” indicating only when it confronts you; but one is not required to seek out a nest...

5. מסכת חולין קלט:

תנו רבנן: “כי ייקרא קן ציפור לפניך” – מה תלמוד לומר? לפי שנאמר: “שלח תשלח את האם ואת הבנים תיקח לך” – יכול יחזור בהרים וגבעות כדי שימצא קן? תלמוד לומר: “כי ייקרא” – במאורע לפניך...

Nevertheless, the **Chida** (in the *Birkei Yosef*) cites the **Arizal** who holds that one should try to go out of one's way to find a nest so that one may perform this mitzva.

נ Birkei Yosef, Yoreh De’ah 292:8

Even though according to the Gemara that states “one might have thought one must search in the mountains, etc.” it is clear that one is not obligated to search for [an opportunity] to fulfill this mitzva... but from the words of the Arizal it seems that one should try and fulfill this mitzva...

6. ברכי יוסף | יו"ד רצב:ח

אף על גב דלפי משמעות הש"ס, דקתני “יכול יחזור בהרים” וכו', מוכח דאינו חיוב לחזור לקיים מצווה זו... ומדברי האר"י זצ"ל משמע, שצריך להשתדל לקיים מצווה זו...

RABBI CHAIM YOSEF DAVID AZULAI – THE CHIDA (1724–1806)

Rav Chaim Yosef David Azulai was a prominent *posek*, author, and traveler. Known by the acronym Chida, he was highly respected for his great piety and scholarship, and he wrote numerous works (some say up to seventy-one). The Chida was born in Jerusalem to a distinguished Sephardic family. He studied Torah initially with his father, who was a very learned individual himself, and later with other great sages including Rav Chaim ben Attar, the *Ohr HaChaim*.

In 1753, at age twenty-nine, the Chida was appointed emissary to represent the Holy Land abroad and collect money for its institutions. He spent five years on his mission, visiting many countries in Europe and North Africa, where he was welcomed with great respect and admiration. He later made a number of additional trips across the world for similar purposes.

During these trips, the Chida made a point of searching for collections of old manuscripts and other Jewish works. He took extensive notes on his discoveries, which he eventually turned into his classic work known as *Shem HaGedolim*, an encyclopedia of authors and *sefarim* of Torah literature. Following his time living in Israel and traveling (and a five year stint in Egypt as rabbi of Cairo), later in his life he settled in Leghorn (Livorno), Italy, a center of Jewish printing, where he wrote and printed many of his other works (though some were never published). These works include commentaries on many subjects, including Chumash, Talmud, history, Kabbala, and halacha. His most well-known halachic works include the *Birkei Yosef* and *Machazik Beracha* commentaries on the *Shulchan Aruch*, among others. He often mentions the more Kabbalistic perspectives even within his halachic writings, as he does in the quote here.

Towards the end of his life, while still living in Leghorn, the Chida wrote in his diary that he wished to return to Israel, which unfortunately did not occur, and he died in Leghorn at the age of eighty-three. However, chief rabbi of Israel Rav Yitzchak Nissim arranged to have his remains transferred to Har HaMenuchot in 1960, 154 years after his death.

The *Chatam Sofer* quoted earlier notes that this position of the Arizal is based on the reason given for the mitzva by the *Zohar* that it is meritorious for us to arouse the "crying" for mercy of the mother for its young, as this can also arouse Hashem's mercy for us (His children). But the *Chatam Sofer* claims that since this goes against the clear implication of the Gemara cited above, the halacha is that there is no obligation to do so.

⌘ Responsa Chatam Sofer 1:100

...However, in the Responsa *Chavot Yair*, he cites the *Zohar* that the reason for sending away the mother is to arouse the crying of the mother for her children. Accordingly, it is a mitzva to try and find a nest in order to arouse the mercy of the mother for her children. Consequently, there is no problem of cruelty, as if divine mercy is not given to animals even for benefit of humans, this is certainly true for a mitzva. However, our Talmud does not agree with this... and it is known that where there is a dispute between the revealed Torah and the hidden Torah, we do not deal with hidden interpretations, for the revealed is to us and our children.

7. שו"ת חתם סופר | א:ק

...אמנם בתשובות חוות יאיר סיים טעם בשם ספר הזוהר בשילוח האם, לעורר ייללת אימא עילאה על בניה, אם כן מצוה להדר אחר קן כדי לעורר רחמי אימא עילאה על בניה. ולפי זה ליכא משום אכזריות, דאפילו אם לצורך הנאת אדם לא הגיעו רחמי שמים על בעלי חיים, מכל שכן לצורך מצווה. אך ש"ס דילן על כרחק לא סבירא ליה הכי... וידוע היכי דפליגי הנגלה עם הנסתר – אין לנו עסק בנסתרות, והנגלות לנו ולבנינו.

Even if one does not go out of the way to search for a nest, one may happen to find a nest with a mother bird and chicks (or eggs), but doesn't have any use for them. This is often the case today, when we don't usually keep chicks or chickens in our property, and generally buy our eggs from the store. Is one obligated to fulfill the mitzva? **Rav Yair Bachrach** addresses this case in his Responsa *Chavot Yair* and claims that although the Gemara indicates one need not search for a nest, if one chances upon one he must perform the mitzva. Apparently, the obligation to send the mother away is independent of whether one wants the young.

נ Responsa Chavot Yair, Siman 67

I was asked a question: if one happened upon a nest in the field, is one obligated to deal with it and send the mother away, or is one permitted to continue on one's way, as [perhaps] the Torah only said "You shall send away" if one wants to take the young?...

It seems to me that what can be extrapolated from the Gemara is correct: "One might have thought that one must search even in the mountains" [but the words "when once chances upon it" indicate that only then does the mitzva apply], **which proves that "when one chances upon it," one does indeed need to relate to it.** This also makes sense based on the reason given in the *Zohar* which is in order that the mother bird will be pained and fly from one place to another in search of her young, and through this G-d's mercy will be aroused for His children in exile... **Therefore it seems to me that one has to relate to it and fulfill the mitzva of Hashem, but it is only a doubt [not an absolute obligation], about which it is [nevertheless] worthwhile to be stringent in all cases...**

This ruling of the *Chavot Yair* is quoted by many *Acharonim*, including the *Birkei Yosef* (in an earlier section of the piece cited above), **Rabbi Akiva Eiger** (to *Shulchan Aruch, Yoreh De'ah* 292:1), and the ***Pitchei Teshuva*** (*Yoreh De'ah* 292:1). However, **Rav Chaim Kanievsky** notes that the Ran explicitly states the opposite of the *Chavot Yair*.

