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Mourning the Temple's Destruction:  
The Laws of Tisha B'Av and the Other Public Fasts  
in the Arba'ah Turim and the Bet Yosef

By Sandra Cohen

Thesis submitted in partial fulfillment of  
the requirements for Ordination

Hebrew Union College-Jewish Institute of Religion  
Cincinnati, Ohio  
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In memory of my father, Stephen Howard Cohen 7"1, who always knew  
I would love the study of law.

## Digest

This thesis examines the halachah of Tisha B'Av and the other public fasts, as explicated in the Arba'ah Turim and its major commentary, the Bet Yosef. The author's hope is that this introduction to the Turim and Bet Yosef, and to the fast day of Tisha B'Av, will make the process of halachah more comprehensible and inviting. The first chapter explores the difficulties inherent in attempting to codify Jewish law. There is an ongoing tension between the need to include the sources and development of the law, thereby preserving the law's link with tradition, and the desire to make the final halachic decision clear and accessible. Jacob ben Asher chose a middle ground in formulating his fourteenth century codification, the Arba'ah Turim; he explicitly stated the halachah, but also included some of the reasoning behind the law and contradictory opinions. Joseph Caro, some two centuries later, wrote two books in order to satisfy the opposing goals of a Jewish law code. His Bet Yosef was written as a comprehensive commentary and supplement to the Arba'ah Turim, filling in the sources, contradictory opinions, and minhagim. The second book, the Shulchan Aruch was a book of pesakim, unambiguous and unadorned statements of the halachah.

The second chapter discusses the foundations and growth of



the halachah of Tisha B'Av and the other public fasts. The rabbis crafted the fast of Tisha B'Av by relying on analogies to existing halachic structures: Yom Kippur, other fast days, and particularly the laws of mourning. Additionally, the Jewish people often expanded restrictions and minhagim in order to fill empty ritual moments; these customs, in turn, gained their own authority in the community. Tisha B'Av, then, steps out from the other public fasts to stand on its own, as a fully developed holiday.

The third section of the thesis is a translation of the of the Arba'ah Turim on Tisha B'Av and the Other Public Fast Days, Orah Haim chapters 549-561, and the Bet Yosef to that section. For purposes of clarity, the text of the Turim is rendered in one typeface, while the Bet Yosef is in a different, smaller font at the bottom of the page. Every attempt was made to preserve the halachic idiom, while nevertheless rendering the legal jargon of the halachic debate in comprehensible English. Finally, a source appendix at the end of the thesis provides a brief survey of the major thinkers and literature which were cited by Caro and ben Asher. This thesis thus provides the layperson tools with which to begin to engage in the halachic conversation.

## Acknowledgements

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Dr. Mark Washofsky, who honored me by serving as my advisor, taught me Talmud and Codes. His love for the halachic process animated the text before my eyes and drew me into it. From him, I learned more than the language and methodology of the rabbis; he gave me the tools to enter this sacred dialogue myself. For his time, encouragement and faith, I thank him.

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## Table of Contents

Chapter One--The Challenges of Codifying Jewish Law: An Introduction to the <u>Arba'ah Turim</u> and the <u>Bet Yosef</u> . . .	1
Chapter Two--Tisha B'Av in Halachah: The Rabbinic Creation of a Fast Day. . . . .	34
Chapter Three--The Laws Concerning the Ninth of Av and the Other Fasts: Chapters 549-561. . . . .	65
Appendix of Halachic Sources. . . . .	144
Bibliography. . . . .	162

The Challenges of Codifying Jewish Law:  
An Introduction of the Arba'ah Turim and the Bet Yosef

The history and status of Jewish legal codes is a complex one. On the one hand, the codificatory literature is one of the largest portions of post-Talmudic rabbinic writings. Nevertheless, the idea of a code of Jewish law was a controversial one. The sources of Jewish law were traditionally considered to be the Oral and Written Torahs, and could not be superseded nor replaced by a human legal statement. Halachah gains authority by its connection with Jewish tradition and texts, not from an author's assertion of a given principle or code. On the other hand, the sheer volume of sources and variety of interpretations made it difficult for Jews to discover what the halachah was for a given situation. The people sought definitive answers, a concrete law agreed upon by everyone, rather than legal theory and ambiguous sources which were open to multiple interpretations. And so, over and over again, leading rabbinic scholars undertook the tasks of compiling a comprehensive statement of Jewish law. The Tur, for example, sought to balance laws and sources, pesakim and legal arguments. Joseph Caro's monumental legal work, the Bet Yosef, filled in the debates and foundations for every legal ruling in the Tur, as well as demonstrating the exhaustive process of determining the halachah from its origins. The work of Jacob ben Asher, then, as

well as Joseph Caro's Bet Yosef, illustrates many of the tensions present in forging a Jewish code.

The codification of a legal system is the process of systemically organizing and writing down laws that once existed only orally or in piecemeal form elsewhere. The impulse to codify the law generally arose from a variety of failings in the existing system. Jewish authorities who attempted to write codes were responding to the confusion about the halachah created by widely-scattered sources; contradictory reasoning processes and decisions; the clash of local minhagim arising from the movement of communities of Jews from one place to another; the inconsistency of legal norms stemming from varying readings of text as well as numerous ad hoc rulings; and the inability of the average Jew to learn the halachah without recourse to an expert. Thus, Jewish codifiers were interested not so much in changing the halachah as in gathering and organizing it into a complete, yet accessible whole.

In the secular legal systems of Europe, the propagating of a legal code meant that all pre-existing laws or codes were superseded by the new system.<sup>1</sup> The authority of the code was based

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<sup>1</sup>Menachem Elon, Jewish Law: History, Sources, Principles 4 vols, translated by Bernard Auerbach and Melvin J. Sykes (Jewish Publication Society: Philadelphia, 1994), 3:1141.

on the person or body which proposed it. While a code did leave room for future legal development and interpretation, particularly through adjudication in specific cases, the source of the underlying principles of the system were routed exclusively in the legal code itself. Since the code was meant to clarify the existing diffusive conglomeration of laws, one of the important aspects of the code was clear, professional language. The authoritative nature of the code required that it outline its principles clearly, state the guidelines of the law, and, perhaps most importantly, avoid ambiguity and contradictions.

But if these criteria were the hallmark of a legal code, any sort of codification of the halachah would appear to be impossible. No Jewish scholar, no matter how great, could propagate a code whose authority superseded the Torah and the Talmud. The binding nature of Jewish law was a result of its dependence on and continuity with its textual sources throughout the generations.<sup>2</sup> A rule, custom or norm gained its authority in the halachic system by linking itself to the Written and Oral laws, and to the interpretations of the sources by previous generations. No Jewish codifier ever sought to challenge this principle. Even Maimonides, who advocated his Mishneh Torah as the only book one

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<sup>2</sup>Elon, 1144.

would need in order to understand the halachah, did not dispute the primacy of the two-fold Law. "Everything in the Babylonian Talmud," he wrote, "is binding upon all Israel." (Kovetz Ha'Rambam, I, #140, p. 25) No Jewish code could ever supersede the revealed texts, nor, in fact, the generations of interpretation which preceded it. It was not the job of a codification to change the law.

However, if a formal legal code was impossible, an authoritative compilation of the halachah was not. A Jewish codifier could organize the existing laws into a coherent whole, and then, with the consent of the community, that work could theoretically become the sole resource for making future halachic rulings. This was the goal of the Rambam in writing his Mishneh Torah. Within such a compilation, creativity and ingenuity was possible in at least two ways. First, the process of organization itself was often innovative, as various authorities arranged the law according to a variety of schema. In addition, within the workings of the law itself, a rabbinic scholar could adapt the halachah to new situations, or change an old interpretation. Such emendation of the existing halachah, however, had to be based on sources and reasoning found within the body of legal texts themselves. Thus, a compiler of Jewish law could be selective in



what he chose to include, or exclude, from his work. Nevertheless, a compilation of Jewish law was primarily a collection, systemization, and, often, harmonization of the halachah up to that day.

The question remained, however, whether a compilation of Jewish law, such as the Mishneh Torah, was a good idea. Rabbis over the years were nervous about severing the practical halachah from its sources, which underlie the rulings and give life to the law. Arguments over the meaning of a law trace their way back to the disputes of Hillel and Shammai, about which was said, "the words of both are the words of the living God." The heart of the halachic system lies in discovering how the halachah applies in concrete situations, not in articulating theoretical principles which will govern problems in the future. By eliminating the contradictory opinions, and setting the law down in rigid lettering on static paper, does not the halachic process disappear? Compilation, as well as codification, many rabbis thought, might destroy the flexibility and creativity of the law, creating a system which rested on the authoritative interpretations of one scholar alone, rather than on the tracing of its origins back to the living God.

And yet, despite these reservations, compilations of the halachah flourished. In fact, one of the principle sources of



Jewish law is the codificatory literature. The systemic differences separating the halachic process from the assumptions of a compilation or legal code were no match for the undeniable need for some kind of organization of the massive amounts of halachic material generated over the years. The primary sources of any given area of law were scattered throughout the Talmud, making study of them difficult, while the contradictory rulings and customs surrounding the law further complicated the efforts of a layperson to learn the halachah on that issue. When communities of Jews were expelled from Spain, for example, and moved into other areas, their opposing minhagim and long-held legal decisions were suddenly challenged by alternative halachic interpretations. And the halachah itself, valuing the preservation of disputations, was neither uniform nor easily decipherable. The needs of communities of Jews for clear halachic guidelines for practical living gave rise to the Jewish legal code.

In codifying, or compiling, the halachah, the codifier walked a thin line. On the one hand was the desire to preserve the idea that all Jews were unified under one Torah, one legal system, given by the one God. This goal urged the scholar simply to state the halachah, ignoring contradictory opinions or customs. Such

clarity of language and structure would also foster knowledge of the law, especially in an era of declining knowledge. On the other hand, the halachic process demanded that the sources of the law, as well as competing interpretations, be preserved, in order to maintain the integrity of the system. This aim lent itself to more complex compilations, which themselves needed interpretation. Three types of Jewish legal compilations emerged from this struggle.

One kind of codificatory literature was the book of halachot.<sup>3</sup> Books of halachot gave, often briefly, the texts and discussions, as well as the reasoning process, which underlie the final halachic decision. The premier example of this type of code was Alfasi's Sefer Ha'Halachot. (see appendix) Typically, books of halachot followed the order of the literary source of the law. Thus Alfasi's compilation was based on the structure of the Talmud. The codifier in such works chose to give more of the history of the law, thus preserving the halachic process. Unfortunately, such foundational work often made these books hard to use; finding a given halachic subject was not necessarily made any easier, and, while most codifiers did state the final halachic decision, the skill needed to decipher much of the code at times

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<sup>3</sup>Elon, 1139.

made books of halachot inaccessible to the average Jew.

Books of pesakim, or decisions, on the other hand, were simplicity itself. Usually organized topically, these books stated the halachic rule, omitting any discussion of its sources or explanation of how the authority reached its conclusion. Maimonides Mishneh Torah was the best example of this sort of compilation. The law was easy to find, and, since the sources of disputations are not given, the author usually used clear, precise language. These books were thus quite accessible.

The problem with books of pesakim is that the halachah is completely severed from its sources. One has to rely exclusively on the scholarship of the codifier, and upon his choices in interpreting and presenting the law. This sort of code was just what many rabbis feared: the average person would no longer need to be connected to any of the primary texts, and soon the compiler would become the only authority. How could a rabbi make a decision about how to apply the law in a particular case, without knowing either the sources or the reasoning behind the law?

In response to these limitations of the early types of codes, later authorities, such as Jacob ben Asher, created a third genre, which strove to combine the two approaches. He gave the sources of the law in a limited fashion, and even quoted contradictory

opinions. But he organized his Arba'ah Turim according to topic, making particular laws easy to find. This compromise between extensive source work of the books of halachot and the staccato precision of the books of pesakim proved popular among both rabbis and laypeople alike.

Thus, Jewish legal compilations constantly strove to satisfy opposing goals, between self-promulgation and reliance on earlier authorities; between clarity of language and style and connection to their sources; between halachah and pesak. The Tur managed to find a balance, swaying neither to the left nor the right on his narrow path, while Joseph Caro chose to write two works, one of each style. This examination of their works will highlight the many tensions inherent in Jewish halachic codes.

#### Jacob ben Asher's Arba'ah Turim

During the twelfth and thirteenth centuries, the production of Jewish legal literature flourished. The Tosephists in France and Germany had created a whole new method of reading the Talmud, and, in their discussions and commentary on the text, they added many novelle which affected not only the theoretical interpretation of a text, but the halachah as well. Existing books of halachot imitated the structure and style of Alfasi's

comprehensive, but difficult, Sefer Ha'Halachot, organizing themselves around the Talmud or Biblical listings of commandments, or even according to the days of the week. In addition, the sheer number of books of halachot added to the confusing clamor of legal decisions: in the face of conflicting decisions, what was the halachah? While different scholars attempted to use various principles to decide between rabbinic authorities in cases of contradiction, there was still much work to be done. One of the fundamental purposes of a compilation of Jewish law, simplicity and ease of use, was overlooked in many of the codes being written. It was difficult to find a work which clearly organized and stated the halachah, much less one that made reference to the sources and disputations. Into this atmosphere of confusion and need came Jacob ben Asher.

Jacob ben Asher was born in Germany around 1270 c.e., but moved to Spain in 1303. He was a judge in the rabbinical court of Toledo. Jacob was the son of Asher ben Yechiel, the Rosh, a noted halachic authority in both Ashkenaz and Sephard, who himself wrote a book of halachot, the Piskei Ha'Rosh. But even this halachic work had many shortcomings. Modeled on the Talmud, its structure was confusing; the law was often hidden amidst a discussion of the Talmudic texts. And the Rosh (Asheri) even left out many of his

own, as well as other current responsa to pressing issues of the day.<sup>4</sup> A new kind of code was needed, one with the easy organization of the Mishneh Torah, the thorough presentation of the sources of the Rif, and the inclusivity of both Sefardic and Ashkenazi law found in the Rosh's work. The times cried out for a new articulation of the one law of the Jews. The Arba'ah Turim was Jacob ben Asher's response to the cacophony of halachic voices heard in his day.

In his introduction to one of the four turim, or "rows," Jacob b. Asher [who is also known as Ba'al Turim or simply the Tur, in reference to his famous work] wrote;

Since we are already a long time in exile, legal analysis has deteriorated, opinions have proliferated and conflicts of authority abound. There is no longer any clear and undisputed law, so that many wander about to seek the word of the Lord, but cannot find it. Therefore, my ideas and thoughts stirred me to consider the statements. . . and understand the books and the words of their authors. . . and I determined to compose a work on the subject of religious law and all the other matters needed at this time.<sup>5</sup>

He was concerned about the contradictions in both religious and "civil" Jewish law, which, he believed, allowed Jews to select from among halachic decisions not according to any legal theory or

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<sup>4</sup>Elon, 1280.

<sup>5</sup>Introduction to Tur Yoreh De'ah, as quoted in Elon, 1280.



interpretation, but rather based on what would benefit the individual. When standing in front of a rabbinic court, each of the parties to a case could plead "kim li," that is, "it is established [for me according to this legal opinion, who favors my opinion.]" Thus, Jewish law could be completely undermined, as the defendant could exempt himself from the plaintiff's claim, based on an alternate interpretation. This multiplicity of opinions made authoritative resolution of actual conflicts between Jews virtually impossible; indeed, the plea of kim li tended to sabotage the foundation of the adjudication process itself.<sup>6</sup>

Jacob b. Asher's intention was to eliminate such problems, caused by the lack of a binding compilation of the halachah. He had two primary goals in writing the Turim. The Tur wanted to create an unequivocal and definitive expression of Jewish law.<sup>7</sup> Such an articulation would put an end to, among other things, the destructive kim li plea. Secondly, the Tur hoped to develop a new form of codification, which would better balance the conflicting needs of the people. He wanted to benefit from the merits of both the books of halachot and the books of pesakim, rather than be

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<sup>6</sup>Elon, 1281.

<sup>7</sup>Elon, 1283.

limited by either form alone. Such a compromise, the Tur envisioned, would both clearly and categorically state the law, without the confusion of complex textual citation or detailed attributions, but would, at the same time, maintain a link to its sources and tradition, thus preserving the continuity of the law and the variety of legitimate interpretations therein.

The Tur's own statement of methodology articulates the process by which he hoped to accomplish his goals. "I do not intend to include protracted proofs, but to set down the law as it has been authoritatively declared; when there are differing opinions, I will set them forth, and then state my father's [the Rosh's] conclusion."<sup>8</sup> Jacob b. Asher, then, attempted to walk a middle line: he included discussion of various authorities, as well as a brief, unattributed statement of the underlying principle of the law, usually a summary of a Talmudic passage. But the goal of an unambiguous statement of the halachah guided him as well: he did not get bogged down in extended technical discussion, but simply listed the contradictory opinions, at times with a sentence of explanation.

At the beginning of a chapter, the Tur pronounced the basic law. Only then does he give sources, disputes, interpretations,

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<sup>8</sup>Introduction to Tur Yoreh De'ah and Tur Orah Haim, as quoted in Elon, 1284.



and even some of the foundational reasoning underlying the law at hand. He rarely stated his opinion explicitly. Yet by ending with the custom or ruling of "my lord, my father, the Rosh," the Tur often implicitly nodded to the decisions of Asheri. Nevertheless, his code did leave room for flexibility and growth in the halachah; a rabbi could find the basis for a ruling, and apply it, by analogy, to a new case. In this way, Jacob b. Asher found a balanced road of sources, interpretations, and clear articulation.

As he stated above, the Tur began with the rulings of his father, the Rosh, in determining the halachah; these decisions, in turn, as based on the foundations of the Alfasi. But when an "important authority," such as Rambam, or any one of a number of German, French or Spanish scholars disagreed with the Rif or the Rosh, the Tur included the various opinions, although he generally ends with, and tacitly approves of, his father's opinion. This was more than a son's loyalty to his father; the rabbinic idea that hilkheta ke'vatra'ei, that is, the law is in accordance with the most recent authorities, mandates such treatment of the most recent codification of Jewish law.

This principle served Jacob b. Asher well, given that his father, the Rosh, had been a leading halachist in both Germany and Spain, and was thus versed in the minhagim and decisions of

Ashkenazi and Sephardic Judaism. By including a variety of minhagim in his compilation, the Tur also reinforced the importance of custom in Jewish life. Often, he quoted a local or general custom without mentioning the halachic basis for it; he then followed the citation by urging Jews "not to forsake the Torah" of their ancestors. With the inclusion of both Sephardic and Ashkenazi customs, gleaned from his father's work, as well as from his own experience, Jacob b. Asher's halachic work thus encompassed far more than the minimal law on a topic; it included the customs and practices which spontaneously grew out of the lived experience of the halachic life all over Europe. The Turim thus utilized the Rosh's interweaving of the words of the scholars and decisions of the great Jewish centers to create an inclusive code, relevant throughout the Jewish world.

One of the goals of the Tur in writing his extensive code, was to arrange it "so that the reader may run through it, and "every point may be easily found."<sup>9</sup> Thus, instead of following the structure of the Rosh, he organized his work by topic.

The "four rows" of the title of the code, Arba'ah Turim, refer to the four major divisions of the work, each containing a major category of law. Tur Orah Haim, the Path of Life, laid out the laws

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<sup>9</sup>Introduction to Tur Hoshen Mishpat, in Elon, 1287.

governing a person's daily life, including rituals of arising, benedictions and prayers, and Shabbat and the festivals. By contrast, Tur Yoreh De'ah (It Will Teach Knowledge) dealt with matters of issur, or religious law. Kashrut, idolatry, the laws of niddah (the menstruant woman) were included in this category. Family law was the subject of the third row, Tur Even Ha'Ezer (the Stone of the Helper). Finally, Tur Hoshen Mishpat, the Breastplate of Decision, dealt with mishpat ivri, the great bulk of Jewish civil and criminal law.

The classification system of the Turim was quite detailed. Jacob b. Asher divided each tur into sections, or halachot, dealing with a certain area of the law. Finally, the sections were broken into chapters (simanim), and then, in some editions, into se'ifim, paragraphs. While Maimonides also organized his Mishneh Torah according to topic, his subdivisions were more general than the Jacob b. Asher's. Even though, at times, the Tur may have sorted the laws too finely, his organizational scheme was considered progressive in the history of Jewish legal compilations. The headings and divisions allowed the reader to locate a given subject matter relatively easily.

In addition to including some source material, and the disagreements of various authorities, the Tur also chose to

include in his work some aggadic material. Appearing often at the beginning or end of a section, the philosophical and ethical material supplemented the legal theory and practical halachah of that section, or even that entire Tur. Judicious use of aggadah shored up the foundations and values implicit in the halachah itself. By incorporating such material, Jacob b. Asher was able to set a tone for an otherwise dry book of legal decisions.

The Arba'ah Turim were highly successful, both in form and content. Jacob b. Asher managed to consolidate a huge body of law and tradition into an accessible, thorough text of Jewish law. He clarified the existing halachah, both in practical application and, to some extent, in the underlying reasoning of the rulings, and did so in a manner which was inclusive of different customs and interpretations. The organization of the work, as well as the Tur's clear articulation of the law at the beginning of each chapter, gave the Turim the advantages of a book of pesakim. Yet his inclusion of source material and contradictory opinions meant that his work had the authenticity and link to tradition that were the strengths of a work of halachot. Jacob b. Asher essentially succeeded in finding a balance between the two types of codes when he crafted the Arba'ah Turim.

The Turim were quickly adopted as an authoritative code in

the great Jewish centers in the West. Germany, Italy, and Poland especially followed the rulings of the Tur. The success of Jacob b. Asher's work was reflected in the fact that it was the second Hebrew book to appear in print, after Rashi's commentary to the Torah.<sup>10</sup> It remained the main code of Jewish law until the writing of the Shulchan Aruch by Joseph Caro.

Many commentaries were written to the Turim. The Bayit Hadash, by Joel Sirkes, was written at the beginning of the seventeenth century in Poland. The Bah is a classic commentary on the Turim, explaining the text, giving sources and interpreting the issues underlying the various opinions. Today, the Bah appears on the outside of the page of the printed edition of the Arba'ah Turim.

The other two major commentaries to the Turim were written almost simultaneously. The Darchei Moshe of Rabbi Moses Isserles, one of the great Polish scholars, is a massive supplement to the Tur. He originally hoped to collect the different opinions on the subject at hand, and to lucidly articulate them.<sup>11</sup> Isserles believed his documentation and discussion of such sources would be most useful if attached to an already existing code; he chose

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<sup>10</sup>Elon, 1301-2.

<sup>11</sup>Elon, 1350.

the Turim. But, in the course of writing his commentary to the Arba'ah Turim, the Rema (Rabbi Moses Isserles) discovered that Joseph Caro had already begun such a work. Bowing to Caro, "the light of Israel," whose Bet Yosef had already encompassed much of what Isserles hoped to accomplish, the Rema eventually shifted his purpose. He decided to write a more concise, less discursive book than the Bet Yosef, modeled on the Arba'ah Turim itself. In addition, he added many novelle, and responsa, particularly Ashkenazi scholarship, which had been omitted by Joseph Caro. The Rema wanted to include all the various opinions on a particular issue, something Caro did not aim at doing. The final goal of Isserles's Darchei Moshe, aside from inclusion of all the sources and the clear, brief statement of those opinions, was to maintain the policy of hilkheta ke'vatra'ei, "the halachah is according to the latest authority." A short form of the Rema's work, Darchei Moshe Ha'Katzar, is currently printed in the edition of the Arba'ah Turim. This commentary remains important, although Isserles' most lasting contribution is found in his supplement, the Mappah, to Caro's Shulchan Aruch.

Perhaps the most significant commentary written to Jacob b. Asher's work was the Bet Yosef, the creation of Joseph Caro. His achievement as a halachic scholar, thinker and authority is almost



unrivaled in Jewish history. A closer look at his theory of halachah, and the purpose of his two great works, the Bet Yosef and the Shulchan Aruch will reveal his struggle with the halachic process, and the need for simple codification.

### The Work of Joseph Caro

The years between the publication of Jacob ben Asher's Arba'ah Turim and the literary work of Joseph Caro were eventful ones in both the Jewish, and larger, Christian worlds. America was discovered; the fall of the Eastern Roman Empire and the great Reformation of the Church both occurred during the tumultuous fifteenth century. Closer to home for the Jews were the Black Death, often blamed on a Jewish poisoning of the wells, and the Spanish Inquisition, which culminated on the expulsion of all Jews from Spain in 1492. Entire communities moved, along with their scholars, rabbis and lay leaders. Jews of Germany moved to Poland, creating new centers of learning; Spanish Jews migrated to a variety of locations in North Africa, the Middle East, and Italy. The great rabbinical court in Safed grew out of this dislocation, as did many other hubs of halachic scholarship. Against this backdrop Joseph Caro was born, in 1488.

Joseph Caro, son of Ephraim Caro, was exiled from Spain at age

four, along with the entire community. His family slowly made their way to Safed in the land of Israel. As a young scholar, Caro was quickly appointed to the bet din of Safed, headed by Jacob Berab. Berab sought to revive the traditional custom of ordaining rabbis, and Caro was one of the first to receive the newly re-introduced smicha, although he never claimed it in his career as a halachist. After Berab died, Caro, along with Moses b. Joseph Trani, became the head of the rabbinical court in Safed, which was looked to by Jews from all over the world.

Once again, the migrations of Jewish communities had led to contradictory halachot and minhagim confronting one another, as new communities formed out of a variety of older ones. A new complex of halachic problems resulted from this merging of disparate Jewish groups. The response to these difficulties was the flowering of creative halachic literature, including responsa, legislative enactments and even codes.<sup>12</sup> But as the halachah's size and scope grew, it became increasingly difficult to find one's way through the literature. Conflicts multiplied. In the face of all this creativity and dissension, many Jews yearned for a restoration of halachic as well as spiritual unity.

This was how Joseph Caro saw the situation. In the Bet Yosef,

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<sup>12</sup>Elon, 1311.



he wrote:

As time has passed. . . we have become scattered. . . The Torah and its students have become helpless. For the Torah has become not [only] two Torahs; rather, it has been fragmented into innumerable Torahs because of the multitude of books written to explicate its laws and rules. Although all those writers, peace be upon them, meant to enlighten our darkness, the "light" we have enjoyed from them has brought great doubt and confusion, because each author has composed his own work in which he either has repeated what previous writers had already written, or has stated the law contrary to his predecessors without mentioning the conflict. You will sometimes find that several codifiers have stated a rule categorically, as though it is universally accepted, but when you investigate, you discover that leading halachic authorities have rejected it. . . And if one attempts to trace the source of every law from the Talmud through all the commentaries and codes, he will find this task to be exceedingly difficult and will surely become exhausted in the search for the source of the law in the Talmud.<sup>13</sup>

As Caro articulated the predicament, the current status of the halachah suffered from all of the problems of the two types of codes, but enjoyed none of the benefits. Some books of pesakim simply asserted the law, without foundation in the sources, giving a scholar or layperson no basis on which to evaluate the work, and making reliance upon such a code halachically risky, at best. On the other hand, the proliferation of codes, responsa and the like

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<sup>13</sup> Bet Yosef to the Introduction of the Tur Orah Haim, as quoted in Elon, 1311-12.

led to a multiplicity of opinions and sources too numerous and difficult to be of any practical value when searching for the law on a particular issue. What was needed was both a compilation of sources along with a discussion on the various issues, interpretations and decisions of the various aspects of the halachah, on the one hand, and a simple, and reliable book of pesakim, based on the sources, on the other. Joseph Caro undertook this enormous task.

