


HALOCHOSCOPE



This week's question:

May one close on an investment property on *Rosh Chodesh Av*?

The issues:

- A) *Bain Hametzarim*, the period of the Three Weeks/Nine Days
- B) *Mema'atin bemasa umatan ubebinyan*, restricting commercial and building activity
- C) *Shehechyanu* on new purchases

A) *Bain Hametzarim*

The three week period from the Seventeenth of *Tamuz* to the Ninth of *Av* is observed as a period of mourning for the destruction of both temples in *Yerushalayim*. It is commonly referred to as *bain hametzarim*, between the straits (the two fast days commemorating the Romans' breaching the walls (17th of *Tamuz*), and *Tisha b'Av*, when the *Bais Hamikdash* was actually destroyed) after the verse in *Eicha* saying that the Jews' pursuers caught up with them between these straits, with nowhere to escape to. Historically, the Seventeenth of *Tamuz* commemorates the day the Jewish people worshiped the golden calf. *Tisha b'Av* was the day the spies returned from their tour of *Eretz Yisroel*, brought back their evil reports, and 'that night ordained for future trouble', the Jews wept, thus denying faith in the promise about the Land. More unfortunate events took place on these days in subsequent times, right up to our own times.

While *Tisha b'Av* is observed with full mourning practices, there is a gradual build up. On *Tisha b'Av*, apart from fasting and sitting on the ground, other mourning practices include refraining from wearing leather shoes and from bathing any part of the body. Torah study, which causes joy, is limited to sad passages. On *Erev Tisha b'Av*, when eating the last meal before the fast, one may not eat more than one cooked food, or eat meat or drink wine, and one eats alone. During the week of *Tisha b'Av* it is forbidden to launder, to wear freshly washed clothing and to take a haircut. From *Rosh Chodesh Av* and on (nine days) joy is minimized. Weddings are not held and fancy building and tree-planting is forbidden. The Talmud refers to a custom (though apparently this was not forbidden outright) to refrain from weaving. Court cases with gentiles should not be scheduled during this ominous period. These are the restrictions mentioned by the Talmud.

These periods are all based on a verse, prophesying the punishment of *Yerushalayim*, cited by the Talmud: Hashem will cease the celebrations of its festival, its month and its '*Shabbos*', i.e., week. The 'festival' is *Rosh Chodesh Av*. Its 'month' is the rest of the month, or at least until *Tisha Bav*. Its 'week' is the week in which *Tisha Bav* falls. Months are associated with *mazal*, destiny, good or bad. *Av* is an ominous month. [Hence, when *Av* begins, reduce joy! However, after the fast, and especially on the Fifteenth of *Av*, we follow the view that it is an auspiciously good period.] A week can also have *mazal*, etc.

Throughout the generations Jewish communities adopted more restrictions, or extended these restrictions backwards, some of them to the Seventeenth of *Tamuz*. These have the status of *nedarim* that are binding on members of those communities. The ruling forbidding meat and wine at the final meal before the fast is extended as a practice to refrain from them for the entire Nine Days. [See Taanis 29b-30a, Yerushalmi Psachim 4:1, Poskim. Tur Sh. Ar. OC 551:3-8 17, commentaries.]

B) Mema'atin bemasa umatan; Mema'atin bebinyan

The Talmud states that when *Av* begins, one reduces joy. In another statement, the Talmud says that the people reduce business activity, planting trees and building. The same Talmudic statement is made with regard to the series of fasts for rain. If, after a total of thirteen fasts there is still no response in the form of rains, certain restrictions are imposed. These include reducing business activity, planting trees and building. The Talmud qualifies this type of building as building for joy. This includes a house for one's son who is about to marry. By comparing the two sources, it is assumed that this is the type of building and commercial activity that is restricted during the Nine Days.