FURTHER IYUN

For perspectives on *Ta'amei HaMitzvot* as it relates to the mitzva of *Shiluach Hakein*, see page 255.

ה Chidushei HaRan, Chullin 139a

...Is sending away [the mother] a mitzva that is obligated upon him? If he doesn't want to take the young, he is exempt from sending it away.

Some *Acharonim*, including the ***Chazon Ish***, rule this way that there is no obligation of *Shiluach Hakein* if one does not actually want to take the eggs or the chicks.

8. שו"ת חוות יאיר | סימן סז

שאלה נשאלתי, אם כי ייקרא קן ציפור לפני איש בשדה, אם מחוייב על כל פנים לזקוק לה לשלח את האם, או רשאי לילך לדרכו, דלא אמרה רחמנא "שלח תשלח" רק באם ירצה ליקח הבנים...

נראה, דדקדוק נכון הוא מה שיש לדקדק מגמרא: "יכול יחזור בהרים" וכו', דמוכח ד"כי ייקרא" מיהת מחוייב ליטפל. והכי מסתבר לטעם שכתב בזוהר, שהוא כדי שהעוף – אם העופות – תצטער ותפרח ממקום למקום לבקש את בניה, וע"י כך יתגלגלו רחמי המקום ברוך הוא על בניו שבגלות... לכן נראה לי, דחייב להיטפל ולקיים מצוות ה', ולא יהא אלא ספק, שראוי לחוש ולהחמיר בכל דבר...



Chazon Ish, Yoreh De'ah 175:2

...From here we can prove that if one happened upon a nest and does not want to take the young, he is not obligated to send away [the bird], as if this weren't the case, then Rav Yehuda would be required to perform the *Shiluach* (sending away) completely, and he could not be exempted due to *darkei shalom* (maintaining peace) since this is obligated from the Torah, and the owners themselves are liable when they find the bird nesting...²

10. חזון איש | יו"ד קעה:ב

...ומכאן יש להוכיח, דאם פגע בקן ואינו רוצה לזכות בבנים – אינו חייב בשילוח, דאם לא כן חייב רב יהודה בשילוח גמור, ולא שייך למיפטריה מפני דרכי שלום, כיוון דחייב מן התורה, והבעלים גופייהו חייבים כשימצאו רובצת...²

2. The *Chazon Ish* here is referring to a passage in the Gemara (*Chullin* 141b–142a) where Rav Yehuda wished to acquire newly born chicks from Levi bar Simon, but the Gemara says that he could not do so, since Levi himself does not acquire them until the mother flies out of the nest (see source 13 below, which is the passage immediately prior to this one in the Gemara). Despite them being ownerless, Rav Yehuda was still forbidden by rabbinic law from taking them due to *darkei shalom* (maintaining peace between neighbors). The Gemara suggests that Rav Yehuda strike the nest, causing the mother to fly out of it, which would allow Levi to first acquire the chicks, after which he could transfer ownership to Rav Yehuda. The *Chazon Ish* is claiming here that if *Shiluach Hakein* was necessary even when one doesn't want the young, Rav Yehuda would have in fact been obligated to perform it and take the young despite the rabbinic injunction of *darkei shalom*, since the Torah mitzva of *Shiluach* would override it. Since that was not the case, one must not be obligated in such a scenario. [Addition of the English editors]

A NEST IN ONE'S PROPERTY

We saw above in Rashi's commentary on the Torah that the mitzva of *Shiluach Hakein* does not apply to every single nest. Rather, the words "when you happen [*ki yikare'i*]" indicate that it applies only where the nest isn't considered *mezuman*, which literally means "readily available." This term is used to limit the mitzva to situations where a nest is situated in places that the mother bird can fly away easily or are not in one's property. However, nests located in one's possession or places which the person can catch the bird should he so desire are generally not included. The source of this halacha is in the **Mishna** cited below.

ח Mishna, Chullin 12:1

... Sending [the mother bird from] the nest... applies only when it is not in one's possession [lit. readily available]. What is considered not in one's possession? [It includes,] for example, geese and chickens that nested in the field. But if they nested in the house, and also Herodian doves, one is exempt from sending them.

11. משנה | חולין יב:א

... ושילוח הקן אינו נוהג... אלא בשאינו מזומן. איזהו שאינו מזומן? כגון אווזין ותרנגולין שקיננו בפרדס. אבל אם קיננו בבית, וכן יוני הרדסאיות – פטור משילוח.

As mentioned above, this law is derived (by the Gemara) from the verse "when you happen," which excludes a case where the nest is in one's possession. The Gemara explains (in the context of the intricate discussion below) that if one's courtyard acquires the eggs, it is considered in one's possession and one cannot fulfill the mitzva. However, as long as the mother bird did not rise from sitting upon the eggs, the courtyard does not acquire it, as the person himself cannot reach the eggs while the mother is sitting on them. As soon as the mother leaves the nest though, the courtyard immediately acquires it.

ח Masechet Chullin 141b

The Sages taught in a *beraita*: **Pigeons of a dovecote and pigeons of an attic** whose dovecote and attic are within a person's property **are subject to the obligation of sending** away the mother bird, because they are ownerless and therefore not considered readily available. **But nevertheless, they are subject to the prohibition of robbery due** to a rabbinic ordinance to maintain **the ways of peace. But if this ruling that Rabbi Yosei, son of Rabbi Chanina, says is correct, that a person's courtyard affects acquisition for him** of an item placed in it even **without his knowledge**, then a dovecote or attic will effect acquisition for its owner of any eggs inside them. Accordingly, one should **apply here** the principle that the mitzva to send away the mother bird from the nest applies only in the case described in the verse: "If a bird's nest **happens** before you," which **excludes** a bird or egg readily **available** in one's home. Yet the *beraita* rules that the mitzva does apply in this case.