Caro's aim was to create one halachic work divided into two parts of distinct form and content. Together, he hoped, they would form an organic whole, a definitive and reliable statement of the halachah. One portion would trace the history of the halachah from its foundational sources through all the relevant materials to the present day decisions on the subject; this work would contain a detailed discussion of the issues, interpretations, opinions and difficulties surrounding the halachic ruling. The other part of his vision was a book of pesakim, to tell every Jew, lucidly and easily, what the relevant rule was for a particular case. The only precedent for such an undertaking was Rashba's two-part work, Torat Ha'Bayit Ha'Aroch and Torat Ha'Bayit Ha'Katzar. It, too, consisted of a book of pesakim, complemented by a book of halachot, spelling out the developments of a given ruling or legal

principle. However, Rashba's work was not comprehensive, dealing only with laws relating to issur and to some of the festivals. In addition, his work had little effect on the halachic literature of the time.<sup>14</sup> Joseph Caro, however, transformed Jewish codification with his magnificent code: a single compilation consisting of two massive parts -- the Bet Yosef and the Shulchan Aruch.

Joseph Caro's first and most complex work was the Bet Yosef, literally "the house of Joseph." The research and writing of this book took Caro almost twenty years to complete, from 1522 until 1542. He wrote it as a supplement and commentary on Jacob b. Asher's Turim, following its structure, and including, as the Turim did, only the laws applicable after the destruction of the Temple. His first goal in crafting this work was to collect all the halachic materials, beginning with the Bible and Talmud and continuing up to Caro's day, "omitting none."<sup>15</sup> The Tur's inclusion of some source material, as well as his citation of a number of opinions on an issue, made the Arba'ah Turim a good choice for Caro to supplement, rather than repeating work already completed by the Tur. Caro merely had to give the Talmudic sources for the Turim, as well as fill in the fine points and reasoning of

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<sup>14</sup>Elon, 1313.

<sup>15</sup>Bet Yosef to the Introduction, Tur, Orah Haim, as quoted in Elon, 1313.

the discussion already presented in the Turim, and both previously neglected and new opinions to the dispute.

Once he had examined the entire scope of the debate of a topic, Caro turned his attention to the second objective of the Bet Yosef: a determination of the halachah. The ideal method, Caro said, would be to examine all of the arguments of the great authorities, and select the opinion whose interpretations and proofs were most convincing. But the arguments are many and, he wrote,

"who will be so presumptuous as to undertake to add to them. And who can be so audacious as to pass judgement on such giants, to decide between them by appraising arguments and proofs, to contradict their conclusions, or to decide when they withheld decision? . . . Moreover, in any event, even if we were capable of taking this path, we could not keep going on it, because it would be an exceedingly long journey."<sup>16</sup>

It would not be possible to work through all of the differences among the halachic authorities. No current scholar, in Caro's opinion, had the authority or capacity to decide between the great rishonim, since it was commonly known that "because of our many sins, our minds are too weak even to understand them fully, let alone to presume to be wiser than they."<sup>17</sup> In addition,

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<sup>16</sup> Bet Yosef to the Introduction of Tur, Orah Haim, as quoted in Elon, 1316.

<sup>17</sup> Bet Yosef to the Introduction of Tur, Orah Haim, as quoted in Elon, 1316.

this method is too time consuming to be of practical use in determining the halachah. One might never reach a final, and unequivocal, declaration of the "one Torah" for all Israel, Caro's ultimate goal.

In light of these difficulties, Caro sought another, creative way to decide among the various opinions and thereby to ascertain the halachah.

Since I concluded that the three pillars of instruction upon which the House of Israel rests are Alfasi, Maimonides and Asheri [the Rosh], of blessed memory, I resolved that when two of them agree on any point I will determine the law in accordance with their view, except in those few instances when all or most [of the other] halachic authorities disagree with that view, and a contrary practice has therefore become widespread.

When one of the three pillars expresses no opinion on a particular matter, and the other two do not agree, we will turn to Nachmonides, Rashba, Ran, the Mordechai, and Semaq. . . and declare the law in accordance with the view of the majority of these authorities. When none of the three above-mentioned pillars expresses an opinion, we will declare the law according to the well-known authorities who have expressed their opinion on the particular matter.<sup>18</sup>

Thus Caro set up criteria based on the authority of a select group of earlier scholars, and a majority ruling among a select group of thinkers. If evaluation of the arguments was too

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<sup>18</sup> Bet Yosef to the Introduction of Tur, Orah Haim, as quoted in Elon, 1317.

difficult, a vote by the giants of the past would have to suffice.<sup>19</sup> The plan could lead to underlying contradictions, when part of Rambam's legal theory, say, was adopted as a majority rule in case A, but then the same reasoning was rejected in instance B, when both the Rif and the Rosh used another interpretation.<sup>19</sup> This method, Caro admitted, was not ideal, but it was feasible. And, in order to achieve a certain unity of law, it would have to do.

But Caro did not value only the letter of the law and strict unity of practice over all else. Rather, he took local minhagim quite seriously, granting them status over and above the statement of halachah determined by his mathematical formula.

And if, despite our ruling that certain things are permissible, the practice in some countries has been to prohibit those things, those countries should continue to follow their custom, since they have already accepted the opinion of the halachic authority holding those things prohibited, and they are therefore not permitted to act in accordance with the permissive ruling.<sup>20</sup>

The existence of a local custom implied a widespread acceptance of a certain interpretation of halachah, which Caro did not intend to overturn. Indeed, even if a minhag permitted an action which Caro would have forbidden, Caro endorsed the practice. In this way, he

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<sup>19</sup>Elon, 1318.

<sup>20</sup>Bet Yosef to the Introduction of Tur, Orah Haim, as quoted in Elon, 1318.



not only showed respect for the formal process of halachic development, as illustrated by the disputation of the sources. He also granted status the informal, layman's approach to Jewish law and life. As will be seen later, the Jewish people often created rituals to fit a mood, or fill in ritually empty space. Caro's serious treatment of minhagim, like the Tur's before him, elevated those customs from mere folkways to the status of halachah itself.

If Caro's main objective in writing the Bet Yosef was the collection and close examination of the sources of Jewish law, his aim for the Shulchan Aruch, a huge compilation was quite different. The Shulchan Aruch was meant to be a companion volume to the Bet Yosef, two halves forming a greater whole. One was the book of halachot, the sources and methodology behind the law. The other was a book of pesakim, with the halachah articulated in terse, precise statements. The brevity and clarity of Rambam's Mishneh Torah did not go unappreciated by Caro. He saw the need for such a book in his day, and so he wrote one: the Shulchan Aruch.

This work was the second portion of the grand legal code he had envisioned. Written after the Bet Yosef, it was first published in 1564-7. Like its companion volume, the Shulchan Aruch followed the structure of the Turim; it was organized by topics, which were then broken down into smaller units of chapters

and individual halachot. Caro was proud of its accessibility to every Jew; he anticipated the study of the Shulchan Aruch by school children and the unlearned, as well as by scholars and rabbis. Written in thirty parts, he advocated reviewing its contents every month, so that it would be fluent on the tongue, and the halachah thus become readily known to all.<sup>21</sup> This "set table" would invite all to eat from it. With the law definitively declared in the Shulchan Aruch, controversy would diminish, and one Torah would again reign.

The Shulchan Aruch, of course, achieved tremendous popular usage throughout the Jewish world. Supplemented by the Rema's Mappah, which included Ashkenazi rulings and minhagim, the Shulchan Aruch gained widespread authority. It split the history of the development of halachah in two: those writing before Caro became known as rishonim, the early ones, and those afterwards, acharonim. Used even in the twentieth century as the basic code of Jewish law, the Shulchan Aruch's legitimacy and authority was never effectively challenged. Ultimately, this was because the scholarship of the Bet Yosef gave it support and grounding.

Caro's contribution to the halachah is almost impossible to overstate. He defined a new balance in the compilation of Jewish

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<sup>21</sup> Introduction to the Shulchan Aruch, as quoted by Elon, 1321.



law. Rather than limiting himself to the shortcomings innate in a book of pesakim or one of halachot, or accepting the compromises of clarity and context inherent in writing combination of the two, such as the Turim, Caro decided to take on the necessary task of writing two books. He ceased upon Jacob ben Asher's Arba'ah Turim as a fine beginning, using its accessible structure as the model for his book of pesakim, the Shulchan Aruch. Caro chose the work of Jacob ben Asher as the basis for the Bet Yosef, as well, because the Turim already included much of the halachah and opposing opinions. Thus, Caro's brilliant and comprehensive work completed the task begun by Jacob ben Asher in his Arba'ah Turim.

### Conclusion

Joseph Caro's two part methodology of halachic compilation was the culmination of the efforts of all those before him. Rambam's radical innovation in the Mishneh Torah introduced the idea of a book of pesakim, wherein the law could be clearly explicated without the inclusion of complex legal arguments, dense sources and contradictory claims. The Rashba's attempt in the thirteenth century to write companion volumes of halachot and pesakim set a precedent for Caro's monumental work. And Jacob b. Asher's Arba'ah Turim not only provided the structure and base for

Caro's work, but it also served as a model of complete halachic code which attempted to balance the two genres of codes, the books of halachot and those of pesakim. The authority and popularity of the Turim laid the groundwork for both the writing, and then acceptance, of Caro's work.

Perhaps the best way to understand the way these two halachic codifications function is through a close examination of a particular subject. Because the laws of Tisha B'Av and the other public fasts constitute a small, discreet unit in the Turim and the Bet Yosef, they lend themselves to analysis. The debates over the scope of various restrictions of the fast of Tisha B'Av illustrate the importance of the sources and reasoning behind the halachah. The basis for one custom, once elucidated, often leads to a series of other observances. Likewise, the crucial role of minhagim in the development of Jewish law is exemplified in the expansion of the laws of the public fasts. The impulse to mourn, underlying the strictures of this fast day, thus spills over into everyday customs, from breaking the glass at a wedding, to the way one paints a house. The next chapter is devoted to such an explication of the ways the laws of Tisha B'Av came to be. Through a close look at these chapters of the Turim and the Bet Yosef, one can learn not only the practical halachah of the public fasts, but also the

disputations, sources, theology and customs surrounding those laws. These two codifications, then, succeeded in their desire to state the law, and link it to its past.

The necessity of laying the foundations of the law is inherent in the Jewish legal process. A codifier must consider not only the eternally binding sources of the law, in the Bible and Talmud, but must also contemplate the development of the law throughout the ages. As both the Tur and Caro knew, minhag is more than simple folkways to be brushed aside. It, too, is a form of halachic growth, encompassing the will and vision of the people. All the contradictory rulings, the disparate theories of the law and varying interpretations must be taken into consideration in formulating any legitimate, and lasting, compilation of the halachah.

Yet, without a clear statement of the law, such detailed and in depth examination of the halachah's history might be for naught. Part of the reason for the influence and popularity of both the Turim and Caro's work is that they both include pesakim, declarative articulations of the law. The job of the codifier is to assemble the law, demonstrate a knowledge of it, and then, history teaches, to decide it for the masses. The compromise of Jacob ben Asher, as shown in his Arba'ah Turim, was an attempt to

assemble both principles and sources, and to present a statement of the law in one, lengthy code. Caro took the other route, writing two books, each one serving a different purpose. In both works, however, the underlying needs of the halachic system were met. The law remained linked to its life-giving sources, and "one Torah" was declared for all Jewry.

Tisha B'Av in Halachah:  
The Rabbinic Creation of a Fast Day

The laws of Tisha B'Av are important not only for their content, but also because a close examination of those rules can shed light on the way halachah develops. This section of the Tur deals with Tisha B'Av and the other public fasts--the tenth of Tevet, the third of Tishrei, the seventeenth of Tammuz--which mark the successive losses of Jewish sovereignty during the First Temple period. The halachah of Tisha B'Av is massive, despite its simple beginnings. The rabbinic conception of Tisha B'Av has its origins in a single prophetic verse and in the tragedy of the Temple's destruction. But, by the time the generations of rabbis have finished crafting this fast day, the laws encompass not only rituals of the day itself, but extensive preparations and customs to be observed all year round. The halachic authorities use other legal frameworks, such as Yom Kippur and mourning, as guidelines in shaping the laws of Tisha B'Av. Rather than blindly applying these models, however, the rabbis pick those laws which fit their sense of what Tisha B'Av is, leaving the rest aside. Through careful elaboration on the simple fast mentioned in the Bible, the rabbis transformed a day commemorated to a historical tragedy into one of the foci of the Jewish experience.

The Rambam wrote about these fasts in his Mishnah Torah (Hilchot Ta'anit 5:1) that "... these are days which are observed by all Israel as fasts because tragic events happened on them, the object being to stir the hearts. . . ." The challenge facing the early authorities was how to create customs which would reinforce the sense of loss and devastation following the Temple's destruction. They turned to pre-existing halachic frameworks to guide their task of developing and explicating the laws of Tisha B'Av. In the end, using the halachic materials of mourning, Yom Kippur, and the public fasts, and their own ritual impulse for the day, the rabbis created the distinctive rites and rituals of Tisha B'Av.

The section of the Tur translated by this author ostensibly deals with the four public fasts: Tisha B'Av, the third of Tishrei, the tenth of Tevet, and the seventeenth of Tammuz. The first two chapters, indeed, do address the status of all four of these fasts, and the basic rituals surrounding their observance. But the majority of this section deals with Tisha B'Av, the central tragedy of Jewish life. The other fasts fade into the background, useful in setting the stage for the culmination of Jewish national and religious mourning, observed on Tisha B'Av. And the destruction of the Temple, the occasion of Tisha B'Av, is not

contained by its holiday; its commemoration expands to include rites of sorrow and memory extending into everyday life.

The four public fasts, which are observed even today, are barely mentioned in the Bible. In the rabbis' own recounting, the Scriptural basis of these fasts stems from a single verse in Zechariah: "The fast of the fourth and the fast of the fifth and the fast of the seventh and the fast of the tenth will be to the House of Judah for joy and gladness." (Zech. 8:19) The rabbinic explication of this verse links each of the fasts in Zechariah's prophecy to the four fasts observed by the community. The prophet already assumes their observance, showing, in the rabbinic mind, their import and authoritative status. From there, it should be but a small step to justify these fasts, on the one hand, and explicate their rules and regulations, on the other.

The status of the fasts, however, is not so clear for the rabbis. The commentators, beginning with Rav Pappa in the Talmud (Rosh Hashannah 18b), were not certain if the fasts were obligatory upon Jews in their day, or simply voluntary. Rav Pappa explained that according to Zechariah, the fasts would some day become days of joy; this will happen when there peace, and no persecution. When is, or was this? When the Temple is standing. And in times of persecution, and of no peace, they are fasts. But



what about the third possibility when there is neither peace, since the Temple is in ruins, nor persecution, in any place known in Israel? From Rav Pappa's vantage point in Babylonia, such was the situation in his day. His answer is that in such a time, the fasts are merely voluntary. One who wishes to fast, may do so; one who does not which to, need not. Tisha B'Av is always obligatory, because of the multiplicity of tragedies which occurred upon it. But, according to the Talmud, the other public fasts are only voluntary.

The status of these public fasts was under debate for the first thousand years after the Temple's destruction. Indeed, it appears as though the Rambam's codification of the fasts in his Mishnah Torah (Hilchot Ta'aniot 5:2) was one of the first definitive statements that these fasts were indeed binding upon all Israel. The Tur writes that in his day, the majority of the community has taken the fasts upon themselves, and it has become a custom to fast. In the same way that Tisha B'Av is built up by minhagim which become halachah, this custom of observing the four public fasts observed by the previous generations becomes by the time of the Tur obligatory based on that received tradition

In order to infuse the fasts with meaning, the Talmudic sages piled calamity upon tragedy on two of the fast days: the 17th of

Tammuz and Tisha B'Av. Five calamitous events, not just one, happened on each of these days, according to Ta'anit 26a,b. Tisha B'Av, in particular, did not just happen to be the day both Temples were destroyed. Rather, in the rabbinic mind, the ninth of Av was already set apart, in God's mind, as a day for tragedy. The Talmud notes, in Ta'anit 26a, that on Tisha B'Av, it was determined that the generation of the wilderness would not enter into the land of Israel, the first tragedy of this day. Another rabbinic legend connects the story of the spies in the desert to the ninth day of Av. On the day the spies returned, with their negative report about the land, the people in the wilderness cried out. God, hearing their cry, said, "Today, they lament with no reason. Therefore, in the future, I will make this a day of weeping and lamenting." (Ta'anit 29a) The significance of the public fast days, then, goes far beyond a mere historical commemoration. The fasts become, in rabbinic hands, part of the fabric of the Jewish people's relationship with God.

Once the significance of the fast days is established, the Tur turns his attention to the halachic details of their observance. In the case of the three smaller fasts, the tenth of Tevet, the third of Tishrei and the 17th of Tammuz, this takes only a sentence or two. As minor fasts, the rabbinic understanding was

that their only obligation was fasting. All the other forms of self-affliction, associated with Yom Kippur and then Tisha B'Av, such as not bathing, anointing, and the like, are not applicable on the three minor fast. In fact, if one of them falls upon Shabbat, Shabbat clearly takes precedence, postponing the date.

The Tur's opening sentence on the laws of Tisha B'Av, on the other hand, underlines the seriousness with which the rabbis approached that fast day: "A Bet Din may not (permanently) annul Tisha B'Av, since on it, calamities multiplied." (Rosh Hashannah 18b; Tur, Orah Haim 551) This fast is in a different category from the public fasts, and must be approached with reverence for its import.

The problem facing the rabbis, given this import, is the sparsity of scriptural material addressing the observance of Tisha B'Av. This holiday is only mentioned once, in connection with the other public fasts, and no prohibitions for Tisha B'Av are listed anywhere in the Bible. Thus, the rabbis, in fleshing out this holiday, turn to other models of observance. Since Tisha B'Av is a fast day, dedicated to lamenting the loss of the Temple, the rabbis used obvious analogies to Yom Kippur and mourning.

Mourning and Yom Kippur resemble one another in some of their basic prohibitions. During both, a Jew is forbidden to bathe,

anoint, wear shoes, and have marital relations. All of these prohibitions likewise apply on Tisha B'Av. But the analogy between Tisha B'Av and Yom Kippur is only a guideline; the laws of Tisha B'Av utilize the framework of Yom Kippur without replicating it.

Tisha B'Av is explicitly compared to Yom Kippur at several points in the Tur's discussion of the fast day itself. The prohibition on eating and drinking on Tisha B'Av is akin to that of Yom Kippur, the Tur writes in chapter 554. This is the most basic law of Tisha B'Av, and the only one with a biblical proof-text. Nevertheless, Yom Kippur's prohibition is Toraitic, while that of Tisha B'Av is merely received tradition, so the penalty for violating Yom Kippur is more severe. The Rambam further differentiated between the structure of the two fasts, noting that on Tisha B'Av, one must only stop eating while it is still day--that is, during its twilight--while on Yom Kippur, additional time must be added to the fast from the preceding day. And while one is permitted to feed a sick person on Yom Kippur as well, doing so on Tisha B'Av is obvious, because "the rabbinic decree does not apply." (Ramban, Torat Ha'Adam) The status of Tisha B'Av, then, is acknowledged as a rabbinic creation.

The prohibition of wearing shoes on Tisha B'Av is the same as

that on Yom Kippur, applying only to leather shoes. Washing and anointing on Tisha B'Av also follow the model of Yom Kippur. The Tur likens the complete prohibition of these activities to that of Yom Kippur. Washing one's hands and face, however, is permitted on both days, if it is not done for pleasure. On both days, one should omit the blessing, perhaps because of the doubt (safek) about the status of such washing.

In a similar manner, the Tur notes that just as on Yom Kippur one is permitted to immerse for the sake of a mitzvah, one is allowed to do so on Tisha B'Av. In the Bet Yosef, Joseph Caro traces the debate which occurs over the centuries as to whether one is allowed to immerse after niddah or disease on either Yom Kippur, Tisha B'Av or both. Rabbi Hanina b. Antigonus taught that one may do so on Yom Kippur, but, concerning Tisha B'Av, he said that it is commendable to forgo immersion in memory of the Temple. Rabbi Yitzhak wrote that one should postpone such immersion until the day after the fast. The Shulchan Aruch's ruling explicitly compared Tisha B'Av with both model structures, saying he had never heard of anyone immersing during mourning, on Yom Kippur or on Tisha B'Av. The discussion, then, concerning the permissibility of immersion on Tisha B'Av revolves around a careful comparison to the laws of Yom Kippur.

However, despite all of these similarities, the day of Yom Kippur is not a sufficient model for the day of Tisha B'Av. In many ways, the days differ. Yom Kippur, to begin with, is a Toraitic holiday, and its laws are understood by the rabbis to be d'oraita in origin. It is the ultimate Shabbat, with all that implies. מלאכה, the thirty-nine categories of work is forbidden, while it is permitted on Tisha B'Av, a rabbinic holiday. Yom Kippur supersedes the Shabbat, whereas Tisha B'Av is postponed because of it. On Yom Kippur, the Jew wears white, a symbol of confidence that his repentance will be accepted, and forgiveness will follow. On Tisha B'Av, one should not wear white; the day commemorates past sins, and the punishment which followed. While both holidays demand that the Jew humble himself before God, the mood of the fasts are diametrically opposed. On Yom Kippur, one stands confident before God, because one is definitely a member of a holy community; even the sinner is allowed to join the congregation. On Tisha B'Av, one sits as one who has been judged and found wanting; the very covenantal relationship is uncertain, as God's face is hidden from Israel.

Tisha B'Av also needed a fuller model than the fast day of Yom Kippur. It is more than a solemn day in the Jewish year; it marks the loss of the House of God. It was not enough, then, for the



rabbis to call Tisha B'Av a day of self-affliction. They needed to tie the lamenting for the Temple into the ritual of the fast itself. The best model for this was the laws of mourning.

The Tur begins his discussion of the day of Tisha B'Av itself by quoting the rabbis. "Our sages have taught that all the laws which are customarily observed by a mourner customarily apply on Tisha B'Av." (cf Ta'anit 30a) In addition to the prohibitions on bathing, anointing, wearing shoes and marital relations, and the obligation to fast (which, of course, is unconnected to the laws of mourning), the Jew may not learn Torah. While there are some portions of the Bible and Talmud which may be studied, such as Lamentations, the book of Job and the devastating parts of Jeremiah, as well as the midrashim to these, neither the mourner nor the Jew on Tisha B'Av is permitted to engage in other study. Like the mourner, on Tisha B'Av, one may not cut his hair nor shave, nor should he exchange greetings with others. Jews are not to wear freshly-laundered clothing on Tisha B'Av, just as the mourner avoids the pleasure of newly-pressed clothes during the week of shiva.

The Tur's presentation of the prohibition on wearing freshly-ironed clothing is complex; the debate presented in the Bet Yosef makes it clear that the exact nature of the prohibition



was unclear to generations of rabbis. The discussion, however, draws heavily on parameters for the mourner's prohibition on ironed and freshly-washed clothing. Ramban, for example, explicitly compared the two rulings, both with respect to linen clothing in particular, and with respect to new, as well as old ironed garments in general; his ruling was that, in certain respects, the rule on Tisha B'Av--indeed for the week of Tisha B'Av--is more stringent than that concerning the mourner during the shloshim period. Through such technical discussions, the rabbis explored the boundaries of the halachah. They learned the limits of specific rules, as well as principles, by comparing and contrasting Tisha B'Av to its halachic model, mourning.

Similarly, the liturgy of Tisha B'Av, which omits certain passages, finds its parallel in the minyan held in the house of mourning. Indeed, at the Tisha B'Av service, the community of Jews sit on the ground, even as the individual mourner does at shiva. The deletion of other portions of the service, such as the omission of *וְלֵב יִשְׂרָאֵל כָּשָׁה* is explained with a reference to the mourner; while this passage is said in the shiva home, it is only said by those who are not in mourning. On Tisha B'Av, all are mourners, and thus do not learn Torah; no one present, then, could say this passage. The omission of this passage, in particular, also

underlines the shaky status of the covenant on Tisha B'Av, just as the relationship between the mourner and God seems shaken after a death. Mourning, thus, serves as a framework for many of the rituals and prohibitions of Tisha B'Av.

Since mourning has several levels, the rabbis had to decide which portion of mourning laws to use as their framework. The Rosh explained the relationship of mourning to Tisha B'Av as "... one should not make Tisha B'Av more stringent than the six days of mourning." In other words, the first day of shiva, which is more rigorous in its rules, is not the model for Tisha B'Av; the other six days of shiva serve as the model. This may have to do with the rabbinic argument over whether the halachah of mourning is de'oraita, from the Torah, or de'rabbanan, of rabbinic origin. Rabbi Meir of Rothenberg, on the other hand, when addressing the issue of wearing tefillin on Tisha B'Av, wrote that "[on] Tisha B'Av, one does not put on tefillin, as on the first day of mourning, since there is no day more bitter than this one, a day established for weeping for all generations." Thus, in at least this instance, Rabbi Meir wanted to make Tisha B'Av more stringent, as during the first day of mourning. The underlying issue for the development of the halachah of Tisha B'Av is which laws of mourning are analogous to the rituals of Tisha B'Av.

In some instances, the rabbis compared the Jew on Tisha B'Av to the onen, the one whose dead lies before him. During this period of mourning, before burying the dead, the mourner is exempt from any positive commandments. More relevantly, it is also forbidden to try to comfort the onen, since his dead is not yet buried. For example, the lamenting on Tisha B'Av when reading of kinot is compared to such the onen: the tragedy lies before the people, and no consolation is yet possible. In addition, the Bet Yosef reports the custom of saying the blessing "Blessed be the true Judge," which is said upon hearing of a death, over either the reading of the Torah or over the book of Lamentations.

The rabbinic use of the mourning framework in crafting the laws of Tisha B'Av is also apparent in the Tur's discussion of a Tisha B'Av which falls on Shabbat. If Tisha B'Av falls on Shabbat, all of its strictures are lifted, postponed until the observation on the tenth of Av. It is taught that there should be no sign of mourning on Shabbat, and similarly, there is no lamenting on Shabbat. The Bet Yosef writes, "it is taught (Ta'anit 29b) that 'if Tisha B'Av falls on Shabbat, one may eat and drink . . . and need not withhold from himself anything.'" The Rosh understands this to mean not only bathing, anointing and wearing shoes, but also to include marital relations. Rabbi Yitzhak, the Tosafist,

on the other hand, compared this situation not to the mourner on Shabbat, but to the one who buries his dead during a festival, when mourning is postponed until afterwards. "Nevertheless," he wrote, "one must observe such customs of mourning having to do with domestic privacy. (Moed Katan 24a) Here, too, on this Shabbat in connection with Tisha B'Av, it is comparable to the situation of the mourner during a festival, and it is forbidden to have sexual relations."

