YESHIVAT hAR eTZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**the laws of THE FESTIVALS**

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Dedicated by the Wise and Etshalom families

in memory of Rabbi Aaron M. Wise,

whose yahrzeit is 21 Tammuz. Yehi zikhro barukh.

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**Shiur #22: The Laws of Fasts**

***Bein Ha-metzarim* - The Three Weeks**

**Introduction**

Last week, we studied the specials prayers for fast days, including *Aneinu*, as well as the special Torah reading and *haftara*. We discussed the extent to which the *tefillot* must reflect the congregation’s participation in the fast or the objective nature of the day. We concluded with the question of whether *birkat* *Kohanim* should be recited at *Mincha* of a fast day, and why *Mincha* of a fast may differ from an ordinary weekday *Mincha*.

This week, we will begin our study of the laws of the three-week period from the seventeenth of *Tamuz* until *Tisha Be-Av*, known as “*bein ha-metzarim*.” We will study these *halakhot* in the order that we encounter them; we will begin with the laws in force starting with *Shiva Asar Be-Tamuz* and move on to those which begin on *Rosh Chodesh* *Av* and the week of *Tisha Be-Av*, and those of *Tisha Be-Av* itself. We will use this sequence despite the fact that the laws of the nine days are much earlier in origin.

**Prohibitions During the Three Weeks (Until *Rosh Chodesh* *Av*)**

The earliest reference to a three-week period of mourning over the loss of the *Beit Ha-Mikdash* appears in *Daniel* (10:23), where the prophet relates:

In those days I, Daniel, was mourning three whole weeks. I ate no pleasant bread, neither came flesh nor wine in my mouth, neither did I anoint myself at all, until three whole weeks were fulfilled.

Daniel recalls how he mourned for three weeks, abstaining from bread, wine, meat, and anointing.

The earliest reference to the unique status of the three weeks between *Shiva Asar Be-Tamuz* and *Tisha Be-Av* appears in *Eikha Rabba* (1:29), where the *midrash* understands the verse "All [Zion's] pursuers overtook her between the straits (*bein ha-metzarim*)” (*Eikha* 1:3) as referring to this three-week period of misfortune.

Indeed, some of the earliest sources that record mourning customs of this time- period attribute them to these verses. For example, the *Shibolei Ha-Leket* (263) records, in the name of R. Saadia Ga’on, that based upon these verses some were accustomed to refrain from eating meat and drinking wine. Similarly, the Kolbo (62) relates that he “saw precious women who refrain from eating meat and drinking wine… and they insist that they received this tradition from their mothers, generation after generation.” He attributes this to the cessation of the offering of the *korban tamid*, which occurred on *Shiva Asar Be-Tamuz*, as we learned a few weeks ago. While this custom was not accepted, we will discuss the prohibition of eating meat and drinking wine in the context of the Nine Days.

Practically, one can speak of four prohibitions, according to custom, that begin on *Shiva Asar Be-Tamuz*. As we shall see, Ashkenazi practice prohibits holding weddings and taking haircuts during these three weeks. These prohibitions stem from the obligation to mourn for the *Beit Ha-Mikdash* in preparation for *Tisha Be-Av*. In addition, it is customary to refrain from recited the *she-hechiyanu* blessing and to avoid unusually dangerous activities. These practices are due to these weeks being an inauspicious time period for the Jewish People, as we described a few *shiurim* ago.

What is the nature of the mourning during this time period, and does it conform to other known models of *aveilut*?

R. Soloveitchik (see *Shiurei Ha-Rav* [OU, 1999] *Inyanei Tisha Be-Av*, p. 20-21; *Nefesh Ha-Rav* p. 191, for example) insisted that, fundamentally, these customs must conform to some previous *halakhic* pattern. In the laws of *aveilut*, we generally speak of three periods of mourning: *Shiva* (the seven day period after the burial), *Shloshim* (the thirty days after burial), and the *Yud Bet Chodesh* (the twelve month period after the death of a parent). R. Soloveitchik maintained that the mourning over the *Beit Ha-Mikdash*, referred to by the Rabbis as “*aveilut yeshana*” (“old mourning,” commemorating a historic national disaster), follows the OPPOSITE pattern of “*aveilut chadasha*” (“new mourning”), mourning for a parent. The laws of *Tisha Be-Av* closely resemble the laws of *Shiva*; the laws of *Shloshim* are similar to the laws of the Nine Days.