12. מסכת חולין קמא:

תנו רבנן: יוני שובך ויוני עלייה – חייבות בשילוח, ואסורות משום גזל מפני דרכי שלום. ואי איתא להא דאמר ר' יוסי בר ר' חנינא, "חצרו של אדם קונה לו שלא מדעתו" – קרי כאן "כי ייקרא" – פרט למזומן! אמר רב: ביצה – עם יציאת רובה הוא דאחייב בשילוח.

Rav says: It is **from** the time of the **emergence of the majority of an egg** from a mother bird's body **that one becomes obligated to send** away the mother from the nest. On the other hand, the owner of a courtyard

does not acquire the egg **until it** fully emerges and **falls into his courtyard**. And therefore, **when** the *beraita* teaches that in the case of the pigeons in a dovecote or an attic, they are **subject to the obligation of sending** away the mother bird, it is referring to a time **before** the egg **falls into his courtyard**. The Gemara asks: **If that is so**, that the *beraita* is referring to a case where the egg has not fully emerged, **why** does the *beraita* rule that the eggs **are forbidden** by rabbinic law for others to take **due to** the prohibition of **robbery**?

The eggs have not yet been acquired by the owner of the courtyard? The Gemara answers: That ruling of the *beraita* is referring **to their mother**, i.e., the mother bird. **Or, if**

you wish, say instead: **Actually**, that ruling is referring **to the egg**. And the reason the Sages rendered it prohibited to take the eggs due to the prohibition of robbery is that **once the majority of an egg emerges** from the body of the mother bird, the owner's **mind is upon** the eggs to acquire them, although technically he will not acquire them until they fully emerge.

And now that Rav Yehuda said in the name of **Rav**: **It is prohibited to acquire eggs whose mother is resting upon them, as it is stated**: “You shall **send the mother**,” and only **then**: “**The young you may take for yourself**,” **you may even say**: **Even though** the eggs fully emerged and **fell into his courtyard**, he must still send away the mother bird. This is because in **any case in which** a courtyard owner is **capable of acquiring** an item by himself, **his courtyard can also effect acquisition** of it for him. **But in any case in which he is incapable of acquiring** an item by himself, **his courtyard cannot effect acquisition** of it for **him either**. Since one is incapable of acquiring the eggs so long as the mother bird is resting upon them, one's property does not acquire the eggs for him even if they have already fallen into it.

According to this principle, as soon as the mother bird flies out of the nest, the owner of the property has acquired the young, and can no longer fulfill the mitzva. This halacha is relevant to the case of a nest located anywhere in one's property, including in one's yard, on one's windowsill, and the like, as is codified in the ***Shulchan Aruch*** as well:

⌘ **Shulchan Aruch, Yoreh De'ah 292:2**

With regard to a nest that is in one's possession, such as doves who usually are raised in people's homes, and geese and chicken that nest in one's home – one is exempt. But doves of the dovecote and in the attic, or birds that made nests in shrubs and ditches, or geese and chickens that made their nests in an orchard are subject to the obligation. But this is as long as the mother hasn't been raised above the eggs since she laid them. But if she was raised above them, if these places belong to him, his courtyard has acquired it for him, and they are considered in his possession and he is exempt.

מקנא לא קני עד דתיפול לחצרו, וכי קתני חייבות בשילוח – מקמי דתיפול לחצרו. אי הכי, אמאי אסורות משום גזל? אַאָמָם. ואיבעית אימא: לעולם אביצה, וביצה כיוון דנפיק ליה רובא – דעתיה עליה. והשתא דאמר רב יהודה, אמר רב: אסור לזכות בביצים שהאם רובצת עליהן, שנאמר “שלח את האם” והדר “הבנים תיקח לך”, אפילו תימא אף על גב דנפל לחצרו, כל היכא דאיהו מצי זכי – חצרו נמי זכיא, וכל היכא דאיהו לא מצי זכי – חצרו נמי לא זכיא ליה.

13. שולחן ערוך | יו"ד רצב:ב

קן המזומן אצלו – כגון יונים, שדרך ליגדל עם בני אדם בבתים, ואווזים ותרנגולים שקננו בבית – פטור. אבל יוני שובך ועלייה, וצפרים שקיננו בטפיחים ובבירות, ואווזים ותרנגולים שקיננו בפרדס – חייב, והוא שלא הוגבהה האם מעל הביצים כלל משהטילם, אבל אם הוגבהה האם מעליהם – אם המקומות הללו שלו זכתה לו חצירו, והווי ליה מזומן ופטור.

However, **Rav Moshe Feinstein** proposed the following suggestion for those who wish to fulfill the mitzva with a nest on their property: If one sees a bird making a nest in his property, he may have in mind before it lays the eggs that his property should not acquire the eggs. If so, he can still fulfill the mitzva, since they won't belong to him and will not be considered in his possession.



Responsa Igrot Moshe, Yoreh De'ah 4:45

[With regard to] eggs that were laid in one's possession, and the mother was raised above them, but the owner didn't have intention to acquire them, can he still fulfill the mitzva of *Shiluach Hakein*?

...I will answer briefly... that only concerning birds in ditches and geese and chickens that nested in an orchard are the ditches and fields considered like a courtyard that acquires the eggs when the mother is raised above them because he has intention to acquire them, but not for eggs that he had no intention of acquiring.

And in general concerning birds, geese, and chickens, if one claims [afterwards] that it is not a merit for him and he didn't want to acquire them, one can believe him even retroactively, and he hasn't acquired them. Therefore, he can still perform the mitzva of *Shiluach Hakein*.

14. שו"ת אגרות משה | יו"ד ד:מה

ביצים שהוטלו ברשותו, והוגבהה האם מהם, אבל לא היתה דעתו לזכות בהם, אם יכול לקיים מצוות שילוח הקן?

...אשיב בקיצור... שרק גבי ציפורים בבירות, ואווזים ותרנגולים שקיננו בפרדס נחשב הבירות והפרדס כחצר שקונה הביצים כשהוגבהה האם מעליהם, משום שדעתו לזכות בהן, ולא בביצים שאין דעתו לזכות בהן.