In this case too, however, the rabbis used the framework of the laws of mourning only as a guide. They did not blindly apply the customs of mourning to Tisha B'Av, but instead, applied those laws which would reflect and reinforce the somber, sorrowful mood they sought for this fast day. Thus, they were careful to distinguish between the fast day and the halachah of mourning. As the Tur writes the beginning of chapter 555, "one is not obligated concerning 'overturning the bed' nor for 'wrapping the head,' even though they are customs of mourning." (Ta'anit 30a) Although a baraita teaches that the customs of mourning apply to the Jew on Tisha B'Av, the Tur carefully explains, this only applies to the prohibitions, not to the positive mitzvot of the mourner. He devotes an entire chapter, 555, to a discussion of the customs of mourning which differ from the laws of Tisha B'Av. The statement

that the Jew is like a mourner on Tisha B'Av, then, is a comparative, not a categorical, statement.

In some places, the analogy between mourning and the observance of Tisha B'Av breaks down. For example, as noted above, the Rosh was at a loss to explain the Ashkenazi tradition of not wearing tefillin on Tisha B'Av. He wanted to utilize the laws of shiva as the model for Tisha B'Av, which would permit, indeed mandate, wearing tefillin. The Tur cites Rabbi Hai Gaon, who strove to maintain the analogy through torturous logic. "The mourner whose seventh day of mourning falls on Tisha B'Av," may either continue observing the positive mitzvot of mourning, "such as wrapping [the head], overturning the bed, and the removal of tefillin," until evening, or may stop observing them immediately; the negative commandments, of course, are obligatory on Tisha B'Av. The Tur is naturally confused by this statement, since the mourner is permitted from the first day of shiva onward to wear tefillin. What did Rabbi Hai Gaon mean by "removal of tefillin"?

The Bet Yosef rescues Rabbeinu Hai with a long discussion about the custom of wearing tefillin all day; in the house of mourning, it seems, the mourner would remove the tefillin if a new comforter came to the house. On Tisha B'Av, the mourner may either continue removing his tefillin, or may simply leave them on. None



of this complicated resolution, however, actually explains the custom of wearing tefillin at minchah, and not at shacharit, on Tisha B'Av. That ritual change has more to do with the emotional sense of the day: one should not put on tefillin as usual when the Temple has been destroyed on this day. The halachic authorities were then left scrambling to make their model fit the actual minhagim being observed by the people.

In a similar way, the Tur's discussion--and the Bet Yosef's near silence--on kri'ah is intellectually unsatisfactory. Jews do not rend their garments on Tisha B'Av, he writes, because mourning and kri'ah are two different categories. The Bet Yosef notes that the Ramban, the Rosh and the Ran all agree with this logic. But the argument itself says nothing. This practice is not justified by halachic argument or theory. The reality is that people do not rend on Tisha B'Av. The rabbis were forced to explain that practice. When the law did not appear to match the praxis, the authorities explained the contradiction with fine distinctions in the relevant halachic model. The impulse of the people was not to rend; the explanation only justifies this instinctive decision.

Moved as much by instinct as by rigorous reasoning, then, Jews practiced various minhagim surrounding Tisha B'Av, customs which then acquired the force of law. For example, while the

instinct of some communities was not to rend on Tisha B'Av, as a mourner would, in other places and moments, kri'ah was observed. The Ravad mentioned rending in connection with the reading of Lamentations; he also noted the custom of people to say the blessing that accompanies the rending, "Blessed is the true Judge." And kri'ah appears again in the last two chapters of this section of the Tur, not on the day of Tisha B'Av, but as a ritual for the one who sees Jerusalem or the Temple. Perhaps this was a popular deduction from rabbinic law; if Tisha B'av is compared to mourning, then surely, in the mind of the people if not the rabbis, the analogy should at some point extend to kri'ah. These instances where rabbinic theory and actual practice are not the same begin to illustrate the power of the Jewish people in creating the holiday of Tisha B'Av.

The ritual instinct of the Jewish people, to fill in empty spaces with customs, was crucial in expanding the observances of the Tisha B'Av beyond the fast day itself. Tisha B'Av commemorates a significant loss to the people Israel. The destruction of the Temple forced the Jews to redefine their identity and their ways of relating to God. One fast day in the middle of the summer did not seem adequate expression of Jewish mourning for this tragedy. Rather, the early rabbis, and the Jews themselves, sensed a need



for preparatory time, to build up to the day of lamenting itself, as well as for time after the fast, for a gentle re-entry into normal life. The fact that there was no biblical basis for the pre-fast customs, which resemble mourning, was no barrier to their creation. The minhagim grew, with rabbinic support and justification, even without a model for this body of custom and halachah.

This impulse to increase observances can be seen in two different aspects in the laws of Tisha B'Av. The desire to create customs where there were none helps explain how some of the ritual practices of mourning were pushed back from Tisha B'Av itself to as far back as the seventeenth of Tammuz, and forward through the tenth of Av. In addition, the tendency towards stringency is apparent in the ever-expanding prohibitions surrounding Tisha B'Av. If mourning is the strongest model for Tisha B'Av, the obvious question is when does mourning begin? While the rabbis of the Talmud proclaimed that the Jew on Tisha B'Av is like a mourner, they did not explicitly compare the Jew on the days before Tisha B'Av to any existing halachic category. Rather, they drew upon the underlying principle of both mourning and Tisha B'Av, that one should not seek pleasure, and declared it applicable for the entire month of Av, with even more stringent regulations for the

week of Tisha B'Av itself.

This preparatory time before the fast might well be compared to the ten Days of Awe before Yom Kippur, and even to the month of Elul. Yom Kippur needs the build-up of the days of repentance to get worshippers into the proper mood. The saying of Slichot for the month of Elul, in turn, prepares the Jew for the task of t'shuvah, of self-examination and return to God. This tendency to push the flavor of a holiday back in time is evident elsewhere in Jewish life. During the thirty days before a pilgrimage festival, Jews begin to study the halachah of the approaching holiday. And, in striking parallel to the rabbinic instruction to "decrease in happiness once Av enters," the rabbis also teach that, "from the time Adar enters, one should increase in happiness." The days and weeks before Tisha B'Av lay the groundwork for the holiday itself. They establish the mood and help the Jew to truly become a mourner of Zion.

The rabbis set apart this preliminary time of mourning already in the Talmud. "From the beginning of Av, one should decrease in happiness." (Ta'anit 26b) Without citing any particular halachic justification or governing model, the sages stated that this is the basis for all halachic rulings concerning activities during the month of Av, before Tisha B'Av. The

discussion which followed over the next several centuries revolved around what this principle entails. Must one simply decrease business of happiness, or should all business be curtailed? The Bet Yosef even cites the case of the B'nai Bodin, who did not transact any business from the beginning of the month until the fast. He dismisses this practice as being without basis in the law, and calls it a "superfluous stringency." At times, his decision implies, the ritual impulse can go too far.

While the underlying tenet was that Jews should decrease in happiness in the days before the fast, this principle needed to be fleshed out into practical halachah in order to be effective. In tractate Yebamot (43a), the rabbis taught that from the beginning of the month of Av, "the people decrease their business activity, and refrain from trade, from building and from planting. One may betroth, but one should not consummate a marriage nor make a feast of betrothal." The practical outcome of the idea that Jews should decrease in happiness is that certain everyday activities should be curtailed, and marriage, which is the consummate joy, may not occur at all. These regulations guide the Jew into the somber mood of mourning for the Temple.

The application of these laws, however, is not all that clear. Halachic authorities have disagreed about the subtle

nuances of applying the regulations, and, in searching to justify their particular response, or the existing custom of the people, they have fallen back on still other halachic structures as models. Thus, in the Bet Yosef's extended discussion of the prohibition on building and planting, the sources he cites draw heavily on the rules of building and planting during the public fasts for rain. In those instances, some of the authorities used the analogy to the public fasts extensively: in that case, only building and planting of happiness is forbidden. Therefore, here, too, in the case of Tisha B'Av, the prohibition only applies to activities of happiness. The Rambam, the Rosh and the Ran all appear to have reasoned this way.

But, as the Tur himself writes, others made a distinction between the prohibition on building and planting with respect to Tisha B'Av and that concerning the public fasts. The language of the prohibition is different; the rule relating to Tisha B'Av does not explicitly specify "of happiness," whereas this qualifier is understood by all authorities to apply to public fasts. And while everyone agreed that happiness refers to building and planting surrounding a wedding with respect to both Tisha B'Av and the public fasts for rain, not everyone agreed that the prohibition is the same for both. Nevertheless, even the poskim who

differentiated between the two prohibitions still needed the public fasts as a model to help them clarify the nature of the halachah of Tisha B'Av. That is to say, whether the rule is the same or different in the two instances, the comparison between the two fasts is essential to the rabbis attempting to define and build up the customs of Tisha B'Av.

The Tur compares the generic prohibition on building and planting to the prohibition on "all business trade." Bet Yosef is concerned with this wording, and he notes that one need only decrease one's business during the month of Av, not actually cease from it. The Tur's point, however, was that the issue of happiness is not relevant to either rule. Rather, he writes, building planting, business activity and even eating (on Tisha B'Av itself) are prohibited "so that it will appear as though we are in mourning for Jerusalem." (551) This, too, is hotly disputed by the authorities throughout the centuries. Some authorities applied the principle of "decreasing in happiness" to this period of time, but not the laws of mourning.

In the Bet Yosef, the sources utilize the comparison to the public fasts, with their qualification that the prohibition only applies to cases of happiness, to justify the continuation of business as usual during this period. These halachic gymnastics

are necessary not only because the authorities are struggling to find and apply underlying principles to the scattered law of Tisha B'Av. They are also necessary because of the minhagim of the people. As the Tosephot noted, in a comment on Yebamot 43a, "it is not the custom of most of the world to diminish business activity from the time Av enters." Thus, the Tosephot reasoned, the people must believe that the regulation applies only to cases of happiness. Either that, they wrote, or the people are simply disregarding the halachah. The Bet Yosef writes that it could well be argued that one only need do a little less business than usual to fulfill this commandment, but not decrease it significantly. In this instance, it is clear how the ritual instinct of the people influences the halachah. In other cases, popular minhagim become halachah and obligatory. Here, an otherwise clear rule is virtually explained away in order to justify the behavior of the Jews.

As the fast approaches, the prohibitions become more stringent. The rules concerning the week before Tisha B'Av are rules which also apply to mourning. Once again, the rabbis' attempt to set a mood, and fill the ritually empty space is evident in the way the rituals of mourning are made applicable to the whole week in which Tisha B'Av occurs. Thus cutting hair, shaving and



doing laundry, even to store it away, are prohibited during the week of Tisha B'Av. While not all of the customs of mourning, such as not wearing shoes or sitting on the ground, are applied to this week, those rituals which are observed are specifically noted as aspects of mourning by the sources. Thus Ramban, in discussing the prohibition on hair-cutting, said it is "like that of a mourner," including the exceptions to the rule. One who is already in mourning before this week is "like the case of the mourner whose mourning is multiplied," according to the Bet Yosef. Already during the week of Tisha B'Av, the Jew is halachically similar to the mourner in many respects.

Minhagim which were initially ordained for the week of Tisha B'Av often were read back to the beginning of the month of Av. Thus, the Ravad wrote that "our ancestors' custom was not to bathe from Rosh Hodesh [until the fast] and it is incumbent upon us to uphold [this custom] because [one should not] 'forsake the Torah of your mother.' (Proverbs 6:20)" (Tur, chapter 551) The force of the minhag here is to make the halachah more stringent.

An even clearer case of the ritual tendency towards stringency is seen in the prohibitions on meat and wine. The Tur quotes Rabbeinu Shmuel b. Natronai who wrote that there are versions of Ta'anit 26b which teach that one should not consume



meat or strong drink. This, he noted, is the basis for the custom in some places of abstaining from meat and wine during the week of Tisha B'Av. Some, he added, even do this from Rosh Hodesh until the fast. The Tur, after discussing several other rules of the week of Tisha B'Av, returns to this issue near the end of chapter 551. There he notes that all Jews refrain from meat and wine from the beginning of the month of Av until the fast, except on Shabbat, when all signs of mourning are forbidden.

It is the custom of some, the Tur wrote, to fast from the seventeenth of Tammuz until Tisha B'Av, while others desist from meat and wine. These customs of mourning and decreasing in happiness, since both wine and meat are associated with happiness, are now pushed back three weeks, to the previous public fast. This period of time is called *ל'ן המצרים*, the time between the straits; it is the period between the breaching of Jerusalem's walls and the destruction of the Temple itself. As early as the Yerushalmi, these three weeks were noted as time unto themselves; Sa'adia compared them to the three weeks of Daniel's fast. Thus, by the time of the Tur in the fourteenth century, the onset of the first rituals of mourning had moved from the ninth of Av all the way back to the seventeenth of Tammuz.

As the fast itself approaches, the restrictions become more

stringent. The Tur devotes an entire chapter to the day before Tisha B'Av. The interesting aspect of the customs of the eighth of Av revolve around the onset of Tisha B'Av and mourning. On the one hand, the Jew is urged to eat legumes and other round foods as a symbol of mourning which, technically, has not yet begun. Others compare the stance of the Jew on the eighth of Av to the onen; he is humbled, eating only the bare minimum and in a downcast position. (cf. Ta'anit 30a) On the other hand, the sources struggle to determine when, halachically, the fast, with all of its restrictions, actually begins. Does the prohibition on washing begin with the cessation of eating, or with the onset of twilight, when other prohibitions, such as the one on wearing shoes, take effect? The tension is between the "feel" of the day, as one of mourning and humility, and the halachic need for clarity of boundaries.

This tension is apparent in many aspects of the day. For example, Rabbeinu M'shulam's custom was not to say zimun on the day before Tisha B'Av. The Tur expresses astonishment, since "even the mourner is obligated to say zimun" when he eats with three. The instinct is obvious: saying zimun is an honor, and as Tisha B'Av approaches, the Jew stands humbled and chastened before God. But the legal basis for this custom must be found in the tangled logic

of the Bet Yosef, who justifies the felt minhag with a ex post facto explanation; Caro assumes that R. M'shulam must have had a halachic reason for his practice, however odd: the three eat as individuals, and thus there is no obligation. This custom is adopted because it has the right mood; the fact that the model of mourning, no matter how it is stretched, cannot accommodate such a minhag testifies to the analogy's weakness, but does not speak to the minhag's validity. Rather, the minhag's validity find its subsequent proof in legal theory.

After the long build-up to Tisha B'Av, climaxing on the day itself, it is not easy to revert back immediately to everyday life. Thus, the tenth of Av becomes a transition day, from the intense lamenting of Tisha B'Av to the ordinariness of the eleventh. The instinct to observe mourning on the tenth is evident even in the Talmud. Rabbi Yohanan said, "Had I been there I would have fixed [the day of mourning on the tenth of Av] since the majority of the sanctuary burned on that day." (Ta'anit 29a) Rabbi Avin, according to the Yerushalmi (Y. Ta'anit 25b) lingered over the day of mourning, fasting on both the ninth and tenth. Rabbi Levy, in a concession to reality, advocated fasting on the ninth and the evening of the tenth, since "a person does not have enough strength to fast the whole day of the tenth." In the Tur's time, the tenth

was observed, at a minimum, by not eating meat or wine, thus continuing this most basic sign of lamenting. Thus the principle of "decreasing in happiness" was extended by Jews and Jewish authorities as far back as the seventeenth of Tammuz all the way through the tenth of Av. The laws of Yom Kippur and especially those of mourning serve as guidelines to halachic decision-making; the underlying sense of lamenting and unhappiness meld the various frameworks and customs into the completed holiday of Tisha B'Av.

The mourning for Zion and for the Temple, however, is not contained by the laws of Tisha B'Av. The last two chapters of this section of the Tur reflect the way the impulse to mourn spills over into other activities. The underlying principle is the same: because of the loss of Jerusalem and the Temple, happiness should decrease. Thus, the Tur cites the decree as "in everything of joy, there should be in it a reminder of the destruction of the Temple."

The rabbis applied this guideline, as early as the Talmud, to such ordinary activities as whitewashing a house. The Bet Yosef cites the rule of thumb in these matters by telling the story of Rabbi Joshua (Baba Batra 60b) ". . . not to mourn at all is impossible. . . but to mourn overmuch is also impossible. . . ." Thus, the sages leave "halachic loopholes," allowing Jews to

whitewash their homes by leaving some small defect, whether it be through mixing sand or straw into the plaster, or by leaving bare a square cubit as a reminder of the Temple. The halachic authorities argued over the details of this law, as well as the law concerning crowns for grooms and the city of gold for brides. But, whatever the fine points of the halachah and its applicability, what these laws do is force a constant awareness of the Temple's loss at moments of joy and fulfillment. The bride may still wear a crown, but it is altered, without a "city of gold." The house is not as completely white as it could have been. Music, perhaps the ultimate expression of joy, is muted and even silenced when not used in connection with a mitzvah. The memory of the Temple's destruction thus overflows from the day of Tisha B'Av into the life of every Jew, every day of the year.

The last chapter of this section of the Tur brings the halachah back to the Temple. Instead of focusing on a particular time, when all Jews must mourn the Temple, on Tisha B'Av, the Tur records the laws of a particular place. What is a Jew commanded to do when s/he sees the cities of Israel in ruins, when s/he comes upon Jerusalem, and finally sees the remains of the Temple? The instinctive analogy to mourning is evident in these laws. The proper response is to rend one's clothing, all the way to the

heart, just as the mourner does.

That mourning serves as the halachic model in this instance is made explicit by HaRav HaMagid. The Rambam's reasoning, he wrote, "was based on the statement in Moed Katan: 'these are the rending one may not repair: the rend over one's father. . . and over the cities of Judah and over the Temple and over Jerusalem.' He reasons that all of these are equivalent rending." In other words, one rends over the Temple in the same way, according to the same halachah, as one rends over the death of a mother or father.

In the minds of the rabbis, in the hearts of the Jewish people, mourning for the Temple could not be confined to one day or one activity. The spartan fast of Tisha B'Av, mentioned along with the other three public fasts in the simple verse of Zechariah, was not enough of a ritual to encompass the grief and overwhelming sense of loss experienced by Jews at their Temple's destruction. Over the years, the sages attempted to flesh out the fast day. The halachah grew, as generations of rabbis looked to the legal models of Yom Kippur, the public fasts for rain, and especially the rituals of mourning to inform their development of the laws of Tisha B'Av. Comparisons to other frameworks helped the authorities both craft halachah, and justify existing minhagim, but they do not contain, or explain, all the rites connected with



lamenting over the destruction. The people themselves filled in the empty ritual space with heart-felt customs; in other cases, the explicit halachic principle was ignored as untenable or simply out of step with the way communities observed the fast. These minhaqim were subsequently justified as halachically valid, and often later acquired the force of law themselves. That the rituals of Tisha B'Av were pushed back in time, expanded and elaborated upon and even extended to other aspects of life, both halachically and in the lived experience of the Jewish people, reflect the centrality of the destruction in Jewish life. The available material, taken from other Jewish moments, was absorbed by the rabbis and by the people, and transformed into a new thing: Tisha B'Av.



ארבעה טורים: אורח חיים  
Arba'ah Turim: Orah Chaim  
הלכות תשעה באב ושאר תעניות  
The Laws Concerning the Ninth of Av and the Other Fasts  
Chapters 549-561

549) We read in the last chapter of Ta'anit (26a,b): "Five events happened to our forefathers on the 17th of Tammuz, and 5 [events] on the 9th of Av. On the 17th of Tammuz, the Tablets [of the law] were broken; the Tamid offering was halted<sup>1</sup>; a breach was made in the [walls of the] city; Apostomos burned the Torah (scroll of Law); and he placed an idol in the Temple<sup>2</sup>. On the 9th of Av, it was decreed that our fathers would not enter the land<sup>3</sup>; the Temple was destroyed, both the first and second time; Bethar was captured<sup>4</sup>; and the city [Jerusalem] was ploughed" (Ta'anit 26b), for Turnus Rufus ploughed [destroyed] the Temple (Ta'anit 29a)<sup>5</sup>. And Rabbi

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**Bet Yosef:**

<sup>1</sup>In the Mishnah there, Rashi explains, "the Tamid offering was halted," because "the kingdom forbade them from offering sacrifices anymore."

<sup>2</sup>Mennassah established it, according to the explanation in the Targum Yerushalmi, on the throne of heaven (cf. Isaiah 66). The Yerushalmi (Ta'anit 4:5) explains that it was a likeness of Mennassah which was established; another says Apostomos set up an image of himself.

<sup>3</sup>The generation of the wilderness: "Surely not one of these people [this evil generation shall see the good land that I swore to give to your fathers. . .]." (Deut. 1:35)

<sup>4</sup>The big city, where Israel used to tread, as in Nezikin, (Gittin 57a): "for the leg of a litter, Bethar was destroyed."

<sup>5</sup>In the Gemara, Scriptural passages are brought regarding the breaking of the tablets and the breaching of the city, and the establishment of an idol in the Temple: they all happened on the seventeenth of Tammuz. So, too, the Tamid offering ended and the Torah burned on the seventeenth of Tammuz; the rabbis had a tradition that all these events happened on the  
(continued...)

Akiva interpreted: "Thus says the Lord, 'the fast of the fourth and the fast of the fifth and the fast of the seventh and the fast of the tenth will be to the House of Judah for joy and gladness.'" (Zech. 8:19) The fast of the fourth, this is the 17th of Tammuz, for on it the city was breached, as it is written/said: "In the fourth month, on the ninth of the month, the famine grew stronger in the city" (Jer. 52:6) and it is written: "a breach was made in the city." (Jer. 52:7) Why is it called the fourth? Because it is the fourth month, as the months are numbered [from Nisan]<sup>6</sup>. The fast of the fifth, this is Tisha B'Av, for on it the House of our God was burned, as it is written, "In the fifth month, on the tenth of the month," etc. (Jer 52:12). And why is its name called the fifth? Because it was the fifth month. The fast of the seventh month, this is the third of Tishrei, for on it Gedaliah ben

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<sup>5</sup>(...continued)

seventeenth of Tammuz. It also uses Scriptural proof that the decree in the wilderness and the destruction of the first Temple were on the ninth of Av. A baraita teaches that the Second Temple was destroyed and Bethar was captured and the city was destroyed on that very day.

<sup>6</sup>But in the baraita (Rosh Hashannah 18b), it reads "this is the ninth of Tammuz," not the seventeenth. The Tur wrote it this way because of the connection to the destruction of the Second Temple, which was more serious, when the breach happened on the seventeenth of the month. In addition, in the Yerushalmi (Ta'anit 4:5), there is a baraita which states: "the fast of the fourth and the fast of the fifth. . . the fast of the fourth, that is the seventeenth of Tammuz." There, a difficulty is raised. "It is written, 'on the ninth of the month, the city was breached,' (Jer. 39:2) and yet you say this? Rabbi Tanhum bar Hanilai said, 'There is an error in calculation here.'" And the Tosephot wrote (Rosh Hashannah 18b) that "our Talmud disagrees with his opinion which says they made an error in their calculations, and Jeremiah did not want the verse to be different from the way had they had reasoned [even though Jeremiah knew the correct date.]" Since the Yerushalmi reads "the seventeenth," and, since according to all opinions our practice is to declare a fast on the seventeenth of Tammuz, the Tur reads as it does.

Ahikam was killed<sup>7</sup>. And why is it written here [in Zech. 8:19]? To teach you that the death of any righteous [person] is equivalent to the burning of the Temple of our God. And why is it called the seventh? Because it was the seventh month. The fast of the tenth, this is the tenth of Tevet<sup>8</sup>, on which the king of Babylon invested Jerusalem, as it is written: "And the word of the Lord came to me in the ninth year in the tenth month on the tenth of the month, saying 'Son of Man, write you. . . [the name of the day, even of this very same day; this very day the king of Babylon hath invested Jerusalem.'" (Ezekiel 24:1-2)]. Why is it called tenth? Because it is the tenth month. Would it not have been appropriate for this one to have been first in the order of evil dispensations?" (cf. Rosh Hashannah 18b) But instead, they are written in the order of the months. Even though it is written in Scriptures [concerning] the fast of the fourth, "on the ninth of the month the city was breached," today, we fast on the 17th of the month [cf Ta'anit 28b]. [Because] at first, they ordained the fast on the ninth of it [the month], since on the ninth, the city was breached the first

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<sup>7</sup>Rabbeinu Yerucham wrote, "The third of Tishrei, on which Gedaliah ben Ahikam was killed--some say that he was killed on Rosh HaShannah, but the fast is postponed to an ordinary day."

<sup>8</sup>Even though, in our Gemara, Rabbi Simeon ben Yochai does not agree with Rabbi Akiva, but rather says the fast of the tenth is the fifth of Tevet, on which the news arrived in the Dispersion that the city had fallen, the Tur does not reason this way, but rather follows the words of Rabbi Akiva, since the universal custom is like him.

time. But the second time, the city was breached on the 17th, and since the second time it was breached on the 17th, it was ordained to fast on the 17th of [the month], since the destruction of the Second Temple was more grievous for us<sup>9</sup>. In any case, the fast of the fourth is for [marks] the breaching of the city and the calamities multiplied upon it<sup>10</sup>.

550) It is objected in the Gemara (Rosh Hashannah 18b): "The prophet calls these days both days of fasting and days of gladness. Rav Pappa replied: In the time when there is peace, and no persecution, as when the Temple existed, they are joy. In the time when there is persecution and no peace, [they are] fast[s]. Nowadays/today, when there is no peace and no persecutions, those

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<sup>9</sup>The Tosephot agree, saying, "this is the ninth of Tammuz, for on it the city was breached. This was the case with the First Temple, but the second time, it was breached on the seventeenth. Because of this, we observe the fast on the seventeenth." The Ramban says likewise, in his book Torat Ha'Adam: "On the ninth of Tammuz, one need not fast, but on the seventeenth of the month, there is a fast, since they took it upon themselves from the beginning. On that day the city was breached the first time, and the second time it was breached on the seventeenth. Thus, it is the custom to fast on the seventeenth, because the second destruction was more serious. And in any case, the fast of the fourth marks the breaching of the city, when calamities multiplied upon it. Similarly, in Megillah 5b, the seventeenth is a fast, but the ninth of the month is not declared a fast, for they did not want to obligate them to fast on both the ninth and the seventeenth. They had obligated themselves for four fasts, and one should not trouble the community more than necessary."

<sup>10</sup>The Tur says that although the fast of the fourth is really the ninth of Tammuz, as Scripture says, it is better to call the seventeenth of Tammuz the fast of the fourth, and make all the rules of the ninth apply to it. This is because of the breaching of the city, on the seventeenth, and the calamities which multiplied upon it. Therefore, the halachah is: even though the fast of the fourth is, as Scripture says, really the ninth of Tammuz, in his opinion all the rules of the ninth of Tammuz are really obligatory for the seventeenth of Tammuz.

who desire, fast, and those who desire, do not fast."<sup>11</sup> And [the phrase] "there is no peace," means [is explained as] that the Temple has been destroyed. "There is no persecution," in any place known in Israel. If the majority of Israel agrees and they accept upon themselves [take it upon themselves] that they will not fast, one should not fast. If most of the community desires, then one

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<sup>11</sup>It is taught (Rosh HaShannah 18b): "For six new moons, the messengers go out: for Nisan because of Pesah; for Av because of the fast. . ." and in the Gemara, there is an objection, that they should also go out (to the Diaspora) for Tammuz and Tevet. "Rav Huna bar Bizna said in the name of Rav Simeah Hasidah: 'What is the meaning of the verse, 'thus saith the Lord of Hosts: the fast of the fourth and the fast of the fifth and the fast of the seventh and the fast of the tenth shall be to the house of Judah joy and gladness.' (Zech. 8:19) He calls them a fast and he calls them a gladness. In times when there is peace, they shall be for joy and gladness, and when there is no peace, fasts.' Rav Papa said, 'This is what it means. In times when there is peace, they shall be for joy and gladness; when there is persecution, fasts. When there is no peace and no persecution, those who desire, fast, and those who desire, do not fast.' If that is so, is Tisha B'av also [optional]? Rav Papa said: 'Tisha B'av is different, since on it, calamities multiplied.' Rashi explanation of "Rav Huna bar Bizna. . ." is that "all of these days are fasts today, in our time, when the Bet HaMidrash does not stand."

