

HALOCHOSCOPE

This week's question:

May one mow his lawn, trim his bushes, weed his garden or plant seedlings on the 10th of Av before midday?

The issues:

A) The 10th of Av

B) What is a *minhag kasher*?

C) *Netia shel simcha*, planting for joy

A) The 10th of Av

There are a number of contradictions and inconsistencies in the record of when the actual *Churban* took place. To reconcile this, the Talmud explains that the First *Bais Hamikdash* was set alight late in the afternoon on *Tisha b'Av*. It continued burning through the 10th until close to sunset. The fast could have been fixed for the 10th of Av. Indeed some Talmudic sages actually believed that it should have been fixed then. However, we follow the view that the fast is on the 9th of Av. The purpose of the fast is both to mourn and to repent for the sins for which we were being punished. Regular mourners do not fast, so the repentance is a major factor. [The Talmud still distinguishes between regular fast days instituted for rain and other hardships, and *Tisha b'Av*, which is also in mourning. However, this does not mean that it is only for mourning.] When commemorating a punishment, it is more important to commemorate the beginning of it.

As mentioned, some sages maintained that the fast should really have been fixed for the 10th anyhow, since most of the damage was done then. Therefore, they observed both days as a fast. Later poskim offer some interesting ways to reconcile the actual ruling; On the 9th the gentiles defiled the *Bais Hamikdash*. Therefore, when it was burned on the 10th it already had a reduced level of holiness. We follow the ruling that only the initial act of kindling is considered burning. This applies both in the laws of damages and *Shabbos*. Kindling *Shabbos* candles before *Shabbos* [and lighting a fire then] is permitted, despite their burning throughout *Shabbos*.

Those sages who observed a fast on the 10th did not impose it on anyone else. This was their personal observance. Some of them felt too weak to observe the fast continuously for two days. They still observed it for the night of the 10th until the morning. Based on these practices, the poskim cite a *minhag kasher*, the definition of which will be discussed later. The practice was to refrain from eating meat and drinking wine for the 10th of Av. Some apparently practiced this all day, and some had the practice to refrain until midday. The poskim even cite a practice to refrain from meat and wine for the night following *Tisha b'Av*, but not for the daytime at all. Some consider this a variation of the theme of fasting for the night. Others explain it differently. Since the fast of *Tisha b'Av* is

are applied. For example, many poskim say that one may not add to the activities specified. Only the most severe restrictions are included. Thus, weddings may be held and music may be played on the night of the 10th according to many poskim, without concern for violating the *minhag*. If the 10th is *Erev Shabbos*, it is better to launder in the morning than after midday. Some poskim maintain that the entire restriction should not be considered mandatory, or that it should not be considered universally mandatory. The meat and wine restrictions are mandatory, and possibly bathing. Refraining from wearing fresh laundry might be considered voluntary. [See refs to section A. Taanis 28b Psachim 50a-51a, Poskim. Teshuvos Maharil 125. Teshuvos Maharshal 92. Sh Ar OC 558 MA TZ PMG Daas Torah, commentaries. Teshuvos Chasam Sofer OC 33. Sdei Chemed, Bain Hametzarim 5. Igros Moshe IX:OC:37. Yabia Omer OC II:23:16.]

C) *Netia shel simcha*

When Av begins, one should reduce joy, business transactions, building and planting. In one passage, the Talmud qualifies building and planting as the type done for joy. Building refers to a house for a wedding, and planting refers to a royal garden. In another passage such distinction is not made. Though the poskim debate whether the conclusion follows the first passage, this is the prevailing practice. The poskim extend these restrictions to anything done for beauty, as opposed to essential planting. Home improvements should also be pushed off until after the Nine Days. Maintenance is permitted. Some say that tending to plants that were planted beforehand is not restricted. Thus, even for beauty, one may trim shrubs and mow lawns. One may not put in new planters or seedlings. However, if it is not necessary to keep the plants going, but is really to beautify, even these poskim suggest that one should refrain. A *minhag* is cited, that people do refrain from mowing lawns, and that while this cannot be imposed, it is encouraged.

The question is whether any of this is restricted on the 10th of Av. The source to forbid additional activities refers to bathing, which is a bodily pleasure. It might extend to laundering and haircutting, both of which relate to bodily pleasure. We have already cited poskim who permit weddings and music, which are not direct physical pleasures. However, if one were to extend all the restrictions of the Nine Days, home improvements would be forbidden. Some contemporary poskim include such activities, but permit lawn-mowing. The principle of not adding to a *minhag kasher* is also invoked. [See Taanis 12b 14b Yerushalmi 1:8 4:6 29b-30a Megilah 5b Yevamos 43a, Poskim. Tur Sh Ar OC 551:2, commentaries. Rivevos Efraim I:OC:374. Nitei Gavriel Bain Hametzarim 29:15-16. Mibais Levi (R Wosner/oral), Nine Days 5. Availus Hachurban (R Schwartz) p. 144.]

In conclusion, one may trim, mow and weed on the 10th of Av in the morning. If he never undertook to refrain from other gardening on the morning of the 10th, he may also plant seedlings.

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Asher z"l, whose *yahrzeit* was on the 10th of Av.

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partially for repentance, as mentioned, one should always refrain from meat and wine right before and after a fast of penitence.

