

HALOCHOSCOPE TO

Additional note to last issue: The main issue discussed relevant to the case was that of transporting the gift. This involves Hotza'ah, carrying outside an enclosed area. This is a Scriptural violation if the item is moved between an enclosed private area and an open public area, or within an open public area. It could be violated many times over. There is an additional issue involved. The gift will be moved outside the *Techum Shabbos*. For the duration of Shabbos one may not leave his home for more than a distance of two thousand cubits (let us say, three quarters of a mile). Home means one's place of chosen dwelling for Shabbos. If one does leave his *Techum* he may not even move more than four cubits from his spot for the rest of Shabbos. Not only may a person not leave his *Techum*, his possessions may not leave his *Techum* either. If a gift is brought to someone on Shabbos from outside the *Techum*, it may not be moved. If a person gives a gift on Shabbos, the item starts out at the onset of Shabbos belonging to the giver, then belongs to the recipient in the middle of Shabbos. If each had a different *Techum*, this raises a question about which *Techum* the gift must be left inside. In our case the person transporting the gift would be crossing the lines of the *Techumin* of the giver and the recipient. He might also be spending a Shabbos outside both *Techumin*, and might be transporting it around there. Though debated by the Talmud, *Techumin* are not considered Scriptural restrictions. However, some Poskim maintain that the distance of twelve *Techumin* is a Scripturally mandated restriction. Accordingly, at least another Rabbinical prohibition, and possibly a Scriptural one, will be violated in this case.

(Courtesy of Rabbi Yitzchok Chinn)

May one complete the refurbishing of a second restroom in his home during the "Nine days"?

The issues:

- (A) *Bain Hametzarim*, the three weeks and the Nine Days
- (B) Building during this period
- (C) The status of a restroom

(A) *Bein Hametzarim*, etc. and their restrictions.

The period of communal mourning over the destruction of the Bais Hamikdash, is known as *Bein Hametzarim*, after the Passuk in *Eicha: Kol Rodfeha Hisiguha Bein Hametzarim*, all her pursuers caught up with her between the straits. This is taken to refer to the period when the enemies overcame the Jews and began (and finished) the final conquest and destruction of *Yerushalayim*.

Some practices we observe today are based on the Talmud, others were

adopted later. Many were expanded to include more stringencies and more days. Some are considered *Minhag Kosher*, a non-binding but highly recommended practice. The mourning is on various levels. The most stringent level is *Tisha B'av*. Next is the *Seuda Mafsekes*, the last meal eaten before the fast. The Talmud refers to this meal as *Seudas Tisha B'av*, the meal of Tisha B'av. Some then add the afternoon of *Erev Tisha B'av*. The *Seuda Mafsekes* only has its special status if it is eaten after midday. Next comes the *Shavua Shechal Bo Tisha B'av*, the week in which Tisha B'av falls. Many restrictions practiced this week are mandated by the Talmud, such as refraining from cutting hair or washing clothing. Then come the nine days. During this time one must reduce joy. The Talmud also says that one should not engage in litigation with a gentile during this period. Since the Midrash teaches us that *Bein Hametzarim* is to be considered a sad time, the entire period from the seventeenth of Tamuz until Tisha B'av is observed as a mourning period, to a lesser degree. Weddings are not held; dancing and music is restricted. Additional restrictions include not wearing new clothes or eating new fruit. A Brocha, *Shehecheyanu*, would normally be recited. The time is sad, and the customary Brocha, "He kept us alive to see this day" is not appropriate. Some spend the days in fasting (breaking their fasts at night) or refraining from meat and wine.

The reasons for the practices include doing things for mourning, lowering our pride by feeling unkempt and ugly, a semblance of fasting by restricting the type of food we eat and showing symbolically that the period is sad. Some practices are to avoid bad *Mazal*, destiny, influencing what happens. Jews are not controlled by predetermined fate, but can influence it by their actions. However, certain times are predisposed to ominous or positive results. Since the days we were wandering in the *Midbar*, the wilderness, (in fact, since the decree to wander, which took place on Tisha B'av) Tisha B'av has been a day that brought sad tidings for the Jewish people. And, since the days of the *Eigel Hazahav*, the golden calf, the seventeenth of Tamuz has brought sad tidings. The period between these "straits" is an ominous time. Many of these practices are *Teshuva*, repentance practices. These are done at times when we feel that Hashem is "angry" with our actions, and demands our attention to reforming our ways. Such times include times that there is no rain in Eretz Yisroel for a long time.