"Peace" is when Gentiles do not rule over Israel.

"They will be for joy and gladness," when it is forbidden to fast.

"When there is persecution," it is obligatory to fast.

"Those who desire do not fast." Since it is permissible, we do not bother to send out messengers [to the Diaspora] about it [to announce it].

The Ramban explained that there is peace when the Bet HaMidrash stands. What is the difficulty here? "They are called fasts, and they are called gladness." It is right to say these days are fasts now, and in the future they will be gladness. (But this is the literal meaning of the verse. So what is the difficulty?) The answer is that this scriptural passage is an answer to the question "Should I weep in the fifth month, separating myself, as I have done these so many years?" The answer is: "The fast of the fourth and the fast of the fifth. . . will be for the House of Judah for gladness and joy and feasts, if you will love the truth and peace." We learn thus that all these fasts will be for gladness and joy, and will not be fast days, for the Lord's will is not for fasts, as [it is written] "if only you will love truth and peace." Scripture comes to say that they will not fast on those days, from that day forward. Later on, he did not use the language of "fasts," which means the days of the fourth month and the fifth, and so on, will be for gladness and joy; this means the fasts days. When he said "weeping in the fifth month," this must mean the fast day he mentioned previously, although he did not specifically say "the weeping is the fast of the fifth month." Since we derive the fasts from this verse, it also comes to teach us that even though they (the ones who returned from Babylon to rebuild the Temple) did not have to observe the fasts, if there is persecution and peace, that is, if the prior conditions return, the fasts once again are obligatory.



should fast. Nowadays, they desire, and they customarily fast. Therefore, it is forbidden "to break through the fence" [i.e. one must fast]. And how much the more so in our generation! The law is: everyone is obligated according to received tradition (מסורת) and from a decree of the prophets (תקנת נביאים) to fast. But everyone is permitted with respect to bathing, anointing, and wearing sandals, and "using the bed"/marital relations, and one need not desist from them while it is still day, except for Tisha B'Av. And if they fall on Shabbat, they are postponed until after Shabbat.<sup>24</sup>

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<sup>23</sup> From "there is no peace since the Temple . . ." through "the decree of the prophets" is from the Ramban, Torat Ha'Adam. He also wrote that it is now the custom for all to fast on these fast days, and they are obligatory on all Israel, until the Temple is rebuilt.

<sup>24</sup> The Ran wrote, in his commentary to Alfasi, in the first chapter of Rosh Hashannah (fol. 5a), in the name of Ramban, that "since all four fasts are public fasts and the prophets ordained them, and all ritual stringencies of the fast apply on them, you must desist from all of them while it is still day, and it is forbidden to bathe, anoint, wear sandals and have marital relations, as on Tisha B'Av. But since nowadays, it is the custom to fast [on these other fast days], but not to observe these restrictions, this statement means originally [one had to stop bathing, etc. while it was still day]. Originally, it was decreed and forbidden for everyone." The Tosephot wrote, in Ta'anit 13b, that during the other fasts, except for Tisha B'Av, it is permitted to bathe, even in hot water, Ravad agreed. But Rabbi Yoel, his father, forbade bathing in hot water. Mordechai wrote in the name of Ravad that it is the universal custom to permit it. This is the adopted custom.

<sup>25</sup> In Megillah 5a, the Mishnah teaches "the day of delivery of wood for the priests [and the people], on Tisha B'Av, the festival offering and the day of assembly may be postponed, but may not be kept sooner [than the proper date]." Rashi explains, "in the instance when Tisha B'Av which falls on Shabbat, and the same applies for the seventeenth of Tammuz and the tenth of Tevet. This is applied to Tisha B'Av explicitly because on that day, calamities multiplied, and everyone fasts on it. But the rest of the statutory fasts are discussed in Tractate Rosh Hashannah: 'those who so desire, fast; those who so desire, do not fast.'" The Rambam also wrote, "if one of the four fasts happens to fall on Shabbat, we postpone it until after Shabbat. If it falls on Friday, one should fast on Friday." The Magid Mishneh wrote (on Hilchot Ta'anit 5:5, Mishneh Torah) that if Tisha B'Av: if it falls on Shabbat, it should be postponed, and not observed earlier, because calamities are not lamented in advance (Megillah 5a). The same is obviously true for the other (continued...)



551) A Bet Din may not annul [as a regular observance] Tisha B'Av, since on it, the calamities multiplied (Rosh Hashannah 18b).<sup>15</sup> From the beginning of Av, one should decrease [expressions of] happiness. (Ta'anit 26b) And a Jew who has a court case with a Gentile should postpone it, because of bad luck (it is an unlucky time). (Ta'anit 29b) It is taught in chapter פ"ד (Yebamot 43a) that "before this time,"<sup>16</sup> that is, from the beginning of the

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<sup>14</sup>(...continued)

fasts. And if the fasts fall on Friday, it is written: "thus was the halachah decided--fast and complete it [one should fast until dusk on Friday]" (Eruvim 40b-41a). Rabbi Abraham ben David wrote, "They did not say to complete it, to the end of the day, but rather that one should not eat prior to sunset. But once the sun has set, it is of the period of time we add to Shabbat, and so is already part of the sanctity of the day [that is, it is already Shabbat]. If one wanted to eat, he may eat, since he has entered into the boundaries of Shabbat, when it is not appropriate to fast." Rabbi David Abodraham wrote in Hilchot Ta'anit, "the tenth of Tevet differs from the other fasts, for if it falls on Shabbat, it cannot be postponed until the next day, because it is written about it 'on this very day,' just as it is concerning Yom Kippur." But the Bet Yosef does not know the source from which Abodraham learns this. Abodraham wrote further, "the tenth of Tevet at times falls on Friday, and one should fast on it, but the other fasts never fall on Friday." He wrote in the name of Shibolei HaLeket that "one should not read from the Torah at minchah on Friday when one of these four fasts falls upon it." But this is not the custom. Abodraham wrote "if the tenth of Tevet falls on Friday, one should pray the Shacharit service as on other fasts, and so, too, at minchah, but one should not say the confessions, and one should not prostrate oneself on one's face at minchah, because it is Erev Shabbat." He wrote further that "on a Shabbat which immediately proceeds [one of] these fasts, after the reading of the Haftarah, before Ashrai, the prayer leader must announce [the fast] to let the community know on which day the fast will fall. And he should say, 'Israel, hear that fast z is on day x. May the Holy One Blessed be He change it into joy and gladness, as He has promised us (in Zech. 8:19) in His consolation, and let us say, Amen.' But for three fasts, one does not announce them: Tisha B'Av, Yom Kippur and Purim."

<sup>15</sup> If you say that this is also true for the seventeenth of Tammuz, on which calamities also multiplied, the Tosephot refuted this (Rosh Hashannah 18b), saying that the destruction of the Temple was more severe, and the seventeenth of Tammuz does not resemble Tisha B'Av, on which one calamity [the Temple's destruction] occurred twice.

<sup>16</sup>Rashi explained (Yebamot 43a) that "before this time" means "preceding the week in which Tisha B'Av occurs." [The Gemara itself (Yebamot 43a) says that "before this time" means prior to some point before Tisha B'Av itself; the question, then, is what time before Tisha B'Av does "before" (continued...)]

month [Rosh Hodesh Av] until the fast, "the people decrease their business activity, and refrain from trade, from building, and from planting. One may betroth, but one should not marry nor make a feast of betrothal," for a betrothal without a feast has no joy. But a marriage, [even] without a feast, does have joy. Rabbeinu Nissin permits betrothal even on the very day of Tisha B'Av. Thus we find it in the Yerushalmi, which it explains that the reason is "so that another one does not precede him." (Y. Ta'anit 7b, 25b; cf. Bavli Moed Katan 18b)<sup>17</sup> Furthermore, it is said in the Yerushalmi this [prohibition] applies to "a building of joy, but if its walls are leaning and stretched out and tending to fall, it is permissible."<sup>18</sup> (Y. Ta'anit 25b; cf Y. Ta'anit 7b, Y. Moed Katan 4a)<sup>19</sup> A "building of joy" is explained in the first chapter of Megillah (5b) as the building of a bridegroom's chamber for one's son; and a "planting of joy" is a royal tree [such as a king

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<sup>16</sup>(...continued)  
 this time" apply] Ramban wrote in Torat Ha'Adam (Chavel ed., p 244), "before this time" is to say "from Rosh Hodesh until the fast." Our Rabbi, the Tur agrees with Ramban.

<sup>17</sup>Rambam wrote in Hilchot Ishut 10:14, Mishneh Torah, that "it is permitted to betroth on every ordinary [non-festival] day, even on Tisha B'Av, whether during the day or at night.

<sup>18</sup>The Rif and the Rosh wrote in the first chapter of Ta'anit (12b; 14b) [regarding public fasts for rain] that "if they do all this, and they are not answered, then they decrease in business and in building and planting, and it is taught about this: building is a building of happiness; planting is planting of joy."

<sup>19</sup>In the last chapter of Ta'anit, it is written that "from the time Av enters, they decrease in expressions of happiness." (Bavli Ta'anit 29a,b)

would plant] which is explained as one that is stretched out in the shade in order that he might tarry in its shade.<sup>20</sup> According to this said above, if its walls are leaning, it is permitted, even with respect to the walls of a bridegroom's chamber, for it says that it is permitted if it leans.<sup>21</sup> But there are those who say

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<sup>20</sup>This is derived from that which is taught in Ta'anit 12b, about the public fasts. "If they do all this and are not answered, they should decrease in business, building and planting, in betrothal and marriage." And it is taught about this: "building' is a building of happiness [for happy reasons], and 'planting' is a planting of joy [for joyous purposes]. What is a building of happiness? Building a bridegroom's chamber for one's son. What is a planting of joy? Planting a royal banqueting tree." (Ta'anit 14b) Our rabbi, the Tur, did not need to bring it from the first chapter of Megillah, where it is brought in only by association, because in Ta'anit 14b, it is the main subject itself. [The Bayit Hadash, however, explains that the Tur wants to demonstrate that we learn the laws of the festivals from one another. In Megillah 5a, the prohibition against learning Torah on a fast day is used to learn something about Purim; if Torah study is forbidden on a public fast as a sign of happiness, then certainly it is permitted on Purim, for the same reason. The Tur, the Bayit Hadash argues, uses this passage from Megillah to show that, if we can learn the laws of Purim from the public fasts, then certainly we can derive the laws of Tisha B'Av from them. The Talmud already draws this analogy; thus, we must be able to. This is yet another example of how analogy functions to create the laws of Tisha B'Av in particular, and the halachah in general.)

<sup>21</sup> "This is to say that anything which is not part of a bridegroom's chamber, even if they [its walls] do not lean [is permitted]; [this is true] also because the baraita does not forbid anything which is not connected to marriage." Thus wrote the Rosh, in the first chapter of Ta'anit, with respect to the public fasts on the Yerushalmi, which said, "if its walls are leaning to fall, they [should] tear it down and [re]build it," (Y. Ta'anit 7b) that is, the walls of a bridegroom's chamber.

Rambam wrote in Hilchot Ta'anit 3:8, Mishneh Torah, "if all these pass and they are not answered, they should decrease in business and in building of happiness, such as painting and decorating, and all planting of joy, such as myrtle and aloe trees. . . ." The Ran wrote similarly, at the end of the first chapter of Ta'anit, "Based on the statement in the Yerushalmi which taught about building of joy, that if its walls are leaning, they should tear it down and [re]build it. This means that when it says 'what is a building of happiness? building a bridegroom's chamber for one's son,' it is not that alone [that is, a building of happiness is not only a bridegroom's chamber] but rather this means that this rule applies to all buildings which are not necessary, and which are only needed for pleasure and for profit in the world."

And he wrote further, in the name of Rabbeinu Hai Gaon, "since it equates building, planting, betrothal and marriage to business, what is the case with respect to business? Just as business activity is voluntary and forbidden--provided it is connected to happiness--so these other activities are forbidden when they are matters of happiness. But for the one who does not have a bridegroom's chamber at all, who has no wife or children, surely it is a case of mitzvah, despite the fact that it involves happiness, it is permitted." And even though it [the sections of the Gemara on which this analysis is based--i.e. Y. Ta'anit chapter 1] seems connected to the issue of "if the public fast passed and they are not answered," it seems apparently that it does apply in this case, (continued...)

that since our Gemara forbids simply "building," it is referring to all [kinds of] buildings<sup>22</sup>, as in the way it forbids all business trade<sup>23</sup> - just as eating is forbidden in all ways, so

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<sup>21</sup>(...continued)

in the period of time from Rosh Hodesh to Tisha B'Av, for these two periods of time [the first nine days of Av, and the time of public fasting for rain] are like each other. But it is not our custom to marry women at all [during this time], even for the one who has neither a wife nor children, because it is unlucky. It is possible that Rav Hai Gaon only said it [that certain men could marry] about [the period of time when] "the public fasts passed and they are not answered." But from Rosh Hodesh [Av] until Tisha B'Av, it is stringent, and even though one has neither wife nor children, it is forbidden [to marry]. Whether it is because this time is more stringent than one's time of mourning, or whether it is because it is a short period of time and is not the same as "the public fasts passed and they are not answered," which is a long period of time, it is correct in any case [that marriage is prohibited].

The Tosephot wrote, concerning "the public fasts passed" in Megillah 5b that this [time period] is more stringent than Tisha B'Av, on which one may betroth. And the Tosephot also wrote, in the first chapter of Megillah, "they should decrease in business" means 'of happiness.' It is like building and planting, in the adjacent section [just above]. In Yebamot 43a, they wrote, "some explain that 'business' also implies [business] concerned with happiness, such as the needs of the huppah. But we disagree with this. It does not appear forbidden except in the case of the [wedding] feast itself. And it appears that increasing business--that is, doing more business than on other days--is forbidden." [In other words, since, in the other cases, we have associated the prohibitions as relevant only when relating to happiness, some say that this is how the restriction on business should also be read. But the Tosephot answer that there is no reason to believe that wedding expenses are forbidden during the time; only the feast itself is prohibited. Thus, if business is to be "lessened," it means literally that one should do less total commerce, not just "happy" trade, during that period.]

<sup>22</sup>That is to say that even though in the Yerushalmi on our Mishnah "once Av enters, they should decrease in [expressions of] happiness," says this refers to building of happiness, but if its walls are leaning, they tear it down and [re]build it, which implies that this comes to teach that it does not say decrease building once Av enters, but rather decrease only in "building of happiness." But, since our Gemara in Yebamot forbids simply "building," it implies, all [kinds of] building. And even though in our Gemara, in the first chapter of Megillah (5b) and the first chapter of Ta'anit (14b), it is taught "decrease in building and planting. . .," this refers only to those of happiness, this applies the issue of public fasts, but from Rosh Hodesh [Av] until the fast [it is not this way]. For it is taught simply that one should "decrease building and planting," which implies even those which are not of happiness are forbidden.

<sup>23</sup>It appears that this is not decisive, for look at the language used in connection with the public fasts, that "they should decrease in business and in building and in planting." Nevertheless, it says in the Gemara that it is not forbidden except in the specific cases of building and planting of happiness alone.

(Ta'anit 14b) Rather, the essence of the claim is that since in our Gemara, simply "building" is forbidden, with respect to [the decrease in activity] from Rosh Hodesh until the fast, and it is not (continued...)



<sup>23</sup>(...continued)

explained in this case that [it is] only concerning happiness, as it is explained with respect to public fasts. So we see that even [with respect to activity] which is not of happiness, it is forbidden. [The issue is that the Tur distinguishes between the *מנוחה* terminology used with reference to the public fasts, and that applied to Tisha B'Av. The Bet Yosef notes that "building of happiness" is not explicitly stated in either case. The real issue is that on Tisha B'Av, the prohibition on building is not limited to building "of happiness," as it is in the case of public fasts. Thus, in this case, the prohibition on building should be read literally, according to its plain meaning.]

Concerning what the Tur wrote: "in the manner that business is forbidden," this is what is means. If you object, why does it forbid building which is not of happiness? Do not be surprised, since they forbid business, even though there is not happiness in it. The reasoning is that these are forbidden, even though they are not connected to happiness is because they are things the mourner is forbidden to do. This is so they will appear to be mourners of Jerusalem. [In other words, the idea of mourning is the real difference between Tisha B'Av and other fasts.] The Tosephot wrote in Yebamot (43a) that "one can learn about the period from when Rosh Hodesh enters until the fast from the public fasts. Just as there, in that case, it is only forbidden in cases of building and planting of happiness, the same is true here," which is according to the first argument of the Tur. But now, it is not the custom of most of the world to diminish business activity at all from the time Av enters. It appears that the explanation they give to the Talmud passages is that building and planting are not forbidden except in cases of happiness, according the first line of reasoning mentioned by the Tur. They explain that business [also] is only forbidden in the case of happiness, just like the cases of building and planting. And so, according to this line of reasoning, which the Tosephot reject, they [those who follow the custom of diminishing business activity] may conduct business in their usual manner and need not scruple; according to this, they must [only] be wary of business of happiness, such as the needs of huppah and similar things. For if they do not reduce business activity connected with happiness, they ignore completely the clear dictum, that they should decrease in business [that is, either they reason this way, or they are just ignoring the halachah.] It appears that this was the opinion of a few of our poskim, who did not cite this baraita from Yebamot 43a; for example, they explained that the building and planting and business which are forbidden and prohibited is only in the case "of happiness." Following this, it is written that "from the time Av enters, they should decrease in happiness," from which they derive that all these words [the prohibitions on business, etc.] apply only in cases of happiness.

The Kolbo wrote similarly in the name of the Rif, that "it says in Yebamot, during the week in which Tisha B'Av occurs, it is forbidden to do business. This is the instance of business activity concerned with happiness, such as the needs of the huppah, which resembles [the cases of] building and planting, which are explained elsewhere as a royal spreading tree. It is also forbidden to increase in business. This means that one should do less [business] than on other days."

It is possible to say, furthermore, that everyone reasons that one need not decrease in business at all, even if it is [business activity] for the needs of huppah. [How could one say this, in the face of the clear Talmudic passage? The Bet Yosef is trying to justify those who do not observe this prohibition.] [It could be that] the opinion in Yebamot is a very pious practice, or that if one is in a place where it is the custom [only then does this prohibition apply]. Therefore [based on these interpretations], the Rif and Rosh and Rambam abandon [this prohibition, presumably as not applicable]. I [Bet Yosef] saw *הרי"ף* behave, and they did not do any business at all, from the time Av entered. There is no halachic support for their position, for their practice is contradicted by either position. If one reasons [in accordance with the first line of reasoning which] the Tosephot overrode—that all business which is not for the needs of huppah is permitted. Or,

(continued...)





forbidden to launder it and then wear it.<sup>25</sup> So, too, that which was laundered previously is likewise forbidden. And not only is wearing them forbidding, but it is forbidden [to launder] whether is to wear or use them for bedclothes, whether it is a man or a woman, even napkins or tablecloths.<sup>26</sup> Our laundering is permitted, but our ironing is forbidden.<sup>27</sup> But linen garments are not included in the prohibition against ironing [literally: "are not subject to the category of 'ironing'" (Ta'anit 29b)]. In fact, they are like our laundering, and it is permissible; thus, we do not fear that they will be well-ironed [i.e. that they'll look nice.],

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<sup>24</sup>(...continued)  
is like their [Palestinian] laundering [with respect to this prohibition], but linen garments are not included in the prohibition against ironing [which seems to be some kind of special laundering process which goes beyond laundering, but may not be same as modern ironing either.] This is indeed a refutation." (Ta'anit 29b) Rashi explains that "the point of the prohibition is because it looks as though his mind is distracted [from mourning] when he engages in laundering clothing."

<sup>25</sup> Ramban wrote this in Torat Ha'Adam, and it is obvious [that is to say, it has no Talmudic source, but it doesn't seem necessary.]

<sup>26</sup>The Ran wrote this (in his commentary to the Rif, Ta'anit 29b), and so, too, did Ramban in Torat Ha'Adam. Ramban brings proof from the words of Rav Sheshet: "A proof of this is that the fullers [launderers] in the house of Rav are idle at that time." (Ta'anit 29b) He explains that the launderers were idle during that very same week; it implies completely idle. And so ruled the Rashba in a responsum.

<sup>27</sup>Rashi explains "our ironing" is the equivalent of their laundering, and it is forbidden to launder, but our laundering is permitted." The Ran agreed, and so did Ramban, who wrote "The Gaonim explained our ironing resembles their laundering, which is forbidden. Thus, our laundering is permitted. 'And linen garments are not included in the prohibition' on our ironing and on their laundering. This permission applies to laundering and storing [the garment], but wearing it is forbidden, as in the case of linen garments," which is explained in the adjacent passage. And the Tur also wrote in the adjacent passage, in the name of Ramban: "our laundering, to launder and store, is permitted, but to wear it--whether it is new or old, colored or white, freshly-laundered or previously laundered--is forbidden to be worn during that Shabbat/week[?]." But this is not what is written in the Kolbo, that "there are those who reason that it is permitted even to launder it, with our washing, and then wear it."

because they are close to the flesh and always become filled with sweat.<sup>28</sup> But if it is permitted to iron them, this is in order to store them until after Tisha B'Av.<sup>29</sup> But it is forbidden to wear them during the week during which Tisha B'Av occurs. The Ramban

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<sup>28</sup>Our rabbi, the Tur, did not need to say that one may not iron linen garments, since he is actually talking about ironed linen garments, about which he said that they are not included in the category of ironing, but rather the explanation is that one need not worry that linen garments could be well-ironed. Thus wrote the Rosh. The Ramban wrote, concerning the laws of mourning, that the reason linen garments are not included in the prohibition on ironing is that they do not become ironed in the usual way, and the issue of sweat and soiling [mentioned by the Tur] does not escape from these.

<sup>29</sup>In Ta'anit 29b, it is written: "Rav Isaac b. Giyuri sent a message in the name of R. Yohanan [saying], 'although the Rabbis declared that linen garments are not included in the prohibition against ironing, it is still forbidden to wear them [freshly ironed] during the week in which Tisha B'Av falls.'" Rambam said, "during the week during which Tisha B'Av falls, it is forbidden to cut hair and launder clothing and wear [freshly] ironed clothing, even linen clothing, until after the fast is past. And even to launder clothes and store them until after the fast is prohibited." (Hilchot Ta'anit 5:6, Mishneh Torah) It appears to me [Bet Yosef] that what he said, that it is prohibited even to launder clothing and store it until after the fast, refers to clothing [in general] but not to linen garments. And it is possible that even though it is permitted [to launder and wear them after Tisha B'Av] according to the strict law, Rambam did not mention this distinction precisely in order that a prohibition might be inferred from them, since the general custom is to recognize this as a prohibited act. This idea is apparently expressed by the Magid Mishneh as well. He wrote that "from all this, one learns that it is forbidden to wear even linen garments which are freshly laundered until after the fast, but in the case of laundering and storing them, it is prohibited to do so for all garments, except linen garments [which one may launder and store]. The Ramban adds permission for our laundering also of wool garments, in order to store them. Our rabbi [the Ramban] did not record this permission, since it is custom to be stringent. (Magid Mishneh, Rambam, Hilchot Ta'anit 5:6, Mishneh Torah)

From their statement (in Ta'anit 29b) that our ironing is like their laundering, this implies that our laundering is permitted, while our ironing is forbidden. But the Rosh wrote that "our ironing is permitted, for it is like our laundering, and thus permitted. If this is the correct reading (of the text of the Rosh), we would have to say that it refers to present-day forms of ironing, which is most inferior. The Babylonians used to say that their ironing was only as good as the laundering of the people of the land of Israel; therefore, Babylonian laundering, which was most inferior, was permitted. In our case, since our ironing is [of the quality] of Babylonian laundering, it must therefore be permitted. However, there is no practical difference between them, since our rabbi wrote, in connection to this, that the custom of our fathers was to prohibit even our laundering. And in this chapter, I will write that some declare that our laundering is forbidden even according to the law. The Trumat HaDeshen wrote that Rabbi Meir of Rothenberg forbids laundering children's clothing during that week. But, from the words of the Trumat HaDeshen, it appears that this is not the custom, and, additionally, we do not know anyone, or hear of anyone who acts in this manner.

writes that "[The statement that] our [linen garments] are not subject to [the category of] 'ironing' applies only in the case of old garments; but with respect to new garments, they are included in the category of 'ironing' [and are thus prohibited]. So we see that [ironed] wool garments, even old ones, are forbidden. Therefore, new garments, whether white or colored, are forbidden, and so too for freshly laundered old [garments]. All these are forbidden, even to leave them until after the week of Tisha B'Av. And our ironing [our pressed clothing?] is also prohibited, whether [they are] old ones or new ones [if] they are coming out from under the clothing press. (cf Moed Katan 23a) But our laundering--to launder and to leave [them until afterwards]--is permitted, for it is incidental work. All linen garments, in any case, even with their ironing, it is permitted to iron them and to leave [them until after the week of Tisha B'Av]. But to wear [them] whether they are new or old, colored or white, freshly laundered or previously laundered: it is forbidden to wear them during that week, even linen garments."<sup>30</sup> Ravad wrote: "Our

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<sup>30</sup>These are the words of the Ramban in Torat Ha'Adam, "in the case of mourning, old [garments] are certainly the ones referred to when it says that linen garments are not subject to the category of ironing, for if it had been referring to new ones, even linen garments come under the category of ironing for the mourner, as we explained. But rather it is concerned with old [garments]. So we see that garments of wool, even old ones, as we have said, are forbidden. And all of this we learned [in the Gemara] was about laundering old garments. We learn from this that everything which can be ironed is forbidden. Therefore, new garments, whether white or colored, (continued...)