The term 'reduction' is vague. Thus, some poskim maintain that it really means that all such activity is restricted. While this can apply to a single day, it is difficult to maintain this level of restriction indefinitely, until the rains come. Furthermore, ceasing all commercial activity would not seem to be feasible. This leads to a debate on whether the term joy applies to commercial activity as well, so that basic business is permitted. Only business related to weddings would be restricted.

Accordingly, three situations are discussed, with slightly different reasons and applications for each. There is the actual fast day. When rains did not come on time, a series of fasts were initiated. As the situation was deemed to have become more serious, stricter fasts were imposed. During these, all business activity could be restricted. The second situation would be the period following the thirteen fasts, until the rains would come. At this point, the people would show how they had fallen out of favor with Hashem, having had prayed and received no answer. Refraining from active joy was one way to do this, including some restriction on business and on building. During the Nine Days, as a sign of mourning, the same restrictions applied. However, the mourning activity is not the same as showing our unfavored status. The mourning period is for a limited time. It cannot be to show that we are in an indefinite unfavored status. The specific type of building restricted could be more specifically associated with joy, and other construction could be permitted. Furthermore, non-joy related business activity could be permitted. It is also possible that reduction means that some activity is permitted. Some infer from the language used by the Talmud, that some of the practices during the Nine Days were never imposed Rabbinically. They were adopted as customs. This is suggested as the reason that some poskim do not cite this ruling at all. This could also be one reason why nowadays most people do not practice any restraint of business activity during the Nine Days.

While discussing the taken to mean that one does not restrict all building, but that some types of building is restricted. Likewise, it includes any form of luxury building. One is permitted to shore up a wall that is falling down. The Talmud debates whether this applies to any building or to a building of joy. That is, if this applies to any building, it

means that even on a regular building, only this is permissible, while on a building of joy even this is forbidden. If it applies to building of joy, regular construction is anyhow permitted. Joy building is forbidden, but repairs are permitted. In practice, the poskim allow repairs, even if they are not emergencies. Basically, as long as it is not considered joyful or luxurious, but a necessity, it is permitted. Regarding business activity, there is some debate on whether only joyful commerce is forbidden.

Assuming that non-joy related building can also be forbidden, the act of building must be considered joyous. Presumably, building is the opposite of destruction. It is also symbolic of settlement of the land and peace, or of life. However, if only joy building is forbidden, it seems that these were particular acts that symbolized joy. Repairs or renovations can be either of the above. If one already has a home, his repairs are needed, and renovations might be repairs as well. If, however, one decides to beautify his home with new renovations, this would seem to be considered joy building, or at the very least, the type of building that is considered joyous. Therefore, if one needs to renovate due to damage to the property, he may do this during the Nine Days.

If refraining from doing a *melacha* or working would lead to an irretrievable loss, it may be done even on *Tisha B'av*, when there is a minhag to refrain from all work and business activity. In this respect, the *minhag* is indeed compared to the rules for *Chol Hamoed*. *Melachos davar he'avaid* are usually agricultural activities. In other commercial areas, a situation could arise where merchandise needs to be sold by a certain date, or where one might lose out on a special deal if it is not done now. In addition, if one needs to work for his basic livelihood, he may do *melacha* or conduct business. In the case in our question, an effort was made to conclude the contract before the Nine Days. It was delayed by the other side. Although investments do not produce instant results needed for immediate livelihood, they require timely decisions and seizing opportunities. In this respect, the concluding of this deal is a qualified *davar ha'avaid*.

Based on the limiting of litigation, some say that one should try not to make momentous decisions or deals during this period either. However, if the main negotiations took place at other times, and the conclusions cannot be delayed, one should rely on Hashem helping him do his everyday business. [See Taanis 12b 14b 26b 29a-b Megillah 5b Yevamos 43a-b, Poskim. Tur Sh Ar OC 551:1-2, commentaries.]