One source for the practice implies that one should refrain from excessive meat and wine. It would appear that what is needed for regular sustenance is not included in the *minhag kasher*. However, the poskim maintain that this cannot be the true meaning of the phrase. Rather, it means that one should also eat other foods in moderation, or that one should refrain from meat and wine, that are not needed for basic sustenance, but may eat any other types of foods. They provide basic sustenance. A third view is that the phrase used, 'to restore the soul', is a reference to the person's needs following the fast. The entire practice arose because people really wanted to continue fasting for a second day, but were too weak. Therefore, they refrain from certain foods. However, they still partake of that which helps them restore their reserves. This does not imply anything regarding meat or wine. Either interpretation could work according to this.

The only actual restrictions included in the *minhag kasher* are meat and wine. The implication is that this is a type of fasting. However, some poskim maintain that the restrictions are also based on the general restrictions of *Tisha b'Av*. This resolves a separate question. Someone undertook a personal restriction on meat and wine for the entire Three Weeks. He wanted to know whether this automatically restricted him in bathing as well. The distinction is that meat and wine are either a form of fasting, or to commemorate the abolition of the daily *tamid* offering. Bathing is not a form of fasting, but of *taanug*, enjoyment that should be restricted due to sadness and repentance. Thus, it is not connected to wine and meat. However, on the 10th of *Av*, the *minhag* to refrain from meat is a way to extend *Tisha b'Av*. On *Tisha b'Av* bathing is indeed restricted.

Then there is a further question: how could one adopt a personal *minhag* in direct contradiction to the Talmudic conclusion and the formal *halachic* ruling that all restrictions end right after *Tisha b'Av* is over. The answer is that the Talmudic restrictions have anyway been extended. Wine and meat are only forbidden for the *seuda hamafsekes*, the last meal before the fast. The restriction for the entire week or all Nine Days is a *minhag*. Bathing is only restricted for the week of *Tisha b'Av*. It is extended back to *Rosh Chodesh* by *minhag*. This personal adoption is fine, and has become normative. Therefore, it is now binding on everyone. Accordingly, one may extend some fasting practices to the 10th. They can be considered binding once most people adopt them.

Thus, there is a view that wine and meat as well as bathing is forbidden, and not simply a *minhag kasher*. This view forbids them all day. Other poskim combine this with the *minhag* to refrain until midday. They restrict these practices, but only until midday.

The actual rationale to forbid bathing is based on what is restricted on *Tisha b'Av*. The restrictions of the Nine Days are only invoked to add credence to the extending of the restrictions of *Tisha b'Av*. If we may add to the Talmudic law during the Nine Days, we may certainly add the 10th of *Av*. After all the 10th commemorates the actual burning of the *Bais Hamikdash*. This same view mentions laundering and haircutting, but not in the direct context of the restrictions of the 10th of *Av*. They are mentioned to reconcile a quote about their being permitted right after the fast. However, it implies that these would also be included in the *minhag*, but not mentioned specifically.

However, others invoke this view to forbid other activities. They also add laundering and haircutting to the *minhag*. They do not explain the rationale directly, but some suggest that along with extending *Tisha b'Av*, one is also extending the Nine Days. After all, *Tisha b'Av* is itself part of the Nine Days. Therefore, some say that all the restrictions of the Nine Days should be extended. This includes laundering and wearing freshly laundered clothing, weddings and music, building and planting for pleasure, and purchasing new items that require a *brocha shehecheyanu*. However, many poskim question adding all of these, as will be discussed in the next section. [See Taanis 29a-b Yerushalmi 4:6 Megilah 5b, Poskim. Tur Sh Ar OC 558, commentaries.]

B) What is minhag kasher

The practice is called a *minhag kasher*. This term is not used in the Talmud, but is a Talmudic style term. The poskim use it in certain contexts to explain the meaning of certain passages. The word *minhag* can mean a locally adopted practice for various reasons. For example, there might be a debate that was unresolved. Both points of view are considered valid, and one must choose between them. People may not follow their own preferences, because this leads to strife. Thus, a local practice will arise, preferring one of the views, which is binding on all members of the community. Another example is a widespread *minhag*. This resolves the debate for the entire world. A third application is when private individuals undertake something outside of the normative *halachic* practice. This could be encouraged, left alone, or discouraged. If it is considered unfounded or contradicts *halacha*, it is discouraged. At the very least, it is not to be encouraged. However, if it is a restriction, and an entire community follows it, they are left alone. One may not preach to them that it is permissible, nor may one practice leniency in their presence. If it has a sound basis, but is just considered too stringent to be applied universally, it is encouraged for those who undertake it. It is not necessarily recommended for everyone.

The word *kasher* is used to describe the last type of *minhag*. *Kasher* can mean fitting, appropriate, worthy, worthwhile or valid, depending on the context. It can be used as an adjective or as a noun, also depending on the context. In the case of a *minhag*, it can mean that this is the *minhag* of a *kasher*, a worthy individual, or a *minhag* that is appropriate as opposed to a nonsensical or wrong *minhag*. In our context, the people who adopted the 10th of *Av* as a fast were worthy individuals. Those who adopt a similar practice, albeit less stringent, to refrain from meat and wine, are similarly worthy individuals. It also means that although the Talmud has ruled that all restrictions end when the fast of *Tisha b'Av* is over, it is appropriate to extend the restrictions of meat and wine.

Some poskim maintain that the original *minhag* was indeed for individuals to choose. This is like a personal *neder*, ban adopted by the individual. However, as a result of the spread of this *minhag* such that the majority have adopted it, it becomes a formal restriction. No individual may now choose to relax it for himself. Furthermore, the poskim debate whether the additional restrictions should apply universally. The original practice only mentions meat and wine.

However, this view is not shared by many poskim. Later authorities struggle with this. The question is how to apply the rulings. Some say that while there are those who rule leniently, it is 'hard' to argue with the stringent view. As a result, certain leniencies