<sup>30</sup>(...continued)

are forbidden and so, too, are freshly-laundered old garments. All of these are forbidden, even in the case of storing them until after the week of Tisha B'Av. And our ironing is also prohibited, whether in the case of new or old [garments], if they are coming out from under the clothing press. However, our laundering--to launder and to store them--is permitted, for it is incidental work, and so, too, for linen garments in any case, even with their [Babylonian] ironing. But to wear them, whether new or old, white or colored, freshly-laundered or previously [laundered], it is forbidden to wear during that week, and even those [garments] of linen.\* His words about the mourner are from that which is taught in a baraita in מלך מגיד (Moed Katan 23a): "[The Rabbis taught: 'during the entire] thirty days [the mourner may not wear] ironed [clothing]. It makes no difference whether they are old or new clothes which come out from under the press.' Rabbi said, 'It is only forbidden for new garments.' Rabbi Eleazar son of Rabbi Shimon said, 'It is only forbidden in the case of new, white (linen) garments.'" And the poskim decided in accordance with the one who said, that it is only forbidden in the case of new, white garments. The Ramban wrote that "for the first tanna, who forbade [wearing] old, ironed clothing, linen garments were not included, because they do not become ironed properly, but rather, new ones and white ones are certainly forbidden. Therefore, for Rabbi Eleazar, in the name of Rabbi Shimon, who said new, white, wool and linen garments are all equivalent in the case of the mourner. In the Yerushalmi, 'for [in over all the dead [that is, in the case of mourners], all ironed things are forbidden for the thirty days, etc.' In any case we learn about linen garments that they are included in the category of ironing and since we hold that even in the case of wool [garments], new ones and white ones, we consider all of them the same in their law[the same rule applies for all of them]." This is all he said concerning the issue of ironing for the mourner. He now comes to say that ironing during the week in which Tisha B'Av falls is more stringent. New [garments], whether of wool or linen, white or colored, are all forbidden. Old, woolen garments which come out from under the presses, whether white or colored, are forbidden as well, even to launder and store them. However, old linen garments, whether white or colored, it is permitted to launder or to iron them and store them. But to wear them is forbidden, even if they were laundered or ironed beforehand. The Ramban derived these rules from the statement "linen garments do not fall under the category of ironing." One must conclude that this refers to old garments, for new garments certainly fall under the category of ironing, as is explained in the discussion concerning the mourner. Since, in the case of old [garments], we needed to learn specifically that linen garments are not included in the category of ironing, we can see that woolen [garments], even old ones, are forbidden [since they are included in the category of] ironing. We thus learn from this that everything [in the category of] ironing is forbidden. And just as we do not differentiate between new and old woolen garments, so, too, we do not differentiate between white and colored. In the same way, for new linen garments, which are forbidden because [they fall under the prohibition on] ironing, we do not differentiate between white and colored, and this is what he [Ramban] wrote, "therefore, new garments, whether new or old, white or colored are forbidden, and so on." This means that "new garments, whether white or colored, woolen or linen, are forbidden. And similarly for old laundered [garments], whether they are white or colored, of wool or of linen, they are all forbidden, for in the category of laundering, it does not distinguish between wool and linen. And all of these which are mentioned as prohibited, whether [for] ironing or laundering, even to launder and iron and store until after that week [of Tisha B'Av] is forbidden.

Concerning the further statement which he [Ramban] wrote, that "our ironing is also forbidden, whether for new or old [garments], that come out from under the press," this means for woolen garments, whether new or old, white or colored, and linen garments, if they are new. But if they are old [linen garments], it was already explained, that even their ironing is permitted.

(continued...)



<sup>30</sup>(...continued)

About the words he wrote, "coming out from under the press," he understands it to mean that ironing is not prohibited for old ones, unless they come out from under the clothing press of [during] the week of Tisha B'Av. Because the prohibition for old ones, he derives from the words of the Tanna Kamma, who forbade old ones in connection with the mourner. We see the Tanna Kamma only prohibited old [garments] which had come out from under the press, and so, also, in this case/his [Ramban's] opinion.

In [various] texts of the Tur, it is written, "whether old or new ones, which come out from under the clothing press." And it is a scribal error, for it is the Ravad who reasoned thusly, that "they come out from under the clothing press, whether new or old." And the Ramban disagreed with him, and wrote that "they come out from under the clothing press" refers only to old ones. But new ones, even if they do not come out from under the clothing press, they are still forbidden." And he [the Tur] wrote that this was the opinion of the Rambam. Therefore, we must emend [the text of the Tur] and write "whether [they are] new or old ones, coming out from under the clothing press.."

Concerning his words, "but our laundering, to launder and store [them] is permitted," I [Bet Yosef] already explained that this is Rashi's explanation and the commentators and Ramban ז"ל gave the reasoning, that it is incidental work.

Concerning his words, "and so for linen garments, in any case, even with their ironing, it is permitted to iron them and store," this means for old linen garments, for if it referred to new ones, they are included in the prohibition on ironing, as previously explained. Rather, [this statement] surely refers to old [linen garments]. He already explained that old linen garments are not included in the category of ironing.

Concerning his words, "to wear them, whether new or old ones, white or colored, freshly-laundered or previously laundered, it is forbidden to wear any of them during that week, and even those of linen." This is obvious, from what was said, that "Rav Isaac b. Giyuri sent a message in the name of R. Yohanan, that 'although they said that linen garments are not included in the category of [and prohibition on] ironing, it is still forbidden to wear them during the week in which Tisha B'Av falls.'" (Ta'anit 29b). It has already been explained that the statement that linen garments are not included in the category of ironing refers to old ones. About them, he said it is forbidden to wear them, and how much the more so concerning all the rest.

<sup>31</sup>Orchot Chaim wrote that laundering in water and storing is permitted even on the eve of Tisha B'Av.

<sup>32</sup>"Ironing." The Arukh explains that they pass over the clothing a smooth, flat stone, in order to smooth them [the clothing]. And the B'nimukei Yosef explains, in Moed Katan 23a (cf Y. 19a) that "ironing" is water and ashes, or nitron carbonate of soda, and a sort of soap. According to these words, laundering is the same as water alone.

<sup>33</sup>The Ran wrote, in the last chapter of Ta'anit that "linen garments are not included in the category of ironing" certainly refers to old ones, and from this, wool garments, even old ones, are forbidden. There are those who say the reason that linen garments are not included in the category of [and prohibition against] ironing is because they do not whiten [or bleach] very much, and thus do not fit into the category of Babylonian ironing or laundering of the land of Israel. And ז"ל the Ravad and the Ramban. According to this, it is permissible to give linen to a launder during the week of Tisha B'Av, in order to launder and store [it]. But R. Yehudah b. R. Yehudah wrote that "the whitening is not the principle [component/the essential part] of ironing, but rather the (continued...)

ancestors' custom was to forbid this, even with respect to our laundering."<sup>34</sup> Rabbeinu Shmuel b. Natronai wrote that "the same is true, that it is prohibited to repair new garments during the

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<sup>33</sup>(...continued)

weight which passes over it [the garment] and over the clothes press through which they pass it there, by which they make it like new, with the shape of a new garment. And [new garments] themselves are forbidden in any case, whether they are colored or whitened. Thus he refutes with the baraita from tractate S'machot that the essential part of ironing is not whitening. And these are the garments which have been ironed: garments coming out from under the clothing press, according to Rabbi Yehudah HaNasi, etc. . . . It appears from this that the essential element of ironing is making them [the garments] like new. It is well known that woolen garments, both delicate and thick, can be restored by means of this craft to the point where one cannot tell whether they are new or old. Therefore, he said that linen garments do not fall into the category of ironing, since this craft cannot do anything for them, for everyone can recognize their worn state, and the work of ironing cannot return them to their newness. Thus, they are permitted in Babylonia, where their laundering is not forbidden as part of 'laundering,' but rather as part of ironing, which makes [garments] like new. But in the land of Israel, even though ironing does not renew them, this is the 'ironing' which whitens the [garments], and they are forbidden because of the whitening. According to this, new linen garments are forbidden in every case, since when they are new, they are included in the category of ironing, as is it said in Pesahim chapter ערב פסחים (109a), 'with what (do women rejoice with at the festivals?) . . . In the land of Israel, with ironed linen garments.' [in Babylonia, they rejoice with colored garments.] And it is forbidden, that he not buy them for himself during the week of Tisha B'Av, even to store [them] until after Tisha B'Av, as in [the case of] laundering and storing them. In the land of Israel, laundering them is also forbidden, because they are whitened; whereas in Babylonia, it is permitted, because they do not whiten them effectively there, because their water is muddy, for it is not a land of mountains and hills, as is the land of Israel. Therefore, 'laundering' in this land is possible, for it is like the laundering of the land of Israel. According to this reasoning, linen garments do fall into the category of 'laundering' of the land of Israel, and so we are even forbidden to give linen garments to launderer during the week of Tisha B'Av, even to launder and store them. And the Rambam's opinion apparently is the same, in Hilchot Ta'anit, chapter 3, Mishneh Torah."

<sup>34</sup>The Tosephot also wrote this, in Moed Katan 23a, as did Mordechai at the beginning of Moed Katan. The Tosephot also wrote in Ta'anit 30a, that "Rashi is stringent not to give sheets to [be] launder[ed] during the week of Tisha B'Av." And I [Bet Yosef] have already written, in this chapter, that HaRav HaMagid wrote that Rambam did not give any sort of permission to launder during that week, for it was common custom to be stringent. And this [practice] is widespread. And the Trumat HaDeshen wrote that "from this reasoning, it appears that it is permissible for Hebrew women to launder the clothing of Gentiles during that week, since the prohibition against laundering during that week is not because of a prohibition on work, but rather in order to decrease happiness and to appear as mourners. But this does not apply to laundering the clothing of Gentiles. "But I tend to be stringent, because it would look bad to others." I [Bet Yosef] say that we learn from the Yerushalmi to forbid [this], for there, in Ta'anit 25b, that "this fuller is forbidden for one to do his work," which implies in all cases. That is, it makes no difference if the [clothing or work] is for the Jew or the Gentile.



week of Tisha B'Av. For it is taught in the Yerushalmi in chapter 107a (Pesachim 25b) that the women customarily do not weave wool once Av enters. This is a minhag." And Rabbi Nissim Gaon explained, from the language 'either woof or warp,' that since woof by itself is forbidden, so a fortiori, is repairing new clothing. It is appropriate to be strict about this from Rosh Hodesh [onward], for in this case, too, [it is part of] generally decreasing gladness." And there are versions [of Ta'anit 26b] which teach that one should not consume meat or strong drink. From this, [comes] the custom in places where they do not eat meat or drink wine during that week. And some add [that one should do this] from Rosh Hodesh/the beginning of the month until the fast."<sup>35</sup> As

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<sup>35</sup>This is in the Mordechai at the beginning of Moed Katan: "Rabbeinu Shmuel b. Natronai wrote, 'The rule is that it is prohibited to repair new garments during the week of Tisha B'Av, for it is taught in the Yerushalmi Pesachim 25b that 'the women customarily do not weave wool once Av enters. This is a minhag.' There are those who say that [the words do not mean this, but rather that] they do not drink liquor or wine. But Rabbeinu Nissim Gaon explains the words 'בשר או נשך' as 'warp or woof,' and, since weaving is forbidden, so is repairing/mending clothing. And it is appropriate to be stringent about this from Rosh Hodesh [onward]. It is taught in Yebamot 43a, 'Before this time, people must decrease business activity, etc.'" Hagahot Maimoniot mentions this as well. And in the new Hagahot Maimoniot, it is written in the name of the Rokeah, "It appears that it is forbidden to repair new clothing or new shoes during the week of Tisha B'Av. And it is written in Trumat HaDeshen, 'It appears that the work that the women do to veils before laundering them in order to mend a part is not forbidden during that week at all, with respect to veils belonging to Gentiles, for even with respect to veils belonging to Jews, it is a superfluous stringency. For this is not the same at all as fixing the woof or new clothing. In addition, the women who spin threads in order to sew clothing from them support themselves from this work. It appears that it is permissible to spin during that week, for this, too, is not fixing the woof, which is the beginning of weaving clothing, and there is happiness in it. But that is not the case for the threads of sewing.'" There, in the Yerushalmi (Y. Ta'anit 6a), it gives the reasoning of the minhag, not to weave because during Av, the foundational [or weaving] stone disappeared. [The אבן שזיכה or the foundational stone was the stone upon which the earth was founded. There is a pun here: the foundational stone is being read as the weaving stone.]

(continued...)

to a haircut during this week, Ramban writes that "the rule is the same as the one for the mourner; the same rule applies to the head as to all the hair upon him. With respect to his beard, if it hinders eating, it is permitted [to trim it]. For the one whose bereavements are multiplied, who is a mourner of both the dead and of the week of Tisha B'Av, if his hair is too long, he may be

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<sup>35</sup>(...continued)

One could ask, since the Yerushalmi says that "once Av enters"--which means from Rosh Hodesh--why did Rabbeinu Shmuel b. Natronai only forbid it for the week of Tisha B'Av, as explained in the words of our Rabbi [the Tur?], and as Mordechai derives. And one could ask further, why he wrote that the point that it was "appropriate" to be stringent, from Rosh Hodesh [onward], since it is certainly included in the diminishment of happiness. [Why not] derive it [directly] from the statement in the Yerushalmi, that 'once Av enters, it is the custom. . .'. And, furthermore, one could ask how Rabbeinu Shmuel b. Natronai could write that it is forbidden to repair new garments, since in the Yerushalmi, it did not forbid it, but rather declared this a kosher custom.

It seems to me that since the Yerushalmi says "once Av entered, it is customary. . .", Rabbeinu Shmuel b. Natronai derives that during the week of Tisha B'Av it is actually forbidden [that is, by law as well as by custom]. It would have been enough to restrict the prohibition to that week. Rather it is surely forbidden according to the law during that week and they [the communities in question] adopted the stringency from Rosh Hodesh onward. And he ruled that they prohibited it during that week, for it was certainly prohibited from the law itself, and they made a customary stringency to forbid it once Av entered. He wrote that it was appropriate to be stringent about this from Rosh Hodesh, even in places where this is not the custom, based on the [legal] principle of "diminishing happiness," as it is taught a baraita in Yebamot 43a, from Rosh Hodesh until the fast, "they should decrease in business activity, etc."

One could also say about this that Rabbeinu Shmuel b. Natronai reasoned that the statement in the Yerushalmi, that "it is a minhag," means that it is a kosher minhag, but it is only forbidden from the law during that week. For we do not hold like R. Meir who prohibited it from Rosh Hodesh, but rather like Rabbeinu Shmuel b. Gamliel, who only prohibits it during that week. This is what Rabbeinu Shmuel b. Natronai wrote, that "it is forbidden the week of Tisha B'Av," which is to say, from the law, like other things forbidden during that week, "And before that week, it is permitted," following R. Shimon b. Gamliel's view. However, it is fitting to be stringent from Rosh Hodesh, even though we do not hold according to R. Meir who holds that it is because of the diminishing happiness, as was taught in chapter הוולץ (Yebamot 43a). As for not weaving wool, it appears that it makes no difference whether it is for oneself or for others, for wages or for free. It is the custom not to do this work, for any of these cases [whether it is for free or for wages; whether one does the work oneself or others do it] the explanation "for during Av the foundation stone disappeared" applies. (Y. Pesahim 25b, Y. Ta'anit 6a) [This interpretation implies that the very act of weaving is prohibited for itself, and not because of an issue of "decreasing happiness."]

lenient [and cut it] with a razor, but not with a scissors.<sup>36</sup> And one may launder his coat in water, but not with nitron [a carbonate of soda] or with sand."<sup>37</sup> (cf Moed Katan 17b) Following the fast, it is permitted immediately, according to Rabbi Meir. We do not follow Rabbi Simeon ben Gamliel, who forbade it for the whole week. And the halachah is according to Rabbi Simeon ben Gamliel who only prohibited it during the week [of Tisha B'Av], and not like Rabbi Meir, who forbade it from Rosh Hodesh/from the beginning of the month onward. (Ta'anit 29a,b; 30a)<sup>38</sup> If Tisha B'Av falls on

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<sup>36</sup>This is because it resembles the case of the mourner whose mourning is multiplied [who mours for more than one person simultaneously/overlapping], as it says in אלו מנגדין (Moed Katan 17b), which I wrote about in Yoreh De'ah 390. The Kolbo wrote that "cutting hair is only prohibited on that week, up until the fast, and before that week, it is permitted. In any case, it is the custom of the elders not to be shaved or cut at all before that week, so that they will enter the day of the fast humbled, and they rebuke fiercely anyone who has gotten a haircut." It is written in Hilchot S'machot: "Adults are forbidden from cutting the hair of children and from laundering their cloaks/covering/מסות during the week of Tisha B'Av." Its prohibition of laundering the cloaks/coverings of children implies that this excludes the clothing in which children/infants are swaddled and their diapers [which are likely to be exposed to excrement and urine], for these are permitted. Notice the word he uses is "מסות/covering", not "בגד/clothing."

<sup>37</sup>Ramban wrote this in Torat Ha'Adam, and his reasoning is like that in Ta'anit 26a: It is taught [in the Mishnah] "during the week of Tisha B'Av, it is forbidden to cut hair and to launder clothing," and the Ramban comes to say that it is not just prohibited to cut the hair on the head, but rather the same rule applies to all the hair on a person; it is forbidden to cut any of it, just as it is for a mourner. The exception is [one may cut part of] a beard which hinders eating, and the mourner is also permitted to do this, according to Ramban's opinion.

<sup>38</sup>"It is forbidden to cut the hair and to launder clothing from Rosh Hodesh until the fast; this is the opinion of R. Meir. R. Judah says, 'It is forbidden the whole month.' R. Simeon ben Gamliel says, 'It is forbidden only on that particular week.'" (Ta'anit 29b) "Rava said, 'The halachah is according to R. Simeon b. Gamliel.' Rava said further, 'The halachah is according to R. Meir,' . . . both for leniency. And both [decisions] must be stated, for if it had only taught that the halachah is according to R. Meir, I might have thought that the restriction applied from the beginning of the month, therefore it is explicitly stated that the halachah is also according to R. Simeon ben Gamliel. And if it had only taught that the halachah is like to R. Simeon ben Gamliel, I might have thought that the restriction would apply even after the fast, therefore it is explicitly stated that the halachah is according to R. Meir.

Sunday, or on Shabbat and is postponed until after Shabbat, it is permitted during both weeks. It is permitted during the week preceding it, since the fast was postponed until Sunday [the first day of the week]. It is permitted during the week prior to Tisha B'Av, since the fast was postponed until Sunday; if so, the prior week is not the week during which Tisha B'Av occurs. The second week is after the fast. Therefore, it is permitted during both.<sup>39</sup> And in the Sefer Mitzvot, he wrote that it is customary that when it [Tisha B'Av] happens to occur on Shabbat, they forbid haircutting and laundering, for the entire week preceding it. And the Sefer Mitzvot Katan explains the above to define "entire" as being aside from Thursday and from Friday, for how it can be forbidden on Thursday and Friday? Is this not the case when Tisha B'Av falls on Erev Shabbat to permit it on Thursday? How much the more so when it is on Shabbat!<sup>40</sup> So, too, for the rest of the week, it is an unnecessary stringency. And if Tisha B'Av occurs on Erev Shabbat, as it did when the new moon was declared on the basis of eyewitness testimony, it is permitted on it [one may haircut and launder on Tisha B'Av] for the sake of the honor of

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<sup>39</sup>The Rosh and the Ran wrote that in the case of Tisha B'Av which falls on Shabbat, both weeks are permitted. And the Rosh wrote, "The reason is that since we postpone the fast until Sunday, that is not the week in which Tisha B'Av actually occurs."

<sup>40</sup>From "In the Sefer Mitzvot" through "how much that the more so when it is on Shabbat," this is all from Hagahot Maimoniot and the Kolbo.



Shabbat. (Ta'anit 29b)<sup>41</sup> Ravad wrote that our ancestors' custom was not to bathe from Rosh Hodesh [from the beginning of the month onward], and that it is incumbent upon us to uphold [this custom], because [one should not] "forsake the Torah of your mother."<sup>42</sup> (Proverbs 6:20) There are stringent ones who fast from the fast of the 17th of Tammuz and onward. Others desist from meat and wine.<sup>43</sup> It is taught in the Yerushalmi: what is between them, between the 17th of Tammuz to Tisha B'Av? 21 days, from when the city was

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<sup>41</sup>The Tosephot wrote, on this, at Ta'anit 30a, "In the instance when Tisha B'Av falls on Thursday, it is permitted to cut hair and wash clothing from midday onward, for the sake of the honor of Shabbat, for one should not wait until Saturday night, because of Shabbat preparations." [The Tosephot's comment actually reads that one should not wait until Friday, because of Shabbat preparations] This is astonishing, to permit washing clothing and haircutting on Tisha B'Av itself. Moreover, it is explicitly taught in a baraita that "[if it falls. . .] on Thursday, before [Tisha B'Av], it is forbidden, but after it, it is permitted." (Ta'anit 29b) If so [if these acts are permitted on Tisha B'Av itself], then the text ought to tell us explicitly that they are permitted on that very day. Furthermore, it is taught about when Tisha B'Av falls on Friday, "if, however her has not washed them on Thursday, it is permitted to wash them [on Friday] from minchah onward. . ." and about this, "Abayah. . . cursed anyone who did so." How much the more so when it falls on Thursday, it is certainly forbidden on that day, even from minchah onward. And it cannot be said [in defense of this] that Tosephot permit it "from noon onward"--that is on Wednesday, which is Erev Tisha B'Av--because it is taught when [Tisha B'Av] falls on Thursday, [haircutting and washing clothing on the days of that week] "before it are forbidden." Moreover, there is even a greater reason to be stringent after midday than before midday [because the Temple was destroyed after midday.] Therefore, one should not rely on this pronouncement.

<sup>42</sup>The Mordechai wrote this in his name at the beginning of Moed Katan. And it is written in Trumat HaDeshen at chapter 190, that "this implies it is prohibited even in cold water, despite the language of the Ramban that 'it is customarily only forbidden in hot water.' It appears that Ravad and Mordechai disagree with Ramban on this issue. They reason that the custom is observed from Rosh Hodesh onward. He [Ramban] wrote that [the prohibition applies] only for that week [of Tisha B'Av], here, too. Let us say that they disagree about this issue [that is, washing is forbidden even in cold water], as well. True, I think I recall seeing in the days of my youth people washing in the rivers from Rosh Hodesh Av with no protest being lodged against them. [This, then, would support Ramban's more lenient position.] Nevertheless, blessing shall come upon the one who is strict [and, following the Mordechai, does not wash in cold water from Rosh Hodesh onward.]

<sup>43</sup>So wrote Hagahot Maimoniot.

breached until the Temple was destroyed. And some say this corresponds to the three weeks that Daniel fasted.<sup>44</sup> And the Ashkenazic minhag is for the pious ones to refrain from meat and wine from the 17th of Tammuz and onward; from Rosh Hodesh onward, all refrain from meat and wine, except for on Shabbat, when they eat and drink in the manner of the whole year [as usual].<sup>45</sup> Thus wrote Rambam that, "In some places, it is customary not to eat meat from Rosh Hodesh until the fast. It is the custom not go into the bathhouse during that week. And it is forbidden to alter the minhag of our ancestors."<sup>46 47 48</sup>

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<sup>44</sup>This was said in the name of Rabbeinu Sa'adia.

<sup>45</sup>The Kolbo wrote that some stop eating meat from the beginning of Av, because 'happiness' means, or implies, meat. [cf Pesahim 109a. "Rejoicing" in Jewish ritual terms has always been associated with the sacrifices, and the Temple, as so on. This, of course, implies the eating of meat.] Even according to this, they do not desist from the cooked dish in which meat has been cooked, for [desisting from meat] is only to try the soul, and they are already afflicted. Further, it was said in Nedarim (52a) "The one who vow [to abstain] from meat is permitted [to eat] cooked dishes." It is written in the name of Rav Asher that the reason some desist from meat and wine from the seventeenth of Tammuz is because on it [the seventeenth of Tammuz], the Tamid offering ceased, and also the libations of wine, for our sins. From the words of Mordechai, which I [Bet Yosef] will quote in the next chapter, it appears that they customarily prohibit, from Rosh Hodesh or from the seventeenth of Tammuz, meat and wine, and even chicken or salted meat and sparkling wine are forbidden. However, when one begins to follow this custom, one can make a condition that he [does not intend to] prohibit chicken, and the like, and then it is obvious that it is not forbidden to him.

<sup>46</sup>All this is from the Ramban, in Torat Ha'Adam. Ramban wrote, in chapter five (Hilchot Ta'aniot 5:6, Mishneh Torah) that "It is already the custom in Israel not to eat meat during this week, and not to go to the bathhouse until after the fast. And there are places where it is customary to suspend ritual slaughter [of animals for meat] from Rosh Hodesh until the fast." And the Magid Mishneh wrote "This minhag has not spread in these lands. Concerning the eating of meat, they only desist [from eating meat] on the day before the fast. But they do not go into the bathhouse. And it is a clear matter, that within the law [as opposed to the common minhag], even on Erev Tisha B'Av, it is permissible to bathe."



552) On the day before Tisha B'Av, one should not eat meat nor drink wine nor eat from two cooked dishes. (Ta'anit 26b/30a)<sup>49</sup> Rabban Simeon ben Gamliel says "one should change [alter his way of living], so that if one ordinarily eats [if it is customary for one to eat] from three [cooked dishes], eat from two; if it was

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<sup>47</sup> (...continued)

<sup>47</sup>The Rashba wrote in a responsum, "It was the custom of your fathers, may paradise be their repose, that they did not eat meat from the beginning of Av. And even though there is no prohibition here from the Talmudic law, that even on the day before the fast, during a meal which is not the last meal before the fast, it is permissible to eat meat and drink wine, even so, the one who eats meat in any place where it is the custom to forbid it [the eating of meat], he pierces the fence established by earlier authorities, and for this one, the snake of their words shall bite him."

<sup>48</sup>[Bet Yosef] found it written in the name of Rabbi Ya'akov Molin that "shampooing the hair on the Friday of Shabbat Hazon [the Shabbat before Tisha B'Av, when the Haftarah is Isaiah 1:1-27] is permitted. And I did not ask them about [washing] the feet, but on the face of it, it appears that they were lenient concerning the head, from what is written (Ta'anit 13b) '[Washing] one's face, hands, and feet/legs in hot water is forbidden, but in cold water, it is permitted.' And in this case, it is not different." And he wrote in Sefer Pardes, "And they wash the head close [in time] to the entrance of the bride [the Shabbat]."

I found it written in an Ashkenazi responsum, "[Concerning the issue of] drinking the wine of havdalah, I did not see our rabbis being cautious [about this]. And more than this, Maharash of Speier said to me that he argued before Rabbi Meir of Rothenberg that it is permitted to say the Birkat HaMazon over a cup of wine, and to taste it. And Rabbi Meir of Rothenberg agreed with him. Indeed, I have my doubts about this [ruling about drinking wine], since we compare it [desisting from wine during this period] to a vow, as R. Meir of Rothenberg ruled, which then requires formal permission for the one who customarily observes this prohibition [against drinking wine]. And also in Sefer Aggadah, he permits cooking fish in vinegar, because a person who has sworn off wine it permitted to [consume] vinegar. This implies that the issue of [desisting from] wine is considered like a vow."

I found in an Ashkenazi responsum "[concerning] saying the Shehechianu בין המצות [during the time between the 17th of Tammuz and Tisha B'Av], it is written in Sefer Hasidim that one should not [say the Shehechianu during this time]. And it appears in my humble opinion that [this applies] in the case of a thing which could postponed, such as fruit or new clothing, but if a pidyon haben occurs, one does not lose [forgo] either the mitzvah or the blessing."

It is written in the new Hagahot Maimoniot: in Lamentations Rabbati, it says that "One needs to be cautious from the seventeenth of Tammuz until Tisha B'Av, that one does not walk alone from the fourth hour until the ninth hour, and one should not strike [another person], even a Rav his disciple, even with a strap, for over them bitter anger rules, and there is danger in it, as it is written, 'all her pursuers overtook her between the straits/בין המצות' (Lamentations 1:3)[which is what the period of time from the seventeenth of Tammuz until Tisha B'Av is called].