וגם בכלל גבי ציפורים ואווזים ותרנגולים, אם אחד טוען שאין זה זכות בשבילו, ולא רצה לזכות – יש להאמינו גם למפרע, ולא קנה. וממילא יכול עדיין לקיים מצוות שילוח הקן.

Some other contemporary *poskim*, including the **Peninei Halacha** (Kashrut Vol. 1, 16) and the *sefer Shale'ach Teshalach* (below source 17) agree with this suggestion of Rav Feinstein. By contrast, **Rav Shlomo Zalman Auerbach** argues that even in a case where one intends not to acquire the nest and the eggs, he still may not fulfill the mitzva, since at any moment he can acquire the nest through his courtyard if he so desires. Therefore, it is considered to still be *mezuman*, readily available to him.



Responsa Minchat Shlomo 100:6

Regarding the suggestion... that even in a secured courtyard a person can make a condition at the outset and say that he has no intention that his courtyard should acquire the eggs that the bird will lay, and therefore he will be able to fulfill the mitzva with ease, as they will not be considered in his possession. **But in my humble opinion this is very questionable...** and there is some backing to my claim, as otherwise every person could bring a cage with a bird that was rebellious into his house, or another kosher bird that doesn't usually live in one's house, and make the cage and bird ownerless immediately and reveal his intention also regarding the eggs that he doesn't want to acquire them, and he would thereby be able to fulfill the mitzva afterwards with ease...

15. שו"ת מנחת שלמה | ק:ק

בעניין... שגם בחצר המשתמרת יוכל לומר בתחילה, שאינו רוצה כלל שתזכה לו חצרו בביצים שהציפור תטיל, וממילא יוכל בקל לקיים את המצווה, כיוון דאין זה מזומן. ולעניות דעתי יש לפקפק בזה... וקצת סעד לכך, דאם לא כן יכול כל אדם להכניס תוך ביתו כלוב עם תרנגולת שמרדה, או עוף טהור אחר שאין דרכו ליגדל בבית, ולהפקיר תיכף את הכלוב עם הציפור ולגלות דעתו גם על הביצים שאינו רוצה בהם, ויוכל אחר כך לקיים בקל מצוות שילוח...

THE DEFINITION OF A SECURED COURTYARD

As we have seen, a nest that is located in a person's possession is not subject to the mitzva of *Shiluach Hakein*. Therefore, one would not be capable of fulfilling the mitzva with a nest found in a secured courtyard. The parameters of the definition of such an area are addressed by a contemporary *sefer* about the laws of *Shiluach Hakein* called ***Shale'ach Teshalach***:



Sefer Shale'ach Teshalach, Se'if 22

A secured courtyard is defined as any [place] where people normally place objects there and are not afraid that they will be stolen. Therefore, one cannot fulfill the mitzva with a nest that is found in this proximity unless the mother was not raised from the eggs at all, or unless one made a condition from the outset that he has no intention to acquire the mother and her young...



Ibid., Footnote

See the responsa of Rav Chaim Kanievsky (45–46) that the definition of a secured courtyard is not dependent on whether the area is locked or not. Rather it is a place that strangers don't enter, and therefore he places his objects there without worrying that they may be stolen... I asked Rav Kanievsky as to the halacha regarding a nest found in a shul above the air conditioner or light fixture, which is very high. Is this considered a secured place, as if he would try to reach it with a ladder, he would be considered like a thief?... He answered me that it is still considered an unsecured location, since the public frequent the area.

16. ספר שלח תשלח | סעיף כב

"חצר" המשתמרת מיקרי כל שדרך בני אדם להניח שם חפציהם, ואין להם פחד שייגנבו. וממילא, קן הנמצאת במקום כזה – אי אפשר לקיים בה המצווה, אלא אם כן לא הוגבהה האם מהקן כלל, או שהתנה מראש, שאין בדעתו לזכות באם ובבניה...

17. שם | הערה

עיין בתשובות הגר"ח קנייבסקי שליט"א (מה, מו), דגדר חצר המשתמרת אינו תלוי בנעילת המקום במנעול, אלא שהוא מקום שאין זרים נכנסים לשם, וממילא הוא מניח שם חפציו בלא חשש שייגנבו... ושאלתי את הגר"ח קנייבסקי שליט"א מה דין קן הנמצאת בבית הכנסת על גבי מזגן או פלורוסנט גבוהים מאוד-מאוד, האם חשיב "מקום המשתמר", וכיוון שאם ינסה להגיע לשם ע"י סולם יהיה נתפס כגנב... והשיב לי, דבכל זאת חשיב מקום שאינו משתמר, כיוון שיש דריסת רגל לרבים במקום.

THE METHOD OF SENDING THE MOTHER BIRD AWAY

Until now we have discussed the reasons for the mitzva and which cases are subject to the mitzva. We will now address the question of the proper method of sending the mother away. The Gemara actually records a dispute about this issue, though **Rashi** cites two explanations of how to understand the dispute.

מ Masechet Chullin 141b

In what manner does he send her away? Rav Huna says: He holds the mother **by her feet**. **Rav Yehuda says:** He holds her **by her wings** and sends her away. **Rav Huna says** that one holds the mother **by her feet, as it is written:** “**That send forth freely the feet of the ox and the donkey**” (*Yeshayahu* 32:20), indicating that the sending of an animal is associated with its feet. **Rav Yehuda says** that one holds her **by her wings, because** the feet of the mother bird **are her wings**, as it is by means of her wings that she moves about.

ר Rashi, Ibid.

In what manner does he send her away? By her feet – One holds her by her feet and sends her away.

By her wings – One holds her by her wings and sends her away.

That send forth freely the feet – We see from this [verse] that sending away is done with the feet. This is what I have heard. But it seems to me that this sending away [as depicted in the previous explanation] is not similar to sending away an ox [which is the context of the proof-text], which walks on its feet, whereas here we hold her by the feet.