R. Soloveitchik suggested that the customary *aveilut* of the Three Weeks, as well as the *aveilut* of *Sefirat Ha-Omer*, conforms to the *halakhic* precedent of “*Yud Bet Chodesh*,” the twelve month period of mourning for one’s parent. Indeed, the laws which characterize the *Yud Bet Chodesh* include the prohibition of attending a “*beit ha-mishteh*” (*Mo’ed Katan* 22b; *Shulchan Arukh*, *Yoreh De’ah* 391) and taking a haircut (*Mo’ed Katan* 22b, *Shulchan Arukh*, *Yoreh Deah* 390:4; Rema).

Other *Acharonim*, however, do not accept the premise that the *aveilut* practices of *bein ha-mitzarim* must be modeled after pre-existing categories; rather, a new, and of course logical, custom developed over time. We will see shortly that this difference of opinion may lead to sharp differences in *halakhic* application.

**Weddings**

The Talmud (*Yevamot* 43a) teaches:

We learned: During the week in which the Ninth of *Av* occurs, it is forbidden to cut the hair and to wash clothes…And [in connection with this *mishna*] it was taught: Before this time, the public must restrict their activities in commerce, building, and plantings, but it is permissible to betroth, although not to marry, nor may any betrothal feast be held. That was taught in respect to the period before that time…

According to this *gemara*, it is prohibited to marry during the “period before that time,” that is, during the entire Nine Days beginning with *Rosh Chodesh* *Av*, and not just during the week within which *Tisha Be-Av* falls. R. Yosef Karo, in the *Shulchan Arukh* (551:2), cites this *gemara*, and Sephardi Jews are therefore accustomed not to hold weddings during the Nine Days.

R. Isaac Tyrnau (14th–15th century, Austria), in his *Sefer Ha-Minhagim*, records the custom to refrain from marrying during the entire Three Weeks. The Rema (ibid.) cites this custom, and Ashkenazim follow this ruling.

Interestingly, this prohibition to hold weddings was interpreted in the broadest sense by some *Acharonim*. The *Magen Avraham* (10), commenting on this *halakha*, writes: “It seems to me that it is prohibited to hold ‘*rikudim u-mecholot*’ (dances) from *Shiva Asar Be-Tamuz* until *Tisha Be-Av*.”

The *Acharonim* differ as to the scope and nature of this extension. R. Soloveitchik, as cited above, believed that the custom prohibits whatever is prohibited during the period of *Yud Bet Chodesh* - *simchat mere’ut* (*Moe’d Katan* 22b; Rambam *Hilkhot* *Avel* 6:6). During *Yud Bet Chodesh*, the mourner is prohibited from attending social gatherings whose enjoyment is a function of the participation of one’s friends and acquaintances. According to R. Soloveitchik, playing instruments or listening to music privately would therefore be permitted during the Three Weeks. However, other public social gatherings, such as a baseball game, might be prohibited!

Other *Acharonim* explain that playing and listening to instruments and music is prohibited, as it is inconsistent with the sense of sorrow we are supposed to experience during the Three Weeks. Just as R. Soloveitchik understood that the periods of *Sefirat Ha-Omer* and the Three Weeks follow a similar pattern, many other *Acharonim* equate these two time periods and deal with them together.

In recent year there has been extensive discussion regarding listening to music from a radio or other electronic devices in regard to both the Three Weeks and *Sefirat Ha-Omer*. On the one hand, R. Moshe Feinstein (*Iggerot* *Moshe*, *Orach Chaim* 1:166 and *Yoreh De’ah* 2:137), who is generally inclined to prohibit all music since the destruction of the *Beit Ha-Mikdash* (!), as well as R. Ovadya Yosef (*Yechave Da’at* 6:34) prohibit listen to recorded music during the Three Weeks. R. Eliezer Waldenberg (*Tzitz Eliezer* 15:33) even prohibits recorded songs without musical accompaniment.

The *Bi’ur Halakha* (551) writes that one who works as an entertainer for non-Jews at social gatherings or banquets may continue working until *Rosh Chodesh Av*. Similarly, some *Acharonim* permit giving or taking instrument lessons until the week within which *Tisha Be-Av* falls (*Tzitz Eliezer* 16:19).