<sup>49</sup>The Ramban ruled that the halachah resembles that of a minor fast. It appears that this is also the opinion of the poskim.

ordinary to drink four cups [of wine], drink three. [But] the Halachah is like the first opinion" (Ta'anit 30a). Salted meat is permissible. For how long [may the meat lay in salt and] not be called salted meat? It is explained in the Gemara: as long as [the time during which] the peace offering [שלמים] [may be eaten], that if it does not [lie in salt] more than two days and one night [it is not yet salted meat], but [if it lies in salt] that long or longer, the taste is spoiled<sup>50</sup>. Ravad explains that "with respect to the peace offering, it is written 'gladness' and thus once the time of the peace offering has passed, there is no gladness in it. And it says also in connection "אלו לרע" to the rebellious son that one is not obligated except with respect to meat which is like a peace offering, which has in it gladness, and draws one after it. [i.e. entice him to gluttony]. 'And Rava said that eating poultry does not make one a rebellious son.' And it is taught in the first chapter of Hagiga that Israel fulfills its obligation by means of goats, but not with poultry, as it is written, 'and be glad ושמחת' [with respect to the festival offering]; that which has in it gladness fulfills [the obligation of the festival offering] but

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<sup>50</sup> Apparently from the time it is slaughtered, we count two days and one night [before it is considered salted meat], according to the Tosephot. Sefer Mitzvot Katan and Rashi explain that it must be soaked in salt, and the Magid Mishneh ruled accordingly. The Tosephot said, "For us, it is forbidden to eat even meat that has been soaked in salt for a long period of time, since we are accustomed to eating salted meat." And likewise for similar things, as the Tur wrote in the adjacent section.

poultry, which does not have gladness in it [does not fulfill it]. From all this, we learn that it is also the rule to allow poultry at the last meal [before the fast begins]. And accordingly ruled Rabbeinu R. Shmuel B. Natronai."<sup>51</sup> [But] it appears that even though there is even though there is no gladness in it, it is forbidden [to eat poultry], for it is not due to gladness alone that they forbid meat, but rather in order to increase mourning. Know [this to be true]: for with any other mourner, it is a mitzvah to serve him wine, as we have said: wine was created only to comfort mourners, for it is a mitzvah to comfort him and cause him to forget his sorrow. But in this case, they prohibit wine [lest we forget the destruction], for if he drinks, he will become forgetful and the mitzvah [in this case] is to remember the destruction of the Temple and be regretful on account of it. Therefore, for this reason, we should forbid even poultry, like meat. And in Sefer Mitzvot Katan, he writes: "Now, when most of our diet is meat, even after it is two days old, it appears that it is forbidden." But it is permissible to drink wine fresh from its

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<sup>51</sup>Thus wrote the Mordechai at the beginning of Moed Katan, in the name of Ravad and Rabbeinu Shmuel b. Natronai. However, he wrote in their names that, according to our practice, where we customarily forbid it from Rosh Hodesh onward, even chicken or salted meat and new wine [is forbidden]. The Rosh wrote similarly at the end of Ta'anit in the name of Or Zarua, saying "even though in the middle of the halachah, it implies that it is permitted to eat chicken or salted meat or lamb at the last meal, and to drink new wine, in any case, it is not correct to do so. It is prohibited also on the basis of [the verse] 'you should not forsake the Torah of your mother.' (Proverbs 6:20)"

presses, that is, the wine is in the midst of the three days [of the fermenting process].<sup>52</sup> Concerning "two cooked dishes," Rabbi Hai Gaon wrote [that this means] for example, rice and lentils, for they are two [different] kinds [of food]. Rabbi Yitzhak Giat wrote any two cooked dishes symbolize honor. And the sages forbid even [one dish consisting of] one kind of legumes or one kind of vegetable and there is no need to say two kinds [of food in the cooked dishes are forbidden]. And so writes the Ramban: "that it is the custom in Tsarfat to put many types into one pot, and since it is all cooked together, it is called one cooked dish. But in Ashkenaz, they are strict about this. But it appears that even those who are stringent about this matter agree that things which are normally made with more than one ingredient all year long, such as cakes which have onions and eggs in them, we allow."<sup>53</sup> Adoni,

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<sup>52</sup>This is clear. (cf Ta'anit 30a) And the Sefer Mitzvah Katan wrote that "concerning this, the heart inclines to forbid it," and this is the custom.

<sup>53</sup>"In Ashkenaz, they are stringent. . . ." All of this is in the Hilchot HaRosh. The reasoning of Rabbeinu Hai is that it is only forbidden [to eat two cooked dishes] when the two dishes are made from two kinds [of food]. But if he cooks one kind [of food] in two pots, it is permitted. But Rabbi Yitzchak Giat differs, and says that this is also forbidden. The Ramban wrote in Torat Ha'Adam, "the opinion of Rabbi Yitzchak Giat is the correct one, since any two kinds of [dishes] from a boiling pot or stew pot/crock pot [it says tightly covered!] are forbidden, since they are [each] called cooked dishes everywhere in the Talmud. But two kinds [of food] in one pot make up one cooked dish. There are those who are stringent, and forbidden even two kinds of food in one pot, even, for fish [counting] the egg which is upon it [that is, fish with egg equals two dishes] and the sliced leek which is beneath it, since they are considered to be two cooked dishes in connection with an eruv. But this is not the case. It is lenient with respect to the issue of an eruv, but not with respect to Tisha B'Av." And the Ran wrote at the end of Ta'anit that "some of the early Gaonim taught that the rule of two cooked dishes is the same for Tisha B'Av as for making an eruv tavshilin," and from these words, comes the Tur's comment, that even the stringent ones permit dishes customarily (continued...)

Avi, the Rosh ז"ל wrote that "there are some who say this refers particularly to two cooked dishes which consist of foods which cannot be eaten when they are raw, but things which are eaten when they are raw, such as milk and cheese and dried salted fish, are not called 'cooked dish' [even when they are cooked]. But the Ravad wrote that even a cooked dish made from cheese is called a 'cooked dish,' and this seems correct."<sup>54</sup> But vegetables and fruits are permitted in order to accompany bread when they are raw, even if there are several types [present].<sup>55</sup> And there are places where it is the custom to eat lentils at the final meal before the fast, for they are a sign of mourning. As the lentil is rounded, so does

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<sup>53</sup>(...continued)  
made with more than one ingredient. But this is not the case, for fish and egg with onions on it, are customarily made all year round, and there are even those who forbid [those dishes]. In any case, for all practical purposes, it is worthy to rely upon the Ramban, who refuted the reasoning of the stringent ones.

<sup>54</sup> This is meaning of the passage in the last chapter of Ta'anit 30a. The reason that this is the correct interpretation is that it makes no sense to distinguish between whether they can be eaten raw or not. But rather, the point is that there is honor and joy in multiplying the number of cooked dishes. Thus, one makes good cooked dishes both from foods which can be eaten raw and those which cannot. Additionally, the Hagahot Maimoniot wrote that a food which can be eaten raw, when it is cooked, it is called a "תבשיל," cooked dish. So wrote the Mordechai in Hilchot Tisha B'Av, in the beginning of Moed Katan, in the name of Sefer Mitzvot Gadol. The Ran wrote at the end of Ta'anit, "the opinion of the Ramban was that everything which is cooked in one dish, even with respect to the issue of an eruv it is considered to be two cooked dishes, in this case, it is only considered to be one dish, because a dish is considered important [that is, worthy to be counted toward the total] only when it is cooked as a single entity. And there are those, according to this reasoning, permit eating cooked fruit--if it can be eaten raw, as long as they are still called by its original name--even though it is said in the Yerushalmi 'everything which can be eaten when it is raw, it is not classified as under the rubric 'Gentile cooking' [that is, is a Gentile cooks it, we may eat it, despite the usual prohibition against Gentile cooking]. And they rely upon it in the issue of eruv tavshilin.' But we have already said that we do not learn from the case of eruv tavshilin, but rather that the Ramban ז"ל permitted only raw foods."

<sup>55</sup> So wrote the Ramban in Torat Ha'Adam.



mourning roll and go around. Just as the lentil has no "mouth," so does the mourner have no mouth [as it were], for he should not speak. In Ashkenaz, it is the custom to eat eggs, for they are also a sign of mourning.<sup>56</sup> Therefore, one should not eat any other cooked dish during the final meal [before the fast]. All of this applies to one who cannot do otherwise [make do with less]; but for the one for whom it is possible, he should be more stringent with himself as was Rabbi Yehudah ben Rabbi Ilai. It was his custom on Erev Tisha B'Av, they would bring him dried bread with salt, and he would sit between the stove and the oven, and he would drink a dipper of water. And he appeared like one whose loved one has died and is not yet buried. (Ta'anit 30a)<sup>57</sup> Ravad wrote that "a person

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<sup>56</sup>So wrote the Rosh, at the end of Ta'anit. In Hagahot Maimon, it is written that "they eat cold and hard-boiled eggs."

<sup>57</sup>The example of Rabbi Yehudah bar Ilai is at the end of Ta'anit (30a). Rambam (Hilchot Ta'anit 5:9, Mishneh Torah), wrote "the practices of the pious men of old was as follows: on the eve of the ninth of Av, each man alone would be brought dry bread and salt and he would dip it in water and eat it, while seated between the oven and the stove. Afterwards, he would drink a pitcher of water, in sadness, desolation and tears, like one whose dead lies before him. Doing this, or something similar to it, is fitting for all scholars and the like. And all my life, I have not eaten on Erev Tisha B'Av a cooked dish, even of lentils, unless it was Shabbat." Hagahot Maimoniot wrote, "he is like one whose dead lies before him. Therefore, it is the custom to sit on the floor at the last meal before the fast." The Tosephot wrote "one should change the place where one customarily eats, as was the custom of Rabbi Yehudah bar Ilai, who sat and ate on Erev Tisha B'Av between the oven and the stove, a place which was desecrated." In Trumat HaDeshen, he wrote "at the last meal [before the fast], one should sit on the ground. Even so, one need not remove one's shoes, because the reason one sits on the ground is not because of mourning, but rather because [the situation] requires a meal of desolation, as is said in several places [that is, the text occurs in several places]: "according to the importance of the meal, one reclines and eats. For us, whose practice is never to recline while eating, the humbleness of the meal is only recognized by sitting on the ground [that is, merely refraining from reclining would not signify anything in a place where they do not customarily recline at meals]." What is the reason that one

(continued...)



should/is required to alter [his actions], so that if he is accustomed to dining with 10 people, he should dine with five. In this case, the first Tanna agrees with Rabbi Simeon ben Gamliel. One should sit on the ground and not eat meat nor drink wine nor eat two cooked dishes.<sup>58</sup> And there are those exceptionally holy people who withhold from themselves all their food except for bread with salt and a measure [1/36 of a log] of water, as did Rabbi Yitzhak the son of Rabbi Menachem. And there are some who eat only

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<sup>57</sup>(...continued)

is not required to remove his shoes? The Ramban explains, and the Tur wrote the explanation in the next chapter. The Yerushalmi reads at the end of Ta'anit (26a) that "Rav, once he had eaten enough for his needs, he would dip his piece of bread in ashes, which means he dipped his bread in dust and said 'this is the meal of Tisha B'Av,' in order to uphold that which is said 'he has made my teeth to grind on gravel, and made me cower in ashes.'" (Kohelet 4:9) Ramban wrote this in Torat Ha'Adam, as did the Hagahot Maimoniot, except that he said it was Rabbi Yitzhak bar Ilai rather than Rav.

<sup>58</sup>In Ta'anit 30a, Rabbi Simeon ben Gamliel explains "one should change. 'How should one change? If he is accustomed to eating three cooked dishes, he should eat two. If he is accustomed to drinking ten cups, drink five. If he is accustomed to dining with ten people, he should dine with five.'" And, according to Ravad, Rabbi Simeon ben Gamliel only disputes the first Tanna on the issues of cooked dishes and cups [of wine], that [according to the first Tanna], one is never permitted to eat more than one cooked dish nor drink even one cup of wine [no matter one's usual custom]. But, concerning what he said, "if one is accustomed to dining with ten people, he should dine with five," he does not disagree with the first Tanna. Since the first Tanna is more stringent than Rabbi Simeon ben Gamliel, for whom it is sufficient to change the measure/number of cooked dishes and cups [of wine], whereas the first Tanna does not consider mere change to be sufficient, but rather requires one not to drink wine at all, and not to eat more than one cooked dish. If so, [if the first tanna is generally more stringent than Rabban Simeon ben Gamliel], then when Rabban Simeon ben Gamliel is stringent on an issue where the first tanna is silent, we presume that the latter agrees with him. But, according to Ramban's opinion, it does not appear that this is so. He does not mention at all the issue of "if one is accustomed to dining with ten, one should dine with five." The Mordechai wrote the Ravad's words at the beginning of Moed Katan. And thus it is written in the Sefer HaRokeah, and so it appears from the words of the Tosephot, who wrote that one should decrease his drinking, so if he was accustomed to drinking ten cups of intoxicants or another drink, he should only drink five. The Mordechai wrote in the name of Ravad that "the first Tanna does not disagree with what Rabbi Simeon ben Gamliel said, in another baraita (Ta'anit 30a), 'if one was accustomed to eat radish or a savory after dining, it is up to him' even though it is said that it is up to him, it is a mitzvah to abstain."

an egg, for it is the food of the mourner, as did Rabbi Yitzhak." And likewise, the Rambam, ז"ל wrote that: "from our day, we do not eat even a cooked dish of lentils on Erev Tisha B'Av, unless it falls on Shabbat." It is written in a responsum that Rabbeinu M'shulam ate on Erev Tisha B'Av with three people, but did not say the zimun [to Birkat HaMazon]. Instead, each would pray Birkat HaMazon alone, as individuals. This was also the custom of Rabbi Yitzhak.<sup>59</sup> And I (the Tur) am amazed [at such a custom], since even the mourner is obligated to say Zimun. נ"נ the Rosh ז"ל's custom was to eat alone at the final meal [before the fast], so as not to have to say Zimun. And all of this concerns the final meal [after which one stops eating] and if this meal is [eaten] after midday.<sup>60</sup> But if it was [eaten] before midday, or after midday but with the intention of eating again after it, it [all of these] is

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<sup>59</sup>The Hagahot Maimoniot wrote, "Thus wrote Rav Sherira Gaon, that it was his custom not to say zimun with three at that meal, but rather each individual sat by himself, as it is written, 'it sits solitary and silent.' (Lamentations 3:28) Thus was the custom of Rabbi Yitzhak and Rabbeinu M'shulam to say the blessing after the meal each one by himself, even when they ate with three men. And it is correct, not to sit three men together to eat, so that they would not be obligated to say zimun, but instead each one sat alone and silent and blessed by himself." A similar statement was written in Hilchot HaRosh the end of Ta'anit.

<sup>60</sup>This is taught in Ta'anit 30a, concerning the Mishnah "on Erev Tisha B'Av, one may not partake of a meal of two cooked dishes, nor may one eat meat nor drink wine. Rabbi Yehudah said, 'this is only taught in reference to [meals] from the sixth hour onward. But before the sixth hour of the day, it is permitted.' And Rabbi Yehudah further said, 'this is only taught in reference with the last meal before the fast, but at a meal which is not the last one before the fast, it is permitted.' And both of these decisions are interpreted leniently." Sefer Mitzvot Gadol wrote, "it is already the custom of all Israel not to eat any meat nor to drink any wine the entire day [before Tisha B'Av]." But this minhag has not spread among us to the multitude of the people.

permitted. And the Ramban wrote that "the final meal before the fast" is when one does not intend to eat a fixed meal afterwards, even though one intends to eat an incidental meal again afterwards.<sup>61</sup> They should not be like the evil ones who eat meat and drink wine and get drunk and afterwards eat an incidental meal, simply in order to stop eating with a meal that does not include meat or wine. If Tisha B'Av falls on Sunday, or falls on Shabbat and is postponed to Sunday, one may eat meat and drink wine at the last meal before fasting, and bring upon one's table a meal like that of Solomon in the time of his kingdom. םן ןן ןן ןן [Gaon] wrote that "[in the case of] Tisha B'Av which falls on a Sunday or on Shabbat and is postponed until Sunday, it is all right to eat meat and drink wine [on Shabbat]. But we are not accustomed to doing this. Even on Shabbat, we do not eat meat nor drink wine at

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<sup>61</sup>The Ramban wrote this in Torat Ha'Adam. The Ran wrote in the last chapter of Ta'anit, that this is exactly what one should derive from the language of the baraita. The םן ןן wrote at the end of Ta'anit that "an individual who accepts upon himself a fast on Mondays and Thursdays for the entire year, and Erev Tisha B'Av happens to be on Monday, should pray minchah and then eat a last meal before the sun sets." And so wrote HaAgur in the name of Shevlai HaLeket, and he reasons that "we agree with the one who says that a fast of hours [a fast which was not observed until sundown] is still a valid fast [in some cases; this is not true for Yom Kippur or Tisha B'Av, but is for other fasts]." This is written in the Hagahot Mordechai in Moed Katan.

The Trumat HaDeshen wrote in chapter 275 that "one of the great sages copied from a responsum of the Rosh that 'the one who vows to fast on Monday and Thursday, if Tisha B'Av falls on Tuesday, he should ask [permission from a bet din to be released from the vow] to fast, or he should 'borrow' this fast and repay it.'" In Or Zarua, it is written that, in a responsum, Rav Sherira wrote that [in such a case], "one eats before sunset, since we hold that a fast is valid even is not completed; he should pray at minchah the prayer for a fast day, and afterwards, eat." The Hagahot Maimoniot wrote that "it is customary not to say tachanun on Erev Tisha B'Av at minchah since Tisha B'Av is called a םן ןן [and tachanun is not said at minchah and ma'ariv on the day before a holy day].

the last meal before the fast because of the Destruction of the Temple."<sup>62</sup> And thus wrote Ravad: "And there are those whose custom is that they do not eat meat nor drink wine at the final meal, for it is not an obligation to set one's table as though it were a complete feast of Solomon's, although it is the final meal [before the fast]."<sup>63</sup> It appears to me that since we desist from the eating of meat and the drinking of wine for the sake of mourning, it is forbidden [to abstain on Shabbat] as it is

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<sup>62</sup>The use of the word "even" implies that what he meant is: it [this rule] is not required for the case of Tisha B'Av falling on Sunday, since the fast is now fixed in its time, and it is more stringent [than a fast which may be postponed until Sunday], but rather even if it were to fall on Shabbat and is postponed that now, since the fast is not fixed in its time, it is not at all stringent, since on Shabbat day, which is its time, it can not fall at all. Even so, we do not eat meat nor drink wine during the last meal before the fast. And it is possible that "and even" is not to be read precisely, and it is as though it was written that: "Also" on Shabbat, we do not eat meat and drink wine at the last meal before the fast. Thus I found in Sefer Mitvot Katan but we, we are not accustomed to this,\* and also on Shabbat, we do not eat meat and drink wine at the last meal before the fast.

<sup>63</sup>This is written in the Mordechai, at the beginning of Moed Katan and Sefer Mitzvot Gadol wrote in the name of Gaon. However, afterwards, he wrote that "there are those who reason that one should not be stringent about this, so that one does not disregard the honor of Shabbat. This is as it is taught 'and set upon one's table, etc.' This is certainly only taught about the last meal before a fast. However, one needs to stop eating while it is still day, as when Tisha B'Av falls on an ordinary day."

Hagahot Maimoniot wrote, "there are Gedolim whose custom it is, when Tisha B'Av falls on Sunday, that they eat, after the third meal [of Shabbat] another meal between minchah and ma'ariv. They eat eggs and drink wine and do not pray the blessing 'נכנס' [that is, בונה ירושלים at Shabbat minchah]" And the Rabbi Meir of Rothenberg was not concerned about this minhag, and he did not change his meals from those on other Shabbatot. Thus spread the minhag, according to the words of ר"י, and it is written, in Hagahot Maimoniot Hadashot, "however, concerning Shabbat clothing, it is the custom to change at the end of Shabbat, and they do not change any of their clothing at the end of that Shabbat, as on other Shabbatot, to exhibit one of the signs of mourning." And similar words are written in the Mordechai, at the beginning of Moed Katan that "we do not customarily behave thusly." The Hagahot Maimoniot wrote further that "it is the minhag to remove the shoes before the beginning of evening prayer service, and if it is Shabbat, one does not remove the shoes until after Bar'chu, except for the prayer leader, who removes his shoes beforehand, because of the distraction." The Tur addresses the issue of saying בוצקת when Tisha B'Av falls on Sunday at chapter 559.

indicated in Moed Katan (23a) that every thing which is recognized in itself as a sign of mourning [as a thing used for the sake of mourning] is forbidden to be so used on Shabbat. And N"K the Rosh ז"ל's custom was to eat meat and drink wine.

553) Ramban wrote that: "From when one begins to eat the final meal, that is, from the sixth hour onward, it is forbidden to wash [oneself] and to anoint [with oil], just as it is on Tisha B'Av itself. And the reason is that since one has begun mourning [with the final meal], it is forbidden to wash, even though Tisha B'Av has not yet arrived. For the pleasure of anointing and washing pertains to later [that is, one does these acts in order to prepare for a later time], so that to wash and to anoint now [on Erev Tisha B'Av] appears as though one is preparing for Tisha B'Av. But with respect to the wearing of shoes and the other customs of mourning, it is not the custom [to begin observing them] until it is dark."<sup>64</sup>

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<sup>64</sup>Ramban wrote this in Torat Ha'Adam, and his reasoning is based on a baraita taught in Ta'anit 30a. "Another [baraita] taught, at the meal כל שרוא מחמת ט"ו [which is for the sake of Tisha B'Av], it is forbidden to eat meat and to drink wine, and to bathe after the meal. . . Rabbi Ishmael b. Yossi said in the name of his father, 'so long as it is permissible to eat meat, it is also permissible to bathe.' The words "כל שרוא מחמת ט"ו" mean the last meal before the fast, at which it is forbidden to eat meat and drink wine. And from the time that one accepts upon himself even a piece of mourning, it is forbidden to bathe. Even though it is not yet Tisha B'Av, bathing for pleasure after this hour [is forbidden], for the pleasure of bathing is not exhausted at the moment one does it. The feeling lasts, and will in this case last into Tisha B'Av. But, with respect to wearing sandals and the rest of the laws of mourning, it is not customary [to observe them] until it gets dark. Rabbi Ishmael b. Rabbi Yossi does not hold this opinion, but rather holds that, for the entire time in which it is permitted to eat, that is, until it gets dark, it is permissible to bathe. The (continued...)



And N"R the Rosh, 7" opposes this and wrote that "it is surprising, that it is permissible to eat and drink, and yet forbidden to wash and to anoint." The Ravad wrote that "Once one ends his meal, the fast automatically begins for him and it is then forbidden to eat and even to wash, that even though he has not explicitly separated himself from washing, since he has finished his meal, and separated from it, it is forbidden for one to eat any more, and

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<sup>64</sup> (...continued)

Tosefta's language is, "everything which is prohibited to eat at the last meal before Tisha B'Av-- meat, etc. and it is forbidden to bathe and to anoint. And Rabbi Ishmael b. Rabbi Yossi permits it. And the halachah is like the first Tanna, which is anonymous [דסותמא תניא], while Rabbi Ishmael b. Yossi in the name of his father is only an individual, and we do not reason according to him." The Rif does not bring this baraita into his code. The Ramban is surprised at this, as is the Ran, and they conclude, from the time one begins the seudah mafseket, the final meal, provided that this is from noontime onward, one may not wash, even one's face and hands and feet. And it is forbidden to anoint on Tisha B'Av itself.

The Rosh, in the last chapter of Ta'anit, after bringing in Ramban's statement, wrote, "this is not the general custom. And it is surprising, that it is permitted to eat and drink when it is forbidden to wash and anoint. The Ravad explained that כל שדורא משום ט"ב Everything which is for the sake of Tisha B'Av, that is, at the last meal before the fast, it is forbidden to bathe after one has stopped [eating], just as it is forbidden to eat, even though one has not [formally] separated explicitly from washing when one separated from eating. For at that time, the fast begins for him, with respect to eating, and also washing is then forbidden. וכל שאינו משום ט"ב and everything which is not for the sake of/specific to Tisha B'Av, such as a public fast, even though one refrains [from eating] while it is still day, it is permitted to eat meat and drink wine at the last meal [before the public fast] and it is permitted to wash. Concerning what R. Ishmael b. Rabbi Yossi in the name of his father [said], every hour in which it is permitted to eat, that is, if he has not yet separated/stopped [from eating], it is permitted to wash. Even though he has stopped eating, it is permitted to bathe. And I wrote above, in the name of Rabbi Yitzhak that even though one has stopped; it is permitted to eat, and he brings proof from the case in Lamentations Rabbati, that R. Yehudah b. Batira ate on Erev Yom Kippur, after he had [formally] stopped. (Find this) And if so, it is also permitted to wash and to anoint and so it is the custom."

The Ramban wrote in the name of the Ravad that even though he reasons that, since he had ended his meal, it is forbidden to drink and to wash. If he makes a stipulation, that stipulation is valid to allow him to wash and drink water until sunset. Know that there is a scribal error in the manuscripts of the Ramban, but this is the correct formula. The Ravad wrote once he has ended his meal, the fast has begun for him automatically [without any formal action]. It is then forbidden to eat and even to wash, even though one has not separated [formally] from bathing. Since one has ended his meal, and separated from it, it is prohibited for him not only to eat, but also to bathe and other prohibitions. The Tosephot explain that even after he has stopped [eating], he may return and eat. Thus wrote the Rif, in the name of a Gaon, about a public fast.



likewise, washing [is forbidden]. And Adoni, Avi the Rosh 7"1 and the Tosephot explain that even after one has stopped [eating], one may return and eat [again]. And so writes the Rif, in the name of the Gaon with respect to the issue of a public fast, that one who stopped [eating] while it is still day, even though he stopped, he may return to eat, until the sun sets. And Rif wrote: "it seems correct that this applies if one did not accept upon himself the fast; but if he did accept it upon himself, it is forbidden to eat and drink."<sup>65</sup> And the Ramban wrote that "this [the issue of when the fast begins and of eating after the final meal] is only connected to the statement about 'acceptance,' in the case of Yom

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<sup>65</sup>The Rif wrote this in the last chapter of Ta'anit. The Rambam, in the third chapter [Hilchot Ta'anit, Mishneh Torah], that any fast day on which one may only eat while it is still day, if one ate and finished and decided not to eat again, he may not go back and eat, even if some daylight remains." HaRav HaMagid wrote, "this is the reasoning of הלכות [the law, that is, according to the Rif]. He wrote, 'concerning the issue of a fast on which one must stop eating while it is still day. The Gaon said thus.' To this, our rabbi [Rambam] wrote 'if one ate and drank and finished and decided that he would not eat. . . ' It is only forbidden if one decided not to eat further [that is, a way of formally accepting the fast upon himself], but if he did not decide to eat no further, certainly, he is not forbidden. This decision is the acceptance of the fast that the Rif mentioned. And there are some of the later authorities who disagree with this, saying that even if one decided in his mind that he would not eat, he may return and eat all day long. They bring proof from the incident in Lamentations Rabbati, that R. Yehuda b. Betira ate on Erev Yom Kippur after he had finished/decided. And I said that the intention of the Rif and the Rambam concerns the one who accepted [the fast] upon himself by explicitly saying he would not eat any more that day, and he accepts upon himself the fast. The midrash does not refute them." And it is true, for it seems from the words of the Rosh, that the Rif only forbids [returning and eating] for the one who accepts upon himself explicitly, that he will not eat any more on that day. Even though the Hagahot explain the words of the Rambam according to their literal meaning, that once he decided in his mind not to eat, it is forbidden even though he has not accepted explicitly. Know that the Hagahot Maimoniot in chapter three wrote that "Rabbi Meir of Rothenberg refuted the proof about Rabbi Yehudah b. Betira, saying that incident occurred in the morning, and when he said 'I am done eating,' he meant 'I'm full.' [not that he had stopped eating before the fast] And you may assume [that if he meant] it in reference to the evening, he would have explicitly said 'I ate and I finished and I intend not to eat any more today,' thereby accepting upon himself the fast. And then, how could he return and eat? Thus explained the Ravad."