[Therefore,] it seems to me that this is the intention: “Rav Huna says by her feet” – that if one detached her wings and sent her away, he is exempt from the mitzva of *Shiluach*, since the bird walked two or three steps, and it would then be permitted to catch her. “And Rav Yehuda says by her wings” – **that she be able to fly normally**. A proof for my explanation is that it brings an incident [in the next line of the Gemara] where one detached the wings and sent her away [and then took her back again], where Rav Yehuda obligated him to send her away [again], as Rav Yehuda follows his reasoning that one cannot send away a bird by foot.

18. מסכת חולין קמא:

במה משלחה? רב הונא אמר: ברגליה. רב יהודה: אמר באגפיה. רב הונא אמר ברגליה, דכתיב: “משלחי רגל השור והחמור” (ישעיהו לב:כ). רב יהודה אמר באגפיה, דהא כנפיה נינהו.

19. רש"י | שם

במה משלחה? ברגל – יאחזנה ברגלה וישלחנה.

בגפה – אוחזה בכנפה ומשלחה.

משלחי רגל – אלמא שילוח ברגל הוא. כך שמעתי. ונראה בעיניי, שאין שילוח זה דומה לשילוח רגל השור, שהוא הולך ברגליו, והכא אחיזה ברגלים. וכמדומה לי, דהכי קאמר: “רב הונא אמר: ברגל” – שאם תלש גפה, ושלחה – נפטר ממצוות שילוח, כיוון שהלכה שתי פסיעות או שלוש, ומותר לחזור לתופשה. “ורב יהודה אמר: בגפה” – שתוכל לעוף כדרכה. וראייה לדברי, מדמייתי עובדא דההוא דתלשינהו לגפה ושלחה, דחייביה רב יהודה למשלחיה, דרב יהודה לטעמיה, דאמר אין שילוח עוף ברגל.

According to Rashi's first explanation, Rav Huna and Rav Yehuda disagree as to whether one must send the mother away by first holding her wings in order to cause her to leave or by first holding her legs. According to the second, they disagree as to whether one may cut off her wings and force her to leave by foot: Rav Huna says one may, while Rav Yehuda says one may not, as she must fly away using her wings. The **Rambam** interprets the Gemara using the first explanation and rules in accordance with the opinion of Rav Yehuda.



Rambam, Hilchot Shechita 13:5

How does one send her away? One holds her wings and chases her away. If one sent her away and she returned and one sent her away again and she returned, even if [this repeats itself] four or five times one is obligated to send her away, as it is stated, "you shall surely send away."

20. רמב"ם | ה'י שחיטה יגה:

וכיצד משלח האם? אוחז בכנפיה ומפריחה. שלחה וחזרה, ושלחה וחזרה, אפילו ארבע וחמש פעמים – חייב לשלח, שנאמר "שלח תשלח."

Other *Rishonim* interpret the Gemara using the second explanation, and rule in accordance with Rav Yehuda that one may not cut off her wings. According to this interpretation, it does not matter whether one holds the mother by her wings or legs when sending her away, one simply must ensure that she is capable of flying away using her wings. This is the ruling given by the **Shulchan Aruch**.



Shulchan Aruch, Yoreh De'ah 292:4

One needs to send away the mother to the point where she leaves one's possession, and then one may take the young. If one wants to clip her wings before sending her away in order that she won't be able to fly away, and he can catch her again, he is not permitted. Rather, one must send her away with her wings in order that she be able to fly away, and after she leaves one's possession one may take her if one desires. If one cut [her wings], one needs to wait until the wings grow back and then send her away.

21. שולחן ערוך | יו"ד רצב:ד

צריך לשלח האם עד שתצא מתחת ידו, ואח"כ ייקח את הבנים. ואם רוצה לחתוך כנפיה קודם שישלחנה, כדי שלא תוכל לפרוח, וייקחנה – אינו רשאי, אלא ישלחנה מיד עם כנפיה, כדי שתוכל לפרוח, ולאחר שתצא מידו ייקחנה אם ירצה. ואם חתך – ישהנה עד שגדלו כנפיה, וישלחנה.

The **Chazon Ish** holds that one may follow the *Shulchan Aruch* and send the mother away in any manner, as long as she still has wings.



Chazon Ish, Hilchot Shiluach Hakein 175:2

It seems that the mitzva of sending away [the mother]... "until she is no longer in his possession [lit. from under his hand]" means from one's possession, to the point that if one would want to catch her, one wouldn't be able, and as long as he can catch her, it is not considered *Shiluach* [sending away]. And there is no distinction concerning *Shiluach* whether one took her with his hand or caused her to flee...

22. חזון איש | ה'י שילוח הקן קעה:ב

נראה, דמצוות שילוח... "כדי שתצא מתחת ידו" – היינו מרשותו, שאם יחפוץ לתפשה לא יוכל, וכל זמן שיכול לתפשה – לא חשיב שילוח. ואין נפקותא בשילוח אם לוקחה ביד על מנת לשלחה, או שמגרשה עד שתברח...

The contemporary *sefer Shale'ach Teshalach* rules the following about this issue:



Sefer Shale'ach Teshalach, p. 43

When one sends away the mother, some say that one must take the mother from the young with one's hands and then send her away. However, others hold that by doing so one transgresses the prohibition of "do not take the mother upon her young;" rather, one must send her away with a stick and the like. This is how many of the *gedolim* of our generation have ruled.

When one uses a stick to fulfill the mitzva one doesn't have to hit the bird herself. Rather, it is sufficient to hit next to her and cause her to become frightened and fly away. One could also throw a stone near her and thereby cause her to flee. Likewise, if one raises one's voice and banishes her, one has fulfilled the mitzva.

23. ספר שלח תשלח | עמ' מג

כששולח האם: יש אומרים שצריך לקחת האם מעל גבי הבנים בידי, ואז לשלחה ממנו. אכן יש אומרים, שבאופן זה עוברים על הלאו של "לא תיקח האם על הבנים", אלא אופן השילוח הוא על ידי שמגרשה מהקן במקל וכדומה. וכן נהגו והורו כמה מגדולי זמננו.