Some practices can not be defined in one class or the other. The reasons seem to overlap. For example, letting the hair grow is an act of mourning. Yet the actual mourning does not begin until Tisha B'av. Therefore, many Poskim maintain that it is to appear dishevelled on Tisha B'av, that we in European communities do not

cut hair all three weeks. In general, those practices applying to Tisha B'av itself are definitely to be considered acts of mourning, as specified by the Talmud. The fast is an act of *Teshuva*. Erev Tisha B'av afternoon is part of the Tisha B'av period. The practices mandated by the Talmud for the week of Tisha B'av seem to be for the same general reason, to a lesser degree. Those practiced from *Rosh Chodesh* are acts of *Teshuva*, to avoid bad *Mazal* and to symbolize sadness. Those practiced for all three weeks, are to show symbolically that the period is not a happy one. The extended practices are a combination of more than one. For example, the practice not to eat meat or drink wine during all nine days. The Talmud restricts it for the *Seuda Mafsekes*. The early Poskim add the week of Tisha B'av. The Ashkenazi practice restricts it all of the nine days. It is an act of mourning, which applies to mourners when they are *Onen*, freshly mourning. This was extended to the week of Tisha B'av. The extension to the nine days is described by some Poskim as a type of fasting. [See Taanis 26b 29a-b Poskim Tur Shulchan Aruch Orach Chaim 551.]

(B) Building during the nine days

The initial restriction on building in the nine days applies to *Binyan Shel Simcha*, building for a joyous reason. It is not meant to restrict all building. As a sign that the time is one that Hashem has shown His displeasure with us, we suppress our pride, including reducing business ventures and not building luxurious buildings. Other restrictions in this category are planting for joyous purposes and holding weddings. They demonstrate the sadness of the period. The Poskim expand the restriction on building to include plastering when it involves carving and molding. There is an opinion that not only is a joyous building forbidden, but any building that is not needed for one's dwelling. Thus a building to rent out for a profit would be forbidden. It is unclear whether this opinion would also restrict building in one's home when it is somewhat of a luxury. The restriction does not apply to a wall that needs to be repaired to stop it from collapsing. Loss preventive measures are permitted even on a *Binyan Shel Simcha*. It is also permissible to build for Mitzvah purposes, such as to build a Shul.

The Poskim maintain that any building that is not a necessity or to prevent a loss is restricted. Some home improvements are not considered building (such as wallpapering and painting) and are, strictly speaking, permitted by some Poskim. Nonetheless, they suggest that one should not follow the strict letter of the law in this matter. [See Taanis 12b26b 29a-b Megila 5b Yevamos 43a-b, Poskim. Tur Sh. Ar. O.C. 551:2, commentaries. Igros Moshe O.C. III:82.]

(C) The status of a restroom

What about everything in between? Many repairs are not urgent, but are not considered joyous building. Many new building jobs are not for joy but for necessity. The typical example that the Poskim permit is repairing a roof.

In our case, the family is too large to be restricted to one restroom. It is not a new building, nor decorative. The second restroom already existed, but was in a bad state of repair. This deterred people from using it, but it was still used when necessary. Now that it is in the middle of being fixed it can not be used at all. The Talmud praises one who walked on a road that had many restrooms on the way. It is considered commendable to protect one's health by using a restroom frequently. Therefore, it would appear that this kind of building would not be included in those that are restricted.

Another consideration in our case is a building for Mitzvah purposes. Two examples are singled out by the Poskim, building a wedding house for a couple who have no children (e.g., marrying for the first time, weddings are restricted due to bad Mazal rather than mourning), and building a Shul. The first is considered a major Mitzvah and the second a communal Mitzvah. However, the dispensation applies to any Mitzvah, including a simple individual Mitzvah. Concern for and measures to protect one's health and that of his family involve a number of Scriptural Mitzvos. These even include the safety and health situation within one's house. In modern times, when people do not feel comfortable unless in a decent restroom, this would be considered a building of a Mitzvah. It surely not a normal case of Binyan Shel Simcha, nor could it really be called a luxury.

There could also be an issue of monetary loss. Some construction projects must be completed once begun, or the entire project would have to be redone. For example, painting a second coat of paint before the under coat gets dusty or dirty. If one had his door removed to be repaired, he would be allowed to put it back during this period, to prevent theft or loss. The project in our question could include some such aspects. [See Tur, Sh. Ar. O.C. 551:2, commentaries.]

Accordingly, one may finish the basic job and protect any surfaces or areas from damage due to water or other monetary loss. Adding a fresh coat of paint should be avoided, unless the raw material will be exposed to water or other damaging elements.