Kippur, when one must add to the it [the day and begin fasting] while it is still [the previous] day. but with respect to the rest of the fasts, even including Tisha B'Av, that at the twilight [of the day before the fast] is forbidden [to eat], if one has stopped eating and then reconsiders, it is obvious that he may return and eat."<sup>66</sup> But it does not appear correct [according to the Tur] to make a distinction, for surely acceptance forbids [further eating] on all fasts for which one needs to stop [eating] while it is still day.<sup>67</sup>

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<sup>66</sup> HaRav HaMagid wrote in the third chapter [Hilchot Ta'anit, Mishneh Torah], "even though from Rambam's words it appears that [public fasts] have additional time added to them, one should notice that he wrote that they [stop??] eat and drink on them while it is still day, as one does on the fast of Yom Kippur. Rambam's words apply the principle that they are not more stringent than Tisha B'Av, which does not have additional time added on from the previous day."

<sup>67</sup> Some say this is not a problem, that in the case of additional time, this is the law: since the additional time does not have a specific measure, everything which one adds to accept upon himself to fast, it is all considered "additional time," and it is forbidden [to eat during that time], because it is as though one has expanded the time of the addition, and it is in his control to expand that addition time. But, any fast which does not have additional time, when one accepts it upon himself to fast at the end of the day, since he ate and drank at the beginning of that day, it is not called a fast, even a fast of hours [and hence, not binding?]. It is not according to the words of the Rosh, which the Tur quotes in chapter 562. With respect to the law, it appears that one is only prohibited from eating from the time he has accepted upon himself explicitly that he would not eat anything else that day, since this is how the Rif reasoned, and the Ramban may have reasoned this way, and the other commentators, aside from the Ravad, thought so. However, in the case that he accepted it explicitly that he would not eat, it is forbidden as it is explained in the words of the Rif, and not according to Ramban's statement, in Torat Ha'Adam, that "the acceptance which the Rif mentions is not really the issue, except in the case of Yom Kippur, because it requires additional time." But some say acceptance is forbidden in our time, and that it is from sunset, and it is from פלג מנחה [what hour is this?] onward. Since one may add time to Toraitic holidays, one may also do so for a prophetic holiday; if one wants to add time to it and take it upon himself, he should treat [the additional time] like the [fast] day itself.

The Rambam wrote (Hilchot Ta'anit 5:7, Mishneh Torah) that "the night before Tisha B'Av is like the day itself in every respect, and one may only eat while it is still the [preceding] day. And the twilight of that day is forbidden [that is, one may not eat during twilight of Erev Tisha B'Av]." HaRav HaMagid wrote, "this is explained in many places. The principle is in Pesachim (54b), where  
(continued...)

554) Our sages have taught (in Ta'anit 30a) that all the laws which are customarily observed by a mourner customarily apply on Tisha B'Av. Bathing and anointing and wearing sandals and having marital relations are forbidden. It is also forbidden to read in the Torah and Prophets and Writings [Hagiographia], or to study the Mishnah, Midrash, Talmud, Halachah or Aggadah, but one may read such parts in Scripture with which he is unfamiliar, and he may learn [in Mishnah and Oral Law] such parts with which he is not accustomed to learn, according to Rabbi Meir, because this causes him suffering [because the unfamiliar text is difficult to master]. Rabbi Yehudah says that one may not read even in a place where he is not accustomed to read nor learn in a place where one is not accustomed to learn, and the halachah follows him. But one may read in Job and in parts of Jeremiah that describe misfortune. The children of the Torah school do not go to it, for it is written, "The precepts of the Lord are right, rejoicing the heart." (Psalm 19:9) (Ta'anit 30a) In Ashkenaz, it is the custom to read in parshat לְשׁוֹן לַיִל וְלַבֹּקֶר (Isaiah 34) after one reads of the misfortunes in Jeremiah. And Rabbi Meir of Rothenberg wrote: "I

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<sup>67</sup>(...continued)

it explained that its twilight is forbidden. From here, the Rambam derives that Tisha B'Av does not have additional time added to it while it is still day, as Yom Kippur does. For if it had such additional time, it would be unnecessary to say that [eating during] its twilight is forbidden, for they would be additional time [of fasting earlier] while it was still day. This is a clear issue."

do not know the source of the custom of reading from the sections of consolation in Jeremiah and also reading Parshat קריאת גרים in Isaiah (34), because all of this is consolation, and one may not read in Scriptures [at all] except for the misfortunes in Jeremiah. And afterwards, I heard that there are those truly observant individuals who omit all the verses of consolation."<sup>68</sup>

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<sup>68</sup>The Hagahot Maimoniot wrote, "Rabbi Meir of Rothenberg complains about those who read 'קריאת גרים' and some of the verses of consolation, and he wrote that those who are truly observant skip all of these [sections]. And it is the custom to read Job and the devastating portions in Jeremiah, which the sages have permitted. But for the one who reads the verses of consolation in Jeremiah and קריאת גרים in Isaiah (34), he has committed a sin. Consider: even words of the Humash [the five Books of Moses] which are neither consolation nor reproofs are forbidden; how much the more so should words of goodness and consolation be forbidden to be read!" The Kolbo wrote, "one should read Kinot and Lamentations and in the devastating portions of Jeremiah and in the Midrash Lamentations Rabbati, in order to remember the destruction of the Temple." Rabbi Yitzhak wrote, "one may read in chapter אלו מנגידין (Moed Katan 23-ff), and things like it [that is, laws of mourning]." Rabbi Peretz [a Tosefist] wrote, "one may read in the commentary [probably Rashi, but any commentary falls under this category] to Lamentations, but not in the commentary to Job, because it [the book of Job, as well as its commentary] deals with a more profound and difficult subject. And when the rabbis said, 'one may read...' they meant 'read' only; but the study of Torah is forbidden [that is, one can not simply read a commentary to Job, and since study, or inquiry is a source of joy, it remains forbidden on Tisha B'Av]."

In the responsum of the מהרי"ל, who disagrees with the above, it is written, "concerning the issue of learning the commentaries to Jeremiah and Job on Tisha B'Av, I do not know why one would want to distinguish between the commentaries and the text itself. Are we dealing with fools who do not understand what comes out from their own mouths [that is, who would not understand it when they read the text? If they do understand the text, it is a kind of commentary anyway.] If it is because you have to study it [the text and commentaries, rather than just reading the words], that is even better, because Rabbi Meir permitted reading even a reproof and learning in places with which one is not familiar. Even though we hold according to Rabbi Yehudah, in any case, we see that any text over which one troubles oneself, or is hard to learn, is preferable." Learning in the section אלו מנגידין is permitted also in the same responsum. "Even though it is not about Tisha B'Av [it is permitted], for it there were joy in [learning] it, they would not have permitted the mourner to read in [but since they have allowed the mourner to read it, we may also learn there on Tisha B'Av]. They permitted [the mourner to learn] in chapter אלו מנגידין without any qualification, even though there are many laws [in the chapter] about excommunication and banning [and it is not solely about mourning]. It is not considered happiness, and furthermore, it is also considered a rebuke, as Job is, in that it is the end of every human being, and so let every person pay attention. It is quite possibly forbidden to engage in Talmudic dialectic in the mourner's presence, since this greatly publicizes the fact [that he is a mourner]."

HaAgur Landau [15th cent. Germany] wrote in the name of Rabbi Yaakov Molin that learning on Tisha B'Av by reviewing [a text] in one's mind is forbidden."

Ramban wrote, "It is the custom of a few not to read Parshat Korbanot (the sacrifices read in the morning service: Exo 30:17-21; Lev 6:1-6; Num 28:1-8; Exo 30:34-36, 7-8; Bavli Kereisot 6a/Y. Yoma 4:5; B. Yoma 33a; plus rabbinic insertions) and Mishnah איזוהו מקומן (Zevachim chapter 5) and Midrash Rabbi Ishmael (the 13 hermeneutical principles from the introduction to Sifra) in the synagogue, because it is forbidden to read in the Torah. But this is not correct, for we are not forbidden [to read things in] the daily service, since we do recite the Shema and say the blessings before and after it [the Shema is from the Torah, so it is like reading in Scriptures], and we also read in the Torah and the Haftarah from the prophets and Parshat Korbanot and איזוהו מקומן, since it was decreed in place of the Tamid offering, and we pray as is customary, and do not worry. The prohibition on eating and drinking on it [Tisha B'Av] is like the prohibition on Yom Kippur, except that one [Yom Kippur] carries a punishment of extirpation, and this one [Tisha B'Av] is from וְנָרִי קִנְיָה [the received tradition: Prophets and the Writings] and one should give him [a violator] lashes of rebellion," (Ramban, Torat Ha'Adam) And it is taught in chapter מקום שנהגו (Pesahim 54b) that pregnant women and nursing women should fast on it and complete it in the same way that they fast and complete it on Yom Kippur. And its twilight is



forbidden [that is, one must stop eating at twilight on Erev Tisha B'Av].<sup>69</sup> The Ramban wrote, "However, in the case of a woman during the thirty days after she has given birth, and in the case of a sick person who needs to eat, one does not have to get an expert's opinion, but rather we feed them immediately, for in cases of sickness, a rabbinic decree does not apply."<sup>70</sup> And this is also true with respect to washing and anointing, which we forbid completely, just as on Yom Kippur, whether it is [with something] hot or cold. (Pesachim 54b) For according to Rabbi Eleazar (Ta'anit 13b), a person is forbidden to put his finger into water on Tisha B'Av, just as he is forbidden to do so on Yom Kippur. However, in

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<sup>69</sup> HaRav HaMagid wrote (Hilchot Ta'anit 5, Mishneh Torah) that it appears to him that we can deduce that pregnant women and nursing women are exempt from the three other fasts. They are only stringent in these cases on Tisha B'Av. The Rashba wrote thusly in a responsum, and added that, despite this, it is meritorious for a pregnant or nursing woman not to be so lenient. If she eats, she should not delight in the food and drink, but only eat and drink in order to sustain the child, as it is said in Y. Ta'anit 6a. Rambam in chapter three (Hilchot Ta'anit, Mishneh Torah) and the implication of the words of the Hagahot Maimoniot is that it is not permitted for pregnant and nursing women to eat on these three other fasts unless it would cause them significant physical pain and discomfort [to fast]. But Rabbeinu Yerucham wrote in Chapter 27 that pregnant women are forbidden to fast except on Tisha B'Av and on Yom Kippur, because of the hardship to the fetus.

<sup>70</sup> The Ramban wrote this in Torat Ha'Adam. The Ran wrote similarly at the end of Ta'anit. Hagahot Maimoniot wrote that "Rabbeinu Tam permitted a woman who gave birth to eat on the day of the fast of Gedaliah even if it is after [the] seven[th day after giving birth]. Even though it says in Shabbat 129a that 'after seven [days], if she says I do not need, one should not violate the Shabbat on her account,' and [even though] the fast of Gedaliah is from the words of the prophets, and the words of the prophets are equivalent to words of Torah, it is nevertheless permitted, since 'when they want to fast, they fast, and when they do not want to fast, they do not fast.' (Rosh HaShannah 18b) If so, then it is permissible, and it is permitted for her to eat." It was written accordingly in the Hagahot Mordechai in Moed Katan, which concluded, "and in these days, when there is no persecution and no peace. . ." and according to the statement in the name of Rashba, the same is true even without this justification [that there is no persecution and no peace], that it is permitted for her to eat because she is a nursing mother.

the case of immersing for [the sake of] a mitzvah [for example, niddah], it is permitted; and it is permitted to wash one's hands for prayer, for it is like an immersion for a mitzvah. All those who are obligated for immersion, should immerse as usual, whether on Tisha B'Av or on Yom Kippur.<sup>71</sup> So too for the remainder of the

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<sup>71</sup>Thus wrote Rambam in Mishneh Torah Hilchot Shvitat Asur chapter 3. His reasoning follows the baraita in Ta'anit 13a, "All who are obligated for ritual immersion, they should immerse in their usual manner, whether it is Tisha B'Av or Yom Kippur. . . Rabbi Hanina the chief of the priests said 'our House of God merits that one should for its sake forgo immersion once a year.'" The law is according to the first Tanna. Likewise, the Ramban ruled in Torat Ha'Adam that "the halachah is like the first Tanna, and those words apply to immersion in its proper time. For we hold that an immersion at its proper time is a mitzvah, but if it is not at its proper time, it is forbidden." But the Tosephot wrote on Betzah 18b that "they [women] who count seven [days] in order to provide for the case of doubt if they are unclean do not immerse on Tisha B'Av or Yom Kippur. Nowadays, all the immersions that women do are considered 'not in their proper time' for this reason."

However, a distinction can be made, based on the statement in Yoma 88a, "Women at the end of niddah/their time of uncleanness and women who have given birth immerse at night; men and women who are unclean [from disease] immerse during the day, etc." So we learn from this reasoning of the tanna that immersion which is not at its proper time is not a mitzvah, yet even so, it is permitted on Yom Kippur. However, on Tisha B'Av, they [women] do not immerse, according to Rabbi Hanina b. Antigonus, who said that "it is worthy of our House of God to forgo immersion once a year." In the Yerushalmi (Betza 10b), Rabbi Levi ruled in accordance with Rabbi Hanina ben Antigonus. Furthermore, the RI says that "in our day, they do not immerse, either on Yom Kippur or on Tisha B'Av, for the ones who used to be engaged in dealings with pure things used to have to immerse immediately, in order not to defile the pure things. But nowadays, when immersion is only to purify [a woman] for her husband, she can bathe and cleanse on Erev Yom Kippur, in order to wash her hair and clean a bit for the evening after Yom Kippur [when she can immerse], for [she must clean herself and wash her hair immediately] before immersing [that is, the woman can do the "heavy washing" on the day before Yom Kippur, so that, before immersing after Yom Kippur, she need only do a minimum of hair-cleaning]. So too on Tisha B'Av, because even if she were to immerse on Yom Kippur or Tisha B'Av, she would be forbidden to her husband [on those days, since marital relations are forbidden]." Additionally, in Shabbat 111a, it is written that the law is like Rabbi Hanina. And our Rabbi, the Tur, even though he wrote here that everyone who is obligated for immersion should immerse whether on Yom Kippur or Tisha B'Av, in the halachot of Yom Kippur, he wrote that Rabbeinu Tam disagreed, saying that they do not immerse. And as for the baraita, "everyone who is obligated for immersion should immerse in their usual manner on Yom Kippur," this is the case only for the one who says immersion in its proper time is a mitzvah. But we hold that it is not a mitzvah. Therefore, they postpone it until the next day. Additionally, Rabbi Yosef Colon wrote, at chapter 35 of his responsa that he had never seen one who immersed during the days of mourning, and how much the more so on Yom Kippur or Tisha B'Av?! We adopt this, even to wash in order to whiten [the clothing]. Or Zarua wrote that "it is permitted for her to change her washing only a little, but she should certainly wear a white covering and she should spread a white sheet on the bed in order to insure that she does not come into doubt [as to whether she is still a niddah]."

day, after one attends to his needs/goes to the bathroom, and he is required to davan "אשר יצר" [who fashioned man with wisdom. . . ], he may wash his hands. But one must be cautious, so as not to wash his whole hands, but rather simply as needed to remove the soiling/excrement. And even if is not for the purpose of a blessing and T'fillah - if one's hands were soiled with mud and dirt and one washes them in order to remove the mud and excrement -- if one is not doing it because of enjoyment, it is permitted, for the rabbis forbade only washing and anointing for pleasure. As it is said in the Gemara: "The one who has scabs on his head may anoint as usual, and need not worry." (Yoma 77b) [In the] — Yerushalmi (Y. Ta'anit 6b): "[On] Tisha B'Av, one washes his hands, passes them over his eyes [wipes him across his eyes],"<sup>72</sup> which means after he has dried them, and they are still a little bit wet. And if there was pus in his eyes, and his usual practice is to wash them in water, he should wash and then remove/wipe it away, and should not worry, since it is like the case of mud or excrement, and he need not scruple. And so wrote R. Yitzhak Giat. But this not like the Rambam, ז"ל, who wrote, "On Yom Kippur and Tisha B'Av, on which one may not bathe, one should not say the blessing [over

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<sup>72</sup>It appears that this is only permitted after one dries his hands and they are still damp; whereas washing them [his hands] in order to clean [his eyes] is not permitted.

hand-washing] "Al N'tilat Yada'im" and should not say "who removes sleep from the eyes." (Hilchot T'fillah 7, Mishneh Torah)<sup>73</sup> One who goes to visit his rabbi may walk through water up to his neck, and need not worry as we read in the last chapter of Yoma (Yoma 77b).<sup>74</sup> It is written that "on Erev Tisha B'Av, they brought him

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<sup>73</sup> All of this is the language of the Rosh at the end of Ta'anit. The Ramban wrote similarly in Torat Ha'Adam, and he added that "washing the hands for prayer is a mitzvah, and in order to greet one's rabbi, one may cross through water, in order to greet the Shechinah. But if it is not the time of prayer, and if they were soiled from using the bathrom, how much the more so may he wash [the hands] in the usual manner. If this is not the case, one may not wash except for prayer." The Ran wrote in Yoma accordingly. Rabbeinu Yerucham wrote "The Tosephot agree that he may wash his hands for Shacharit, and, in any case, one should be cautious that one only washes up to the end of the fingers, and not the entire hand." This is what we hold.

The Rosh wrote in the second chapter of Yoma in the name of the Gaon that "the one who requests to wipe his face on Yom Kippur, if he is delicate and his mind cannot settle upon him normally during the year until he wipes his eyes with water, he may wipe them. But all other people are forbidden. But, if he has dripped urine upon his legs, he is obligated to wash and to rub them with his hand." The Tur wrote this at chapter 613, and there I shall write the reasoning of the poskim who concurred in this judgement.

<sup>74</sup> "They asked him, 'what about a Rav going to the house of his student?'" (Yoma 77b; cf OH 613:7) The Talmud does not answer this question. The poskim ruled the more stringent way with respect to Yom Kippur, but with respect to Tisha B'Av, it would appear that the obvious ruling is the lenient one, since it is a case of doubt about a rabbinic commandment. But the poskim did not rule this way. Therefore, he needs to say that they reason, since a prophetic ordinance [that is, Tisha B'Av, which is surely more than a rabbinic commandment] is as stringent as the words of the Torah, and furthermore, since this law is mentioned only in connection with Yom Kippur [that is, since it is not mentioned with regard to Tisha B'Av, why should one conclude that the rule is more lenient?]. Thus, they hold the stringent view on this issue. It is only permitted to walk through water to go to the house of a superior, and not to a subordinate's. From whence can we derive that one may permit it on Tisha B'Av for a Rav to go to the house of his student? We learn in Yoma 77b, "Rav Joseph permitted the people of Tarbu to walk through the water in order to go to the lecture and he permitted them to return, so that it would not be a stumbling block for the future." And it is taught furthermore that "Rava permitted the people of Ibar Jemina to walk through water to guard the fruit." But the Tur did not write a word of this, because he relies on the writings in the laws of Yom Kippur, and in the Gemara as well, these rules as well as some other laws, are mentioned only in connection with Yom Kippur. And from that source, he learned about Tisha B'Av. The Tur only wrote one of the Yom Kippur laws here [that of passing through water in order to visit one's Rav] with regard to Tisha B'Av, even though he did not write about the end of this very baraita, which teaches that one's father is greater than one's Rav. He did this as a means of arousing our curiosity so that we would turn to the laws of Yom Kippur for guidance on Tisha B'Av [that is, when there is a leniency with respect to Yom Kippur--such as was the case for Rava and Rav Yosef--there is no reason not to apply that leniency to Tisha B'Av. If the Tur doesn't rule on other issues

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[R. Joshua b. Levi] a towel and he would soak it in water and wipe with it at night, his face, his hands and his feet" (Yoma 78a). "Soak in water" means [he would do so] on Erev Tisha B'Av [the day before Tisha B'Av] and remove it from the water, and let it dry, and then at night he would wipe his hands and feet with it in order to cool them, and the next day, he would wipe it across his eyes to remove the "eye pus."<sup>74</sup> Even if it is not one's custom to wash his eyes every day, and he does it now for the sake of enjoyment, it is permitted since it [the towel] is dry. Yerushalmi (Y. Ta'anit 6b):

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<sup>74</sup>(...continued)

here, it is because he expects us, the readers, to search it out from the laws of Yom Kippur and apply it here].

<sup>75</sup>This is the correct version according to the Tur, and the ruling is explained in Yoma 78a. "Zeiri bar Hama said to Joseph, son of Rabbi Joshua ben Levi, 'Come and let me tell you a fine custom that your father had. On Erev Tisha B'Av, they would bring him a towel and he would soak it in water, and wipe his face, hands and feet with it, in order to cool off. The next day, he would wipe his eyes with it, and he did not scruple. . .'" The Rosh explains, "he soaked it in water" on Erev Tisha B'Av and then removed it from the water and it would dry, and at night, he wiped his face, hands and feet with it in order to cool them. The next day, he rubbed his eyes to remove eye pus from them, and bits of slumber." The Ran agrees with this, as does the Tur. This reasoning is based on the fact that it would not be possible to say that he removed it from the water at night, for then he would touch the water while he was removing it. Additionally, who permitted him to wipe his face, hands and feet with it at night, since he removed it from the water at night, and the water would still be dripping from it. How would it be possible for him to wipe with it? Therefore, the explanation must be that he would remove it [from the water] while it was still day, and when, at night, he came to wipe with it, it was already dry, and he would only wipe with it in order to cool off. The Rosh has a difficulty here. Why would he need to wipe this dry cloth over his eyes? This is explained above, that if there was pus in his eyes, and his custom was to wash them in water, he may wash and wipe them and he need not scruple. Therefore, he wrote that this cloth was only needed for the one who was not accustomed to washing his eyes every day, but did so now [on Tisha B'Av]. It was not because he was troubled by it [the eye pus], for it was not his usual way to wash his eyes everyday, but rather he does so simply for pleasure. This is permitted after the cloth is dry, which is implied by this explanation. The Mordechai wrote at the beginning of Moed Katan, in the name of Ravad, "it is permitted to wash the drippings, even on Yom Kippur and Tisha B'Av; if he is soiled with dirt and excrement, it is permitted. And the wiping [done by] Rabbi Joseph b. Levi was in order to pass the cloth over his eyes, because of the pleasure he derived from the cool cloth. I write more about this at chapter 613."



"the one who comes from the road and his feet are muddy, he is permitted to wash with water." And the prohibition against wearing shoes is like the prohibition on Yom Kippur, applying particularly to [shoes made] of leather, but with respect to [those made] of cloth or wood or of cork or reeds--these are permitted.<sup>76</sup> It is taught [in a baraita] that a mourner or one who has been excommunicated, when walking on the road, are permitted to wear sandals, but when they reach a city, they take them off, and the same is true on Tisha B'Av and the other public fasts. (Yerushalmi Ta'anit 6b) The Ravad wrote, "It appears that in this time, when we live among the non-Jews that we do not remove our sandals/shoes, except when on a Jewish road [that is, in the Jewish quarter] or in the house of a Jew."<sup>77</sup> If Tisha B'Av falls upon Shabbat, all these are permitted."<sup>78</sup> And so Rabbi Yitzhak

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<sup>76</sup>This we learn in the last chapter of Yoma (78a). The Rif and the Rosh both agree with this. And the Tur wrote, in Yoreh Deah, chapter 382, that "if they [the shoes] are of wood and then covered with leather, it is forbidden [to wear them]." And so wrote the Ramban in Torat Ha'Adam.

<sup>77</sup>Thus wrote Rabbeinu Yerucham, also in the name of the Ravad, except he wrote about this matter that it is a striking [and not really accepted] leniency [to be permitted to wear shoes at all]. And the Hagahot Maimoniot wrote in the name of [reported from] R. Simeon. And Hagahot Mordechai wrote, in Moed Katan, "the one who journeys on the road is permitted to wear shoes until [he is on] the Jewish [communal] road, in our day, because of the non-Jews." that is to say, because they [the non-Jews] mock [the Jews] while they walk barefooted. But in practice, we should not accept these leniencies [and so, one should not wear shoes].

<sup>78</sup>In Ta'anit 29b, it is taught that "if Tisha B'Av falls on Shabbat, one may eat and drink [as much as necessary], and may load his table with as much [food] as Solomon did in his time." The Rosh wrote there a passage from the Tosefta, which is the same as the language of this baraita. (continued...)

wrote, that "even though we postpone it until the next day, it is forbidden to have sexual relations. This resembles/is similar to someone burying his dead on a [pilgrimage] festival, when mourning is postponed until after the festival. Nevertheless, one must observe [on Shabbat or the festival], such customs of mourning having to do with 'domestic privacy' (Moed Katan 24a) [are observed]. Here, too, on this Shabbat in connection with Tisha B'Av, it is like a festival and it is forbidden to have sexual relation."<sup>78</sup> And Rabbi Meir of Rothenberg disagrees with him, but at the end of his words [he wrote], "Nevertheless, it is correct to be stringent, like the words of my teacher. Even if he is lenient and I am stringent, one should follow his opinion." And N"K The Rosh 7"1 wrote: "But, the words of the Tosefta teach, 'and he places [feast on] his table and he does not prevent withhold himself from any thing.' This implies even "domestic privacy" issues, and thus the people behave." And so wrote Ramban, "One should not ask after the well-being of friends [greet friends] on Tisha B'Av. The commoner who does not know [this] and who says

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<sup>78</sup>(...continued)

And it is further written in it, "And he should not keep from himself anything," and the Rosh explains, "that is to say, he need not refrain from washing or anointing or marital relations and he need not do these things in secret."

<sup>79</sup>"And so the people behave [this is the general custom]," wrote the Rosh in the last chapter of Ta'anit. It is written in Hagahot Mordechai of Moed Katan that "on Tisha B'Av and Yom Kippur, it is forbidden to sleep on the bed with one's wife."

'shalom'/greets--one should answer him with low, indistinct speech."<sup>80</sup> And we learn in chapter חקום שנהגו (Pesahim 54b) that "in a place where it is the custom not [sic--this is in the Tur, but incorrect] to do work on Tisha B'Av, work; in places where it is the custom not to do work, do not work." And in every place the sages cease working. Rabban Simeon ben Gamliel says: 'One should always, with respect to Tisha B'Av, act as if one were a Torah scholar, and we do not account it as a conceit. (Pesahim 55a)."<sup>81</sup> Rabban Gamliel says (Ta'anit 30b, but Rabbi Akiva

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<sup>80</sup> So wrote the Rosh and the Ramban in Torat Ha'Adam and the Rambam at the end of Hilchot Ta'anit (Mishneh Torah). The Kolbo wrote, "one should not travel nor wander the marketplace, in order not to engage in enjoyment and gaming."