כשבא לקיים המצווה על ידי שמגרשה מהקן – אין צורך להכות במקל על האם ממש, אלא די שִׁיכָה לידה, ויגרום בכך שתיבהל ותעוף. והוא הדין נמי, שמקיים המצווה על ידי שזורק אבן לעברה, וגורם בכך להברחתה. וכן אם מגביה קולו ומגרשה – קיים בזה המצווה.

RECITING A BERACHA ON THE MITZVA OF SHILUACH HAKEIN

The *Rishonim* dispute whether a *beracha* is recited before fulfilling the mitzva. The **Ra'avad**, cited by the **Aruch HaShulchan**, holds one must recite a *beracha*.

Aruch HaShulchan, Yoreh De'ah 292:10

It seems clear that one is obligated to recite a *beracha* when sending her away... I also found this [ruling] in the *sefer Tumim De'im* of the Ra'avad. At the end of *siman* 179, he brings the words of the *Ba'al Ha'Ittur* in the name of the *Halachot Pesukot*: "The halacha is that one must recite a *beracha* for *Shiluach Hakein* and for building a fence [on one's roof]"...

24. ערוך השולחן | יו"ד רצב:י

ונראה פשוט, שחייב לברך בשעת שילוחה... וכן מצאתי בספר "תמ"מ דעים" להראב"ד, הביא שם בסוף סימן קעט דברי בעל העיטור בשם הלכות פסוקות, וזו לשונו: "והלכתא – צריך לברך בשילוח הקן ובמעקה" וכו', עד כאן לשונו...

By contrast, the **Rashba** writes that one does not recite a *beracha*.

Responsa of the Rashba 3:283

Question: Does one recite a *beracha* for *Shiluach Hakein* or not?

Answer: ...Nevertheless, regarding your doubt whether one recites a *beracha* on the positive mitzva – i.e., on the mitzva of *Shiluach* – or on the negative commandment of "do not take the mother over her young," it would seem that it would have been more appropriate to recite the *beracha* over the negative commandment, for this is the primary part of the mitzva. Because sending the mother bird is only the rectification of the negative commandment, that if one transgressed and took [the mother], the verse transformed it to a positive mitzva of sending the mother away. Nevertheless, one can only recite the *beracha* as "that we are commanded to send away," for *hanacha*³ is sending the bird away. **And if one would recite a *beracha*, one can do so on a positive commandment for one never recites a *beracha* on a negative commandment.** For we don't recite a *beracha* regarding the prohibition of *neveila* (eating an animal improperly slaughtered), "that He prohibits us from eating a *neveila* and permitted us the animals through *shechita*," or other prohibited foods and forbidden mixtures of clothing, etc.

25. שו"ת הרשב"א | ג:רפג

שאלת, אם מברכין בשילוח הקן או לאו? **תשובה:** ...ומכל מקום, מה שנסתפק לך אם מברכין על העשה – דהיינו על השילוח – או על הלאו, דהיינו "לא תיקח האם על הבנים." והיה נראה יותר, שהיה לו לברך על הלאו, מפני שהוא עיקר המצווה, ד"שלח תשלח" אינו אלא ניתק הלאו, שאם עבר ולקח – נתקו הכתוב לעשה ד"שלח תשלח." ומכל מקום אינו מברך אלא "שציוונו לשלח", שהנחה היינו השילוח, ואם מברכין – אין מברכין אלא על העשה, שאין מברכין לעולם על לאו, שאין מברכין על לאו הנבלה "שאסר לנו את הנבלה, והתיר לנו את השחיטה", ועל לאו איסורי המאכלות, ועל לבישת הכלאיים.

3. It seems that this word is incorrect, as it does not fit the context at all. Perhaps it should say instead "the *aseh*" – the positive commandment.

Rav Yaakov Ettlinger, author of the Responsa *Binyan Tzion*, concludes that one does not recite a *beracha* for a different reason: Perhaps the bird will fly away before one chases it away, which would result in one reciting a *beracha levatala* (*beracha* in vain).

Ⓝ Responsa Binyan Tzion HaChadashot 14

...One can give another reason why one doesn't recite a *beracha* on *Shiluach Hakein* in the first case, for when one recites the *beracha* before performing the action, there is a doubt that perhaps the bird might fly away from the nest on its own without one chasing it away, and it would be a *beracha* recited in vain. Therefore, the Rashba mentioned saying the *beracha* only in the second scenario where one picked it up first, as in that case there is no concern that it will fly away. But in this case, it would be a mitzva that comes by committing a sin [as he took it rather than sending it away]. Therefore, in any event, one does not recite the *beracha*.

26. שו"ת בנין ציון החדשות | יד

...ובזה יש ליתן טעם גם כן שלא מברך על שילוח הקן באופן הראשון, דבשעה שמברך עובר לעשייתה, יש ספק שמא תפרח האם מאליה מעל הקן מבלי שישלחה, והווי ברכה לבטלה. ולכן לא הזכיר הרשב"א רק מאופן השני, שלוקחה תחילה, דבזה אין חשש שמא תפרח, אבל בזה הווי מצווה שבאה ע"י עבירה. ולכן בכל אופן אין מברכין על שילוח הקן.

However, some *Acharonim* maintain that one may recite the *beracha* without Hashem's name.

◆ Sefer Shale'ach Teshalach, Se'if 3

Some say that one recites a *beracha* at the time of fulfilling the mitzva of *Shiluach Hakein*. But many *poskim* hold that one should not recite a *beracha*, and this is the opinion of contemporary *poskim*. One who wishes may recite a *beracha* without Hashem's name.

27. ספר שלח תשלח | סעיף ג

יש אומרים, שמברכים בעת קיום מצוות שילוח הקן. אכן דעת הרבה מהפוסקים שאין לברך, וכן היא דעת פוסקי זמננו. אך הרוצה יכול לברך בלא שם ומלכות.

Below is the text of a prayer that may be recited before performing this mitzva declaring one's intention to do so (similar to those recited by some before performing other mitzvot), as well as the text of the *beracha* (for those who wish to say it):

"I am prepared and ready to send the mother bird from the nest, to fulfill the positive mitzva that my Creator, may He be blessed, has commanded me in the holy Torah, as it is stated: You shall send away the mother, and the negative prohibition not to take the mother, as it is stated: You shall not take the mother from on the child."