C) Shehecheyanu on a new house

Shehecheyanu is known as '*zman*', *brocha* on joy at reaching a particular time. It is required on occasion of a joyous event and the first time a particular *mitzvah* is fulfilled. The *mitzvos* included in this category occur in a cycle, such as *shofar* on *Rosh Hashanah*. *Mitzvos* that occur rarely, though not cyclically, such as redemption of the first-born, are also included. The *brocha* commemorates joy due to a time or date, and the time that personal joy is experienced. Some add *mitzvos* that combine ownership with a *mitzvah*, such as *mezuzah*. Cyclical joy includes fruit coming into season. One who eats it must recite the *brocha*. Some say the occasion is the first time the fruit is seen.

Another joyous event warranting the *brocha* is a new acquisition. Two examples are provided by the Talmud: one who builds a new house, or acquires a new utensil. Some maintain that this shows that the joy over the new utensil must be comparable to the joy

over a new house. Most *poskim* maintain that it depends on the joy experienced by the one acquiring it. For a wealthy person it must be more substantial than for a poor person.

If the acquired item is new to both himself and his company, the *brocha* is *hatov vehameitiv*, Who is good and Who does good to others. This *brocha* is recited on good tidings that affect more than one person. When they affect one person the *brocha* is *shehecheyanu*. Thus, *shehecheyanu* is really on good tidings. Logically this is the acquisition. If it was not recited then, it may still be recited as long as the joy is still felt. For an article used for *mitzvos*, some say that the *brocha* may be recited at the time of acquisition or preparation or at the time it is first used for the *mitzvah*. When building a *sukah* one could recite *shehecheyanu*, or on the first night when one sits there. Our practice is to consider the *shehecheyanu* on the *mitzvah* to be partially on the joy of preparing it.

The *poskim* discuss reciting *shehecheyanu* during the Three Weeks. There are three main *minhagim*: To recite it anyhow, to refrain totally, and to recite only on *Shabbos*. Two issues arise with regard to reciting during a mourning period, the mourning and the period. Does one in mourning recite this kind of happy *brocha*? Even if a mourner recites it, this period is sad, and the *brocha* indicates joy at this '*zman*'. We should be focusing on Hashem's punishment. Rejoicing shows a disregard for Hashem's Judgment.

To explain the debate, one view maintains that the *minhag* is founded on mourning, which does not apply on *Shabbos*. The other view maintains that a mourner must indeed recite this *brocha*. If a father passes away and leaves a large inheritance, the son recites *dayan ha'emes*, on the sad tidings, and *hatov vehamaitiv*, on the newly acquired inheritance. However, we are not told whether he should recite *shehecheyanu* if he has no-one with whom to share the good news. Maybe the wording of *shehecheyanu* is inappropriate, but *hatov vehamaitiv* is appropriate! The consensus is that a mourner recites *shehecheyanu* on cyclical *mitzvos* and new fruits, in private but not in public. The third view is based on the sadness of the three week period, possibly even on *Shabbos*.

In our case, however, the purchase is not for personal use, but for commercial gain. A mourner may continue his business, although at certain points it is reduced. Therefore, one does not recite either *brocha*. Thus, it would not arise as an issue during this period. [See Brochos 59b-60a, Yerushalmi 9:3, Sukah 46a, Poskim. Tur Sh. Ar. OC 223, commentaries. Vezos Habracha 18:n8. Halochoscope III:25 V:34 VIII:7.]

In conclusion, the closing does not involve commerce or building for joy or a purchase that requires *shehecheyanu*. It involves *davar ha'avaid* and is permitted.

On the parsha ... *Build cities for your children and pens for your sheep, then keep your promises [to join your brethren in the conquest]. [32:24].* Moshe reversed the order that Gad and Reuven used. Personal building should always takes precedence over commercial building. But both are *davar ha'avaid*, pressing enough to be done before the conquest.

Sponsored by Richard Walters in honor of his wife, Marsha.

Sponsored in memory of Devorah Chanah Silver (Krasner) a"h bas Harav Shimon, shlit"a,

whose *yahrzeit* is the 5th of Av. ☞

© Rabbi Shimon Silver, July 2015.

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