R. Shlomo Daichovsky, former *dayyan* (judge) on the Supreme Rabbinical Court, forcefully argues that there is simply no *halakhic* source to prohibit music, whether during the Three Weeks, the Omer, or even during the twelve month mourning period after the loss of a parent (*Techumim* 21). He concludes that music that does not lead to “*rikudim u-mecholot*,” as the *Magen Avraham* described, such as classical music, should certainly be permitted. He also reports that R. Moshe Feinstein permitted “background music” during the Three Weeks for the same reason. (See also Maharam Shick, *Yoreh De’ah* 368 and *Chelkat Ya’akov* 1:62.)

It seems that one should determine the type and function of the music. While the more festive and uplifting the music is, the more inclined we might be to prohibit it, while music that is not necessarily celebratory, or which serves as the background for exercising, driving, or in stores and offices, should be permitted.

The permissibility of listening to music at all since the destruction of the *Beit* *Ha-Mikdash* is an interesting topic, although beyond the scope of this *shiur*. Seemingly, however, there might be extra reason to be stringent during the period of mourning during the Three Weeks.

**Haircuts**

The *gemara* (*Ta’anit* 26b) prohibits taking haircuts during the week in which *Tisha* *Be*-*Av* falls, the *shavu’a she-chal bo*. The *Shulchan Arukh* (551:3) rules accordingly, and such is Sephardi practice.

Ashkenazim, however, also extend this prohibition to the entire Three Week period (*Sefer Ha-Minhagim*; Rema ibid.).

The two approaches cited above regarding the mourning customs of the Three Weeks play a central role here as well. R. Soloveitchik believed that the mourning during the Three Weeks was modeled after the twelve month mourning period for a parent. Therefore, just as we generally permit men to shave during the twelve months of mourning, as it is only prohibited to take a haircut until “a friend admonishes him” (until one points out how disheveled he looks), and we assume that every day or two a regularly clean-shaven person needs to shave again, the Rav permitted shaving during *bein ha-metzarim* until *Rosh Chodesh Av*. Incidentally, the Rav also permitted shaving during *Sefirat Ha-Omer*, as we will discuss next year in our *shiurim* on *Sefirat Ha-Omer*.

Some distinguish between haircuts and shaving. Whether one’s hair is longer or shorter is perceived by most as a question of appearance; shaving, however, especially for those who shave daily, causes some discomfort and is perceived as part of one’s personal hygiene.

According to other *posekim*, however, even one who shaves daily should refrain from shaving during the three weeks. R. Moshe Feinstein (*Iggerot Moshe*, *Orach Chaim* 4:102) permits shaving in cases of potential monetary loss, but cautions against shaving in order to avoid the ridicule of co-workers (*Iggerot Moshe, Choshen Mishpat* 1:93).

May one shave or trim one’s beard before *Shabbat?* The Rema (551:3) writes that one may wear laundered clothes for *Shabbat* during the Nine Days, and implies that one may wash them as well. The *Magen Avraham* (14) cites the *Darchei Moshe* (R. Moshe Isserlis’s commentary to the Tur), who records that the custom is to refrain from laundering even for the *Shabbat*. He adds, however, that if one doesn’t have another shirt, one may wash one’s shirt for *Shabbat*. Finally, he concludes that apparently we do not permit haircuts before *Shabbat*, as people are not generally accustomed to taking a haircut every week, as they are to laundering (and bathing!).

The Chatam Sofer (*Yoreh De’ah* 348) suggests that this rationale would imply that one who shaves daily should certainly be able to shave for *Shabbat*. Furthermore, the *Biur Halakha* questions whether one should distinguish between laundering and cutting one’s hair, and cites the comments of R. Akiva Eiger, who notes that according to Tosafot (*Ta’anit* 29) one may even take a haircut for Shabbat during the Nine Days. Based upon the above, some *posekim* permit shaving before Shabbat during the Three Weeks.

A woman may trim hair that protrudes from her hair-covering during the Three Weeks and even during the week of *Tisha Be-Av* (*Mishna Berura* 551:79). A woman may also shave her legs even during the Nine Days (R. S. Eider, *Halachos of the Three Weeks*, quoting R. Moshe Feinstein).