One may then recite the *beracha* without Hashem's Name:

"Blessed are you, King of the universe, who has sanctified us with his mitzvot and commanded us to send away [the mother from] the nest."

הריני מוכן ומזומן לשלח אם ציפור מן הקן, לקיים מצות עשה שצינני בוראי יתברך שמו בתורה הקדושה, שנאמר: "שלח תשלח את האם", ומצות לא תעשה שלא ליקח האם, שנאמר: "לא תקח האם על הבנים". ברוך אתה מלך העולם, אשר קדשנו במצותיו וציננו לשלח הקן.

OTHER HALACHOT RELATED TO SENDING THE MOTHER AWAY

Multiple Eggs or Chicks in the Nest

What is the halacha if more than one egg or chick is found in the nest? May the mitzva of *Shiluach Hakein* be fulfilled twice? The *sefer Shale'ach Teshalach* addresses this question and rules that it indeed may be fulfilled twice by two different individuals, should they desire.



Sefer Shale'ach Teshalach, Se'if 15

Even if there is only one chick or one egg in the nest, one is obligated to send away the mother. Therefore, when there are two or more eggs, two people may fulfill the mitzva of *Shiluach lechatchila* (in the ideal form), by having the first send the mother away and taking possession of one egg... and when the mother returns, the second one sends it away, and takes possession of the second egg.

28. ספר שלח תשלח | סעיף טו

אפילו אין בקן אלא אפרוח אחד או ביצה אחת – חייב לשלח האם. ולכן כשיש שני ביצים או יותר – יכולים שני אנשים לקיים בה מצוות שילוח לכתחילה, והיינו באופן שישלח הראשון את האם, ויזכה רק בביצה אחת, וכשתחזור האם... ישלחה השני, ויזכה בביצה השנייה.

Additional Halachot Related to the Manner of Sending Away the Mother

The *sefer Shale'ach Teshalach* discusses a number of additional issues that are relevant to properly sending away the mother.



Sefer Shale'ach Teshalach, p. 43

The manner of sending the mother away

5. When one sends away the mother, some say that one should take the mother from the young with one's hands and then send it away. But others say that in this manner, one violates the prohibition of "do not take the mother from the young." Rather, the manner of sending away is by banishing her from the nest with a stick and the like. And such was the practice and instruction of a number of the great Torah leaders of our time.

29. ספר שלח תשלח | עמ' מג

אופן שילוח האם

ה. כששולח האם, יש אומרים שצריך לקחת האם מעל גבי הבנים בידי, ואז לשלחה ממנו. אכן יש אומרים, שבאופן זה עוברים על הלאו של "לא תיקח האם על הבנים", אלא אופן השילוח הוא על ידי שמגרשה מהקן במקל וכדומה. וכן נהגו והורו כמה מגדולי זמננו.

6. When one comes to fulfill the mitzva by banishing her from the nest, there is no need to strike the mother directly with the stick; rather, it is sufficient to strike next to her, and cause her to be frightened and fly away. And he also fulfills the mitzva by throwing a stone toward her and causing her to flee. Likewise, if he raises his voice and banishes her, he has fulfilled the mitzva.

Having intent when the mother leaves

7. Occasionally, right after one begins to approach the nest, the mother will sense this and flee immediately. Therefore, it is proper to have in mind initially that he wishes to fulfill the mitzva in any manner that causes the mother to flee. And then he can fulfill the mitzva whether she flees immediately due to his approaching or whether she flees when he waves the stick, even if he did not yet have a chance to strike the nest.

The minimum distance that the mother must go

8. One must send away the mother until she leaves one's possession. After she leaves one's possession, one may take her. The measurement of leaving one's possession is that the mother has distanced herself and is no longer hovering over the nest, and that is sufficient. And even in a case where the nest is in a private domain, and he can fulfill the mitzva, one need not be particular that the mother go out to the public domain.

Taking the young

9. Some say that if one sent away the mother and did not take possession of the young afterwards, he has not fulfilled the mitzva of *Shiluach Hakein*. And this is the practical halacha according to the common custom. But others say that taking the young is not part of the mitzva, and is optional. In any case, for the complete mitzva, it is certainly appropriate to take them, and there is a source for this according to the reasons of wisdom [i.e., Kabbala].

Returning the young to the nest

13. After he has taken possession of the eggs or chicks, he may return them to the nest *lechatchila*, and he has fulfilled the ideal form of the mitzva even if the mother returns to them.

ו. כשבא לקיים המצווה על ידי שמגרשה מהקן, אין צורך להכות במקל על האם ממש, אלא די שיכה לידה, ויגרום בכך שתיבהל ותעוף. והוא הדין נמי שמקיים המצווה על ידי שזורק אבן לעברה, וגורם בכך להברחתה. וכן אם מגביה קולו ומגרשה – קיים בזה המצווה.

כוונה באופן השילוח

ז. הנה יש פעמים, שמיד כשמתקרבים אל הקן, מרגשת בזה האם ותיכף בורחת. ואשר לכן ראוי לכוון מיד בתחילה, שרצונו לקיים המצווה בכל אופן שיגרום להברחת האם. ואז יקיים המצווה בין אם תברח מיד מחמת התקרבותו, ובין אם תברח מיד כשיניף המקל, אף שעדיין לא הספיק להכות על הקן.

שיעור השילוח

ח. צריך לשלח את האם, עד שתצא מתחת ידו. ולאחר שתצא מתחת ידיו מותר לו לקחתה. והשיעור של "תצא מתחת ידו" הוא, שנתרחקה האם ואינה רובצת עוד על גבי הקן, וסגי בהכי. ואף באופן שהקן ברשות היחיד, ויכול לקיים המצווה, אין צריך לדקדק שתצא האם לרשות הרבים.

לקיחת הבנים

ט. יש אומרים, שאם שלח האם ולא זכה לאחזר מכן בבנים – לא קיים מצות שילוח הקן. וכן עולה לדינא, לפי "המנהג הפשוט". ויש אומרים, שאין לקיחת הבנים חלק מהמצווה, והיא רשות בעלמא. ועל כל פנים לשלמות המצווה בוודאי ראוי לקחתם, דיש לזה מקור על פי טעמי החכמה.