The *Kitzur Shulchan Arukh* (122:5) writes that one may cut his nails until the week of *Tisha Be-Av*.

***She-hechiyanu***

R. Yaakov ben Moshe Moellin (1360–1427), known as the Maharil, cites the *Sefer Chassidim* (840), who writes that, when possible, one should avoid recited the blessing of “*she-hechiyanu*” during the Three Weeks on a new fruit or new clothing. However, when what obligates the *she-hechiyanu* cannot be postponed, such as a *pidyon ha-ben*, one may recite the blessing. The *Shulchan Arukh* (551:17) cites the Maharil, and the Rama adds that similarly if a new fruit will not be found after the Three Weeks, one may partake of it and recite the blessing.

As a result of these rulings, many are accustomed not to purchase or wear new clothing or other items for which one would ordinarily recite *she-hechiyanu*. Furthermore, one should refrain from purchasing furniture, appliances, or cars during this time, as one is required to recite *she*-*hechiyanu*. One who purchases a garment that needs to be altered may do so, and then wear the garment and recite the blessing after *Tisha Be-Av*. As it seems to be customary nowadays to recite *she-hechiyanu* upon wearing the garment, and not upon buying it, it should be permitted to shop, without wearing or using what one buys, until *Rosh Chodesh Av*. Finally, new clothing that does not require one to recite *she-hechiyanu*, such as new shoes, undergarments, socks, and ordinary shirts, may be bought and worn until *Rosh Chodesh Av*.

May the blessing of *she-hechiyanu*, according to this custom, be recited on *Shabbat*? The *Magen Avraham* (42) questions whether this stringency should apply on *Shabbat*, and the *Mishna Berura* (98) rules leniently, permitting one to wear new clothing or eat new fruits on Shabbat and to recite *she-hechiyanu* (see *Sha’ar Ha-Tziyun* 99).

The *gemara* (*Berachot* 59b), as well as the *Shulchan Arukh* (*Orach Chaim* 223:5) teach that when one buys an item that may be used by the other members of one’s household as well, one should recite the blessing of *ha-tov ve-hametiv*. Even if one receives the item as a gift, since the present benefits the giver and receiver, *ha-tov ve-hametiv* is deemed the appropriate blessing (*Yerushalmi* *Berachot* 9:3).

Is the blessing of *ha-tov ve-hametiv* essentially the same as *she-hechiyanu*, just recited when more than one person benefits from the item, or is it a fundamentally a different blessing, focusing on the benefit others receive from the item? The Semak (cited by Tur, *Orach Chaim* 223) and Beit Yosef debate this question. The Semak argues that one recites *ha-tov ve-hametiv* in addition to *she-hechiyanu*, while the Beit Yosef insists that *ha-tov ve-hametiv* replaces the other blessing. Clearly, the Semak views these *berachot* as expressing different themes; therefore, both must be recited. The Beit Yosef may view these two blessings as fundamentally similar, or he may simply believe that in certain situations the Rabbis only mandated that one of the two blessings, despite their differences, be recited.

According to the custom cited above to avoid reciting *she-hechiyanu* during the Three Weeks, may *ha-tov ve-hametiv* be recited? R. Moshe Feinstein (*Iggerot Moshe* *Orach Chaim* 3:80) rules that while one should not purchase a car during the Three Weeks, in order to avoid becoming obligated to recite the *she-hechiyanu*, if one purchases the car in a manner that would require the blessing of *ha-tov ve-metiv*, it would be permitted (until *Rosh Chodesh Av*). The *Sha’are Teshuva* (551:18), who rules that if one is given clothing during the Three Weeks he may recite *ha-tov ve-hametiv*, apparently concurs. Apparently, he believes that *she-hechiyanu* and *ha-tov ve-hametiv* are fundamentally different blessings. However, one might disagree and view them as similar blessings, with one simply being more expansive than the other, in which case one should also avoid reciting ha*-tov ve-hametiv* during the Three Weeks.

We may approach this question from a different perspective: Why should one refrain from reciting *she-hechiyanu* during the Three Weeks? The *Magen Avraham* (42) explains that the reason for this custom is not because of mourning, as a mourner may recite *she-hechiyanu*, but rather because it is inappropriate to recite this blessing, which expresses gratitude to God for bringing us to this time, during the unfavorable time of the Three Weeks. The Maharil, however, explains that one should refrain from reciting *she-hechiyanu* in order to “*le-ma’et be-simcha*,” to minimize happiness. One might suggest that while according to the *Magen Avraham*, it is specifically the formula of the blessing of *she-hechiyanu*, “Blessed are You… who has kept us alive, and sustained us, and enabled us to reach this moment,” which causes the problem, according to the Maharil, both *she-hechiyanu* and *ha-tov ve-hametiv* would be problematic.

Interestingly, the Taz (7), Biur Ha-Gra (17), as well as the Arukh Ha-Shulchan (38) reject the entire custom and permit the recitation of *she-hechiyanu* after *Shiva Asar Be-Tamuz*, at least until *Rosh Chodesh Av*, when all purchases that generate happiness are prohibited.

**When Do these Prohibitions Begin?**

When do these prohibitions begin? For example, may one get married on the night of *Shiva Asar Be-Tamuz*, as the fast does not actually begin until the next morning?

Seemingly, this question should depend upon our previous discussions. We explained that the fast really begins the night before; therefore, one should really recite *Aneinu* at night (according to most *Rishonim*, with the exception of the Ba’al Ha-Ma’or), and one who finishes eating and goes to sleep may not eat afterwards, even if he wakes up before dawn (Ramban, *Milchamot Hashem*, *Ta’anit* 3a). It would follow that the prohibitions of the Three Weeks should begin at night. However, the *Ba’al Ha-Ma’or*, who believes that *Aneinu* should not be recited until morning, believes that the “day” only begins the next morning, at which point one may not eat. According to this view, the prohibitions of the Three Weeks should begin only the next morning.

R. Moshe Feinstein (*Iggerot Moshe*, *Orach Chaim* 1:168) rules leniently regarding weddings. At first, he contends that the matter should depend upon the debate between the Ramban and Ba’al Ha-Ma’or cited above. He then cites a proof for the Ba’al Ha-Ma’or from *Pesachim* 2b, where the *gemara* implies that the night before a fast is not considered to be part of the next day. He then writes that regardless of this debate, the entire prohibition is only based upon custom; therefore, the *Rishonim* cited above who believe that the fast begins at night might still believe that the mourning practices should only begin when people begin to fast. Furthermore, as it is “only” a custom, we should follow the lenient opinion.

R. Soloveitchik (*Nefesh Ha-Rav*, 196) disagreed and ruled that one should treat the evening before as the day itself. Therefore, one should not perform a wedding the night of *Shiva Asar Be-Tamuz*. Furthermore, he notes that some even suggest that although one may eat the on the evening before a fast, it is improper to eat meat (*Torat Ha-Shelamim*, *Hilkhot Nidda* 185:10).

**Hitting One’s Children and Students During the Three Weeks - Dangerous Situations**

The Beit Yosef (551) cites early *Rishonim* who warn against “walking alone between the fourth and ninth hours of the day, and hitting, even a teacher to his student, even with a belt,” as these days are inauspicious for the Jewish people. The Rama cites this in the *Shulchan Arukh* (551:18).

Leaving the wisdom of striking children and students aside, we mentioned above that the *midrash* (*Eikha Rabba* 1:29) connects the verse "All [Zion's] pursuers overtook her ‘between the straits’ (*bein ha-metzarim*)" (*Eicha* 1:3) to this three week period, the *Bein Ha-metzarim*. For this reason, some *Acharonim* recommend refraining from engaging in particularly risky activities during the entire Three Weeks (see *Piskei Teshuvot* 551:46 nt. 240).

Furthermore, R. Alexander Susskind ben Moses of Grodno (d. 1794), in his *Yesod Ve-Shoresh Ha-Avodah* (3:9), writes that one should avoid pleasurable activities during the Three Weeks. Similarly, some cite R. Chayyim Palaggi (1788-1869), in his *Masa Chaim*, who records local legislation prohibiting taking walks in the orchards and along the river and sea during the Three Weeks. Based on this, some avoid vacations during the entire Three Weeks.

However, while some are stringent upon themselves regarding risky or pleasurable activities, the *halakha* does not mention nor prohibit these types of activities during the Three Weeks.

Next week, will begin our study of the laws of the Nine Days.