חזרת הבנים לקן

יג. אחר שזכה בבצים או באפרוחים – יכול להחזירם לכתחילה לקן, ומקיים המצווה לכתחילה גם אם האם חוזרת אליהם.

The Types of Birds Included in the Mitzva

The mitzva of *Shiluach Hakein* does not apply to every single bird that one might encounter. Rather, it applies only to the mother, as opposed to the father, and applies only to kosher species of birds.



Sefer Shale'ach Teshalach, Se'if 14,
16, 18

One who sees a nest and inside is a bird with kosher signs, but there is no tradition that has accepted it as a kosher bird,⁴ or he does not recognize this bird at all, and is uncertain whether it is kosher, although it is forbidden to consume it, nevertheless he should send away the mother bird out of uncertainty. However, in a case of a bird that is certainly not kosher, one should not send the mother away for no reason.

One only fulfills the mitzva of *Shiluach Hakein* with the mother, and not with the father. In our times, the nature of pigeons and doves is that the father and mother change places during the day. The time in which it is certain that the mother is sitting and not the father is from sunset until after sunrise. Therefore, it is proper to fulfill the mitzva during this time alone.

30. ספר שלח תשלח | סעיף
יד, טז, יח

הרואה קן, ובו עוף שיש בו סימני טהרה, אך אין מסורת שקיבלו בו שהוא טהור, או שאינו מכיר כלל עוף זה, ומסופק אולי כשר – אף שאסור לאכול אותו, מכל מקום ישלח האם מספק. אכן, בעוף שוודאי אינו טהור – לא ישלח את האם בחינם.

אין מקיימים מצוות שילוח הקן אלא באם ולא באב. ובזמננו טבע התורים והיונים, שהאב והאם מתחלפים במשך היום. והזמן הבטוח שהאם רובצת ולא האב הוא משקיעת החמה ועד לאחר זריחתה. ולכן ראוי לקיים המצווה רק במשך הזמן הזה.

Below⁵ is a list of common kosher species of birds with regard to which the mitzva of *Shiluach Hakein* is applicable:

- American Robin – North America
- Canada Goose – North America
- European Robin – Europe, Eretz Yisrael
- Mallard Duck – North and Central America, Europe, Asia
- Mourning Dove – North and Central America
- Northern Cardinal – Eastern and Central U.S., Central America
- Palm Dove – Eretz Yisrael, Africa, Europe
- Pigeon – Worldwide
- Sparrow – Worldwide

4. Although the Gemara (*Chullin* 59) provides specific characteristics for identifying kosher birds, the accepted halacha is that a bird is only treated as kosher with an accompanying *mesora*, or tradition, that this bird is indeed considered a kosher one. [Addition of the English editors]

5. This list is taken from www.star-k.org/articles/kashrus-kurrents/725/Shiluach-hakan, which is an excellent summary in English of the *halachot* and practical issues related to the mitzva of *Shiluach Hakein*. [Addition of the English editors]

SUMMARY OF HILCHOT SHILUACH HAKEIN

Reasons for the Mitzva

1. **Chatam Sofer/Ramban** – To learn not to be cruel.
 2. **Zohar** – To cause the mother to ask for mercy for her young, which will cause Hashem to have mercy on us.
 3. **Gilyon Maharsha** – One can merit having children through fulfilling the mitzva.
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Must One Try to Fulfill the Mitzva

1. **Gemara** – There is no obligation to search for a nest to fulfill the mitzva.
 2. **Arizal (in Birkei Yosef)** – One should try to find a nest to fulfill the mitzva.
 3. **Chatam Sofer** – There is no obligation.
 4. **Chavot Yair** – If one encounters a nest, one must perform the mitzva.
 5. **Ran/Chazon Ish** – Even if one encounters a nest, one need not perform the mitzva if one does not need the young.
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Mezuman/A Nest in One's Property

1. **Mishna** – There is no mitzva in this case.
 2. **Gemara** – This is derived from the words *ki yikarei*.
 3. **Shulchan Aruch** – A nest in one's property is not subject to the mitzva unless the mother has not yet flown away from the nest.
 4. **Igrot Moshe** – One may declare one does not want to acquire the nest, and thereby fulfill the mitzva even in this case.
 5. **Minchat Shlomo** – One may not fulfill the mitzva in the above manner.
 6. **Shale'ach Teshalach** – One's property is defined as a secured courtyard in which a person would leave his possessions without fear of theft.
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The Method of Sending the Mother Away

1. **Gemara** – Dispute whether this means doing so with its wings or its legs.

2. **Rashi** – The dispute is either about how to hold the bird before sending away, or about whether one may cut off its wings first and force it to walk away.
3. **Rambam** – One must hold her by the wings.
4. **Shulchan Aruch/Chazon Ish** – One may send her away with any method, as long as her wings have not been cut off.
5. **Shale'ach Teshalach** – One may use a stick to cause the bird to leave.

Reciting a Beracha

1. **Aruch HaShulchan/Ra'avad** – One recites a *beracha*.
2. **Rashba** – No *beracha* is recited.
3. **Binyan Tzion** – No *beracha* is recited because the bird may fly away first.
4. **Shale'ach Teshalach** – A *beracha* is not recited, but if one wishes, one may do so without using Hashem's Name.

Additional Halachot Related to Sending Away the Mother

1. If there are two eggs/chicks, two different individuals may fulfill the mitzva.
2. One should use a stick or similar method of sending the mother away rather than taking her with one's hands.
3. One should have in mind that one fulfills the mitzva with whatever actions causes the mother to fly away, even if she leaves before one strikes the nest.
4. The mother bird must minimally leave the area under one's domain in order to fulfill the mitzva.
5. There is a dispute whether one is obligated to take possession of the young in order to fulfill the mitzva, but it is proper to do so in order to fulfill the mitzva completely.
6. One may return the young to the nest after taking them.
7. There is a dispute whether one must pick up the mother to send it away, but the conclusion of most authorities is that this is not necessary.
8. The mitzva only takes effect upon the mother, not the father.
9. The mitzva only applies to a kosher bird.