<sup>81</sup> In the Gemara, Rabban Simeon ben Gamliel's point, that "it does not appear haughty," is explained that they would say "It is because he has no employment [that he does not work today]; after all, look at how many unemployed people there are in the shuk." And Rashi explains that "the one who seeks him not working will say 'he has no work.' Hence, his inactivity does not appear to be a conceit, that he is refraining from work because of a ritual prohibition [that others do not observe.]"

Hagahot Maimoniot wrote, "Rabbi Simeon ben Gamliel was not concerned that it is a conceit, whereas the first Tanna is concerned that it is a conceit. The Tosephot explained that, even for the Tanna Kamma, everyone nowadays should act as though he himself was a scholar and not work on Tisha B'Av, and it is not a conceit, since on the other days [of the year] as well, we are not all that accustomed to work. It was precisely in their days [the time of the Talmud] when they were all accustomed to work that it [not working] was related to conceit, but it is not nowadays. However, in places where they are accustomed to engaging in work, as in the Sephard, נצ"ח it needs consideration whether one should refrain from work on Tisha B'Av. Perhaps, if their custom their is not to work, according to the Sefer Mitzvot Katan, [one should not work]. And he said that it is a widespread minhag in Sephard not to work on Tisha B'Av, and it is similarly the custom of all Israel, in everyplace we have heard of. רדב"ק wrote, "Even in places where it is the custom not to do work, these words apply to [work done by] oneself; but [work done] by means of a Gentile is permitted, even in his [the Jew's] house." The Trumat HaDeshen wrote that to milk cows on Tisha B'Av, which apparently means a Jew doing so, is permitted. But later, he expressed doubt about the matter, and he concluded that it is good to be stringent, and if possible [to milk the cows] by means of a Gentile.

says it): "Anyone who does work on Tisha B'Av will never see [in his work] any sign of blessing." [and the sages say, paraphrased] "anyone who eats or drinks on Tisha B'Av, will not see the joy of Jerusalem and everyone who mourns for Jerusalem merits to see/share in her joy, as it is written: ['Rejoice ye with Jerusalem and be glad with her, all you that love her] rejoice you for joy with her, all you that mourn for her.' (Isaiah 66:10) And anyone who eats meat or drinks wine at the final meal [before the fast], about them Scripture says: 'And their iniquities are on their bones.'" (Ezekiel 32:29) (Ta'anit 30b).<sup>82</sup>

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<sup>82</sup>(...continued)

<sup>82</sup>The Rashba wrote in a responsum, "with respect to the issue of trade, to which I referred, whether it is permitted on Tisha B'Av depends entirely upon minhag. If it is a place which customarily does not do [work], certainly it appears that trade is forbidden, either making a profit or dealing in it. But if it is a place which customarily does work, it appears that it is permitted, but only if one diminishes [the amount of trade]. From the beginning of Av, they should diminish business activity, but if the business activity cannot be postponed without irretrievable loss, it is reasonable to permit it, as it is said about the intermediate days of a festival [דורות של מנוחה; during that time, work is prohibited except in cases where not working would incur a significant loss; in that case, work is permitted only if one need not exert unreasonable effort to do it]."

<sup>83</sup>The Tur's version of the text is the same as that of the Rif and the Rosh. Concerning the phrase "he will not see a sign of blessing," Rashi explained "from that bit of work." Concerning the phrase "and their iniquities will be on their bones," the Ran explained that "so we use [the word] 'bones' because, as it says in Nidah 24b, 'bones of one who drinks undiluted wine are burned; those of a person who drinks wine overly diluted are dry; and the bones of one who drinks wine properly [diluted] are full of marrow.'"

The Rosh wrote, in a responsum, that "it was asked if on Tisha B'Av, from minchah onward, or just after minchah katan, if one may wash his face, hands and feet in order to cool [them]. If they say part of a day is equivalent to its entirety, as in the case of long-standing bereavement. Heaven forbid! [the Rosh rejects this analysis] Rather, the entire day is forbidden." The Kolbo wrote, "The one who is lenient concerning washing from his legs from minchah onward, he transgresses the words of the sages. But it is a minhag that women wash their hands from minchah onward on the day of Tisha B'Av. The early elders established this, and they based this on the statement in the Agaddah, 'that the Messiah will be born on Tisha B'Av, and one must make a remembrance of the redeemer and comforter in order not to despair of redemption.' And this [refers] particularly to the women, because their belief in the Comforter [the Messiah] is weak,

(continued...)

555: One is not obligated concerning 'overturning the bed' and not for 'wrapping the head,' even though they are customs of mourning.<sup>83</sup> As for the baraita which states "all the laws which are customary/which apply to the mourner apply [to everyone] on Tisha B'Av," (Ta'anit 30a), it is taught that this refers to negative commandments which apply to mourners. But with respect to positive commandments concerning the mourner, such as overturning the bed and wrapping the head, it does not apply. And there is no need to say that kri'ah [does not apply], which is not included among the [category of] mitzvot customarily observed by mourners, since we say "mourning is separate [one category] and kri'ah is separate [another category]." (Moed Katan 26b) And N"K the Rosh 7"1 wrote, "it appears reasonable that one is

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<sup>83</sup>(...continued)  
because they are not learned. Therefore, they need strengthening." And I say, this minhag has become mixed up beyond recognition, and all who become lenient in this matter, whether man or woman--coerce him to obey the stringency, so that he does not transgress the words of the sages. The Tosephot wrote at Ta'anit 30a, "when Tisha B'Av occurs on Thursday, it is permitted to wash clothing and to cut hair from midday onward, because of the honor of Shabbat, which one should not delay [these activities] until Friday, because of the troubles [of the preparations for] Shabbat." And I already wrote [about this] in chapter 551, that one should not rely upon this teaching.

<sup>84</sup>Author's note: According to Semahot 6:1, it was once customary for mourners to invert their beds, and then to sit upon the overturned bed. (Isaac Klein, A Guide to Jewish Religious Practice (New York: Jewish Theological Seminary of America) 1979, p. 289) According to S.Y. Zevin, the beds were overturned so that the mourners would not sleep in them. (S. Y. Zevin, The Festivals in Halachah (New York: Mesorah Publications, Ltd.) 1981, p. 234.) Nowadays, mourners customarily sit on the floor, or on low stools.

Mourners also used to wrap their heads as a symbol of mourning, a practice which is no longer observed today.

<sup>85</sup>All this, from the beginning of the chapter is from the Ramban in Torat Ha'Adam. The Rosh and the Ran wrote this at the end of tractate Ta'anit.



obligated [to put on] tefillin, since the mourner himself is not forbidden except for on the first day, and one should not make Tisha B'Av more stringent than the six days of mourning [shiva minus the first day]. As for the baraita, 'mitzvot which are customarily observed by the mourner for seven days,' (Ta'anit 30a) these are specified [in the baraita]: bathing, anointing, wearing sandals, marital relations and reading in the Torah [these are the prohibitions on Tisha B'Av, because the mourner is forbidden them the entire week of mourning]."<sup>86</sup> Rabbi Meir of Rothenberg wrote that: "it appears that [on] Tisha B'Av, one does not put on tefillin, as on the first day of mourning, since there is no day

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<sup>86</sup>The Ramban wrote accordingly in the Torat Ha'Adam, and the Ran at the end of Ta'anit. The Ramban wrote, "a minority of the sages customarily do not put on the tefillin of the head on [the day of Tisha B'Av]." (Hilchot Ta'anit 5:26, Mishneh Torah) It appears from his words that a person is free to put on tefillin on Tisha B'Av, but that a small number of the sages customarily not to put on the [tefillin] of the head. Thus, HaRav HaMagid concluded from his words to exclude [the opinion] of Rabbi Yerucham who wrote in the name of the Ramban that "one may not put on tefillin on [Tisha B'Av], for it resembles the first day of mourning." He wrote further that this was the opinion of the Rif, but I do not know the source of this, that the Rif reasons thusly [that is to day, Caro does not know how Rabbi Yerucham concludes this.].

These are the words of the Rashba in a responsum about tefillin on Tisha B'Av; we find for the Gaon, Rabbeinu Hai, that it is permitted to put them on. And the Ramban, in Torat Ha'Adam, agrees with this. Hagahot Maimoniot wrote concerning the Ramban's statement "some sages customarily do not put on the tefillin of the head on [Tisha B'Av]," that so it is written in Sefer Mitzvot Gadol and the Rokeah, because we call it [the tefillin] an ornament, so the mourner does not observe this. (cf. Brachot 11a, 16b) R. Meir of Rothenberg reasoned likewise; however, he put on tefillin after [or at] minchah. Likewise, it is the universal custom. HaAgur wrote "[those praying as] individuals wear a tallit katan under their clothing, without a blessing." The Kolbo wrote, "ר"ש"י was strict on himself; he would lie on the ground." And in Hagahot Maimoniot on Moed Katan, he wrote, "there are people who place a stone under their heads on the night of Tisha B'Av, and this is a hint/allusion to the matter 'and he took from the stones of the place' (Genesis 28:11). He saw the Temple and its destruction, that it is written, 'how full of awe is this place!' (Genesis 28:17)? He saw the destruction. I found this [interpretation] from the stories of the Gaonim." (Sefer Kolbo, chapter 62, p. 26)

more bitter than this one, a day established for weeping for all generations." And R"R the Rosh 7"1 wrote: "it is possible that [the Maharam] is searching for a reason for the Ashkenazi minhag, but on the face of it, it is as I wrote [that one is obligated concerning tefillin]." And Rabbi Meir of Rothenberg wrote further that "with respect to tsitsit, it was the custom of our ancestors, and throughout Ashkenaz, that one does not wrap oneself/put on [one's tsitsit] on Tisha B'Av, and they relied on the verse 'The Lord has done what he proposed; has broken the decree he ordained long ago. He has torn down without pity. He has let the foe rejoice over you, has exalted the might of your enemies.' (Lamentations 2:17) And it says in the Midrash (Lamentations Rabbah 1:1) that 'He tore his purple' [that is, God allowed Titus to cut through the Temple curtain, and so one should not put on the Tallit] And there are those who do not wish to change the minhag, nor do they wish to be without tsitsit, and so they put on a "tallit katan" [a fringed garment] under their clothes." Rabbi Hai Gaon wrote: "A mourner whose seventh day of mourning falls on Tisha B'Av, that which is prohibited on Tisha B'Av, such as bathing and anointing and wearing sandals and marital relations, continue to be forbidden all day. But things which are permitted on it [on Tisha B'Av] but are forbidden to a mourner, such as wrapping [the

head] and overturning the bed and removal of tefillin - he has the option: if he wishes to continue [to observe mourning] until evening, he should continue, and if he wishes to cease observing those customs of mourning immediately, he should/may do so." And the Ramban <sup>87</sup> brings proof from his words, that "[on] Tisha B'Av, it is permitted [to wear] tefillin." And I do not understand what he wrote -- "Things which are permitted on it, and forbidden for the mourner, such as removing," for behold: the mourner is also permitted from the first day onward.<sup>87</sup>

556: It is written in הלכות הגדולות: "Even though we hold that one may pray [the prayers] of Saturday night on Shabbat, and say havdalah over the cup, if Tisha B'Av falls on Sunday, one should not make havdalah while it is still day. For if he makes havdalah, he receives Tisha B'Av [upon himself], and it is forbidden to drink

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<sup>87</sup>This is indeed a strong challenge to concerning the words of Rabbeinu Hai, and it is possible to push further and say that Rabbeinu Hai reasoned that the halachah is like Rabbi Joshua, who said in Moed Katan 21a, that the mourner is forbidden to put on tefillin for the first two days, and from the second day [including the second day itself], it is permitted to put on tefillin, and if people come [to see him], he takes them off. This implies according to Rabbeinu Hai, [that] for all the days of mourning, if new people come, he removes [the tefillin], even on the mourning of the seventh day. The entire time that comforters have not left him [that is, while he is still in mourning], if new people come, he removes them. And now, that is to say, if the seventh day [of mourning] falls on Tisha b'Av, and new people comes his mourning is over, and he took off the tefillin, if he wants to wait until after minhah to put them on, he may wait. And, if he wants to put them on immediately after the comforters have left, he may put [them] on. It appears that, because of this, Rabbeinu Hai did not use the phrase "putting on tefillin," but rather "removing tefillin," for if he had used the phrase "putting on tefillin," he would have implied that it was forbidden to put on tefillin on the seventh day of mourning, whereas here, he uses the phrase "removing tefillin," which implies the tefillin had already been put on, and then removed because of [the presence] of new people.

wine [so he cannot make הַבדלה על הכוס]. Instead, on Saturday evening, one should bless "over the fire" [that is, say the blessing "Who creates the light of fire"], but not make havdalah until after the fast, and make havdalah over the cup then, and not bless over the fire [after Tisha B'Av]. And the Ramban wrote that one does not make havdalah over the cup [that is, wine]. And א"ח the Rosh ז"ל agrees with the words of Halachot Gedolot, and so wrote Rav Gaon Natronai.<sup>88</sup>

557: On Tisha B'Av, one must mention liturgically "מַעֲיֵן הַמְּאוֹרֶת" the nature of the day. And this is "נַחֵם" "Lord our God, console the mourners of Zion. . . ." and you should say/insert it into

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<sup>88</sup>The Ramban contests against the words of Halachot Gedolot, and the Rosh harmonizes. And all of it [the opinion of Halachot Gedolot, the Ramban's critique, and the Rosh's solution] are written at length in the Rosh at the end of Ta'anit, and I do not see a need to dwell upon it. The Rosh wrote that the people customarily act according to the words of Halachot Gedolot, and so wrote Sefer Mitzvot Gadol, and thus we adopt. The Mordechai wrote at the beginning of Moed Katan that ר"ש מכתבו"ק would say in a loud voice, without the cup [of wine], 'who created the light of fire,' but he would not say [the blessing over] spices, for they are for enjoyment." And so wrote Hagahot Maimoniot, and also Sefer Mitzvot Katan wrote that "one should say the prayer 'who created the light of fire.'" And thus Abudraham wrote, "one should not say havdalah over the cup, until the end of Tisha B'Av, and one should not smell the fragrant wood/spices because on the night on Tisha B'Av, one should not enjoy the pleasure of fragrance. but one should bless over the fire before one reads Lamentations. And Halachot Gadolot wrote accordingly." This is the universal custom.

<sup>89</sup>The Rif and the Rosh wrote at the end of Ta'anit this statement from the Yerushalmi: "Where does one say it [מַעֲיֵן הַמְּאוֹרֶת]? Rabbi Jeremiah said, 'concerning any matter which is to come in the future, it is mentioned in the עֲבוּדָה/worship,' and anything which has already occurred, it is said in the הוֹדָאָה/thanksgiving." And the Rif and the Rosh wrote that the universal custom is to say it in "בְּיִשְׁלֵשׁ הַיָּמִים/rebuild Jerusalem," and they rely upon what Rav Judah bar Samuel bar Shilet said in the name of Rav (Avodah Zarah 8a). "Even though it was said that one should pray for his private needs in שׁוֹמֵעַ תְּפִלָּה/who hearkens to prayer," if one wishes to say at the end of any (continued...)

"Build Jerusalem," since it partakes of the content of that blessing. א"א the Rosh ז"ל wrote: "all my days, I have been astonished as to why one does not say it [this insertion] except at afternoon prayers/minchah, since we have said that the individual on Tisha B'Av must mention המאורע, the essence of the event itself. It is obvious that this should apply to all one's prayers, just as for the evening, morning and afternoon -- ma'ariv, shacharit and minchah, of Rosh Hodesh [יולד וילולא] and Hanukkah and Purim [על הנסים]." Rabbi Yehudah of Barcelona [in his book, Sefer Ha'itim] wrote: "We say 'the essence of the event' [מעין] at ma'ariv and shacharit and minchah. In the blessing שומע תפילה, we mention the fact that this is a fast day, just as we do on

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<sup>89</sup>(...continued)

blessing a supplement relevant to the subject of that blessing, he may say it." And the Rosh wrote, "All of my days, I have been astonished that we do not say it except at minchah," etc., in the last chapter of Ta'anit. Rabbeinu Yerucham wrote that according to the words of the Rosh, this is the correct practice. The Kolbo wrote simply that in all the prayers of Tisha B'Av, they say it. But the Rokeah wrote one should not pray נחם in the blessing about Jerusalem, except at minchah on Tisha B'Av.

And R. David Abudraham wrote that this was one of the arguments between Rav Amram and Rabbeinu Sa'adia. And the minhag according to Rabbeinu Sa'adia spread, that one only says it at minchah. It appears to me that the reasoning of Rabbeinu Sa'adia is that at evening time, the fire was kindled in it [the Temple]. Therefore at that same time, they remember the humiliation of Jerusalem and her mourning and they pray about comforting her. And these are the words of R. Yom Tov ben Avraham Ashvili in a responsum, "about the issue of [saying] נחם on Tisha B'Av, my opinion is that because of the event [what happened to the Temple], we say it, according to the Yerushalmi (Y. Ta'anit 9b,10a) [one may] say it at all of the prayers: aravit, shacharit and minchah/evening, morning and afternoon prayers, as one does for any prayer about an event. But at aravit and shacharit, when it resembles the case of one whose dead lies before him, and he is not consoled [that is, the worshipper is considered an Onen, not a mourner. Consolation is therefore considered inappropriate for the one who is occupied with burying his dead.] Hence, they say נחם/have mercy [rather than "console"]. Then at minchah, they say נחם, because it resembles the one who has buried his dead. And in an case, the prayer leader only says it at minchah, as is the custom."



all other public fasts.<sup>90</sup> And there are places where it is the custom to say 'רחם/have mercy' at ma'ariv and shacharit, and at minchah, 'נחם/console.' And this is entirely minhag, even though there is no difference between 'רחם' and 'נחם,' since for the whole day of Tisha B'Av, we pray [both] for 'consolation' and we seek 'mercy' concerning this matter."<sup>91</sup>

558: It is taught (Ta'anit 29a): "on the seventh of Av, idolaters entered into the sanctuary, and ate in it and drank in it and they profaned it on the eighth and the ninth day until sunset. They set fire to it and it burned until sunset on the tenth."<sup>92</sup> And this is what Rabbi Yohanan meant when he said, 'Had I been there, I would have fixed it [the day of mourning] on the tenth, since the majority of the Temple burned on it.'" And it is said in the Yerushalmi (Y. Ta'anit 25b) that "Rabbi Avin fasted on the ninth

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<sup>90</sup>There are a few texts of the Tur are clearly defective. And the correct version of Rabbi Yehudah of Barcelona's statement is: 'the essence of the event is mentioned at aravit, shacharit and minchah, and the fast [the ענינו] is mentioned in שומע תפילה.'

<sup>91</sup>The Kolbo wrote that "thus, it is the custom of the Rishonim. However, ר"ש מאורא would say נחם, whether during the day, or at night. And the general practice now is to only say it at minchah." Rabbi David Abrudaham wrote in Tefillat HaHol, in the name of HaRav Gershon b. Rabbi Shlomo that if one errs and does not remember it [say it] in its customary place, that one should say it in the "תודה/thanksgiving" for that is its proper place, according to liturgical law. And if one did not remember until he had completed his tefillah, he should not return and pray it again, as we hold in Shabbat 24a/b, and for days on which musaf is not [said], if one errs and did not mention the event, one does not repeat it.

<sup>92</sup>They said in Ta'anit 29a that one reason the fast was fixed on the ninth of Av was because the beginning of a calamity is of greater importance [than its end].

and the tenth, while Rabbi Levy fasted on the ninth, and the evening of the tenth, because he did not have enough strength in him to fast the whole day of the tenth. So he fasted the evening of the tenth."<sup>93</sup> We, in our time/nowadays, our strength has declined and even on Yom Kippur, when it would be appropriate to do two days [of fasting] because of doubt, we are not able to do so. In any case, it is customary with respect to meat, that one should not eat meat on the evening of the tenth and on the day of the tenth; [one should eat] only enough to bring oneself back to life, which is close to suffering [that is, such a small amount of food that it is tantamount to fasting on the tenth].

559: The order of the day: Ravad wrote: "On the evening of Tisha B'Av, [people] remove their shoes and go to the synagogue. They

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<sup>93</sup> At the end of Ta'anit, Rabbi David Abrudroham wrote that the Rosh customarily did not eat meat on the night of the tenth. And the Hagahot Maimoniot wrote: "There are those in the land of Israel who refrain from meat and wine until noon on the tenth." It is written in a responsum of Maharil "the one who observes two days of Tisha B'Av, the ninth and the tenth, and Tisha B'Av falls on Shabbat and is postponed, it appears that he need not fast on the eleventh, because [fasting on] the tenth itself was an extra stringency, and we see that even on the tenth day itself, we are lenient, according to the Tur. If so, from where can we derive the eleventh? But as for refraining from meat and wine on the night after Tisha B'Av, I think this practice should be kept [when Tisha B'Av is postponed to the tenth because of Shabbat] by the ones who do not eat on the night after Tisha B'Av. For this does not come on account of the stringent practice of R. Yochanan ben Zakai [this should read: R. Yochanan (Ta'anit 29a)] [who fasted on the tenth because] on that day, the Temple burned. For even among those who eat meat on the tenth, there are those who refrain on the evening of the tenth, due to the stringency of the fast--the fact that this was a day of mourning--and that it is still considered part of the 'between the straits' period [the time between the seventeenth of Tammuz and Tisha B'Av]."

sit on the ground like mourners<sup>94</sup> and do not kindle candles/lights except for one light, by which to read Lamentations and kinot.<sup>95</sup> The prayer leader stands and prays aravit [the evening service] [up to and including] saying the full Kaddish,<sup>96</sup> and then reads Lamentations and says Kinot. Afterwards, in the Kedusha D'Sidra - he should begin with 'אתה קדוש,' omitting 'לציון' and 'לאל' for there is no redemption at night. And omit 'ואני ואמי' To say 'as for Me, this is my covenant' would give the appearance that God is establishing His covenant on the basis of dirges. Furthermore, it is not appropriate to recite the phrase on Tisha B'Av, since the covenant does not exist for Israel [that is, we desist from the study of Torah and are exempt from certain other positive mitzvot] on that day. In the house of a mourner, however, it is appropriate to say this phrase. Although the mourner desists from Torah study and is exempt from some positive

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<sup>94</sup>Hagahot Maimoniot wrote "we learn in the Gemara that 'all the laws which are customarily observed by the mourner, [everyone] customarily observes on Tisha B'Av.' (Ta'anit 30a) Thus the Maharām approves of the French custom, that they do not sit on benches until minchah, which resembles the way the mourner sits on the ground throughout the seven days of mourning."

<sup>95</sup>The Rosh wrote at the end of Ta'anit that this is a proven minhag, as they said in Lamentations Rabbati, that "the Holy One Blessed be He said to the ministering angels at the time of the destruction, 'a king of flesh and blood, when he mourns, what does he do?' The said to Him, 'he puts out his lamps.' He said to them, 'so, too, will I do this.' As it is written, 'sun and moon are darkened, stars withdraw their brightness.' (Joel 2:10, 4:15)" And so wrote the Hagahot Maimoniot and the Mordechai in the Moed Katan in the name of the ר"י.

<sup>96</sup>That is to say, he says תתקבל [which the mourner does not say]. The Rosh's notes on Tractate Ta'anit, based on the words of the Hagahot Maimoniot.

mitzvot, the rest of the people are not exempt. On Tisha B'Av, of course, we are all mourners.<sup>97</sup> And he says Kaddish [the full kaddish], omitting [the line] 'תתקבל'<sup>98</sup> and then they proceed to their houses--and they do not exchange greetings, one to the other, but rather [conduct themselves] like mourners and those who have been excommunicated. And if Tisha B'Av falls on Shabbat or on Sunday, do not say on Shabbat, at minchah, 'צדקתך';<sup>99</sup> this is similar to the case of Rosh Hodesh falling [on the day after] on Shabbat, for Tisha B'Av is also called a מועד [appointed time]. We do not say 'ויהי נועם' [which begins the particular prayers for the end of Shabbat].<sup>100</sup> And some of the Gaonim wrote that since we do

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<sup>97</sup>The Hagahot Maimoniot wrote 'he skips up until אותה קדוש. The reason is because it is forbidden [to learn] words of Torah [on Tisha B'Av]. It is not proper to say לא ימושׁוׁרׁ לא ימושׁוׁרׁ [and My words that I have placed in your mouth shall not be withdrawn from your mouth, nor from the mouth of your offspring] from the K'dusha D'Sidre] when we are not permitted to study Torah.

<sup>98</sup>The Hagahot Maimoniot wrote accordingly. Their reasoning was because "he [the worshipper] has already read in Lamentations the verse "שָׁמָּה תִּדְלֹת אֶבֶל," ("When I cry and call for help, He shuts out my prayer." Lamentations 3:8) and therefore it is inappropriate to say תתקבל. But prior to the reading of Lamentations, he says the entire Kaddish, as on other days. And there are places where they only skip [the line beginning with] תתקבל at night, after the Tefillah, but at shacharit, they say it, because they already concluded and finished saying kinot, and they say a few verses of consolation at its end."

<sup>99</sup>So wrote the Hagahot Asheri at the end of Ta'anit, and the Mordechai at the beginning of Moed Katan.

<sup>100</sup>Thus I found in Mordechai Yashan, and he gave the reason that it is because [in] a place which does not customarily do work on Tisha B'Av, one may not do [work]. Furthermore, it is called a Moed, a set time. The Sefer Mitzvot Katan wrote that "the reason is the ירה נועם prayer was ordained as a prayer for the rebuilding of the Temple [as well as a request for success during the work week]. It is thus inappropriate to say it on the day of [the Temple's] destruction." The rule concerning making havdalah on Tisha B'Av, when it falls on Sunday, is addressed by the Tur in (continued...)

not say the Kedushah D'Sidra." Rav Tzemah Gaon wrote, "We do not say ויהי נועם, but we do say לא לציון and the entire Kedushah D'Sidra, but we do not say זמיר זמיר." And Rabbeinu Nissim wrote: "We do not say ויהי נועם but it is our custom to say זמיר זמיר at ma'ariv and shacharit. For why should we not say it? [If you argue it is because we do not study Torah on Tisha B'Av,] after all, the people engage in the study of Job and Jeremiah and Kinot at shacharit, from the service of the [morning] blessings and songs [p'sukai d'zimra] as on other days."<sup>101</sup> There are places where it is the custom not to say the Song [at the Sea].<sup>102</sup> And [they] pray the 18 blessings. And the individual [praying alone] should say "ענינו" in the שומע תפילה blessing, and the prayer leader says it [as an additional blessing between "ואל" and

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<sup>100</sup>(...continued)  
chapter 556.

Hagahot Maimoniot wrote at the end of Hilchot Ta'anit, "We say the blessing 'who sanctified us with His mitzvot and commanded. . . ' over the reading of Megillot Ruth, and Lamentations and Shir HaShirim [according to Masechet Soferim]. Maharam adopted this custom, although he advised that the blessing be recited in a whisper, since we are not certain it ought to be said [since the Talmud Bavli does not mention the Soferim's minhag]. But the general practice is not to say the blessing over any megillah except the book of Esther.

<sup>101</sup>12 <sup>101</sup>As we said in chapter 554, even though it is forbidden to read Torah, all the passages [of the Torah] which are part of the daily service are permitted.

<sup>102</sup>The Kolbo wrote this. The reason is that one does not say a song at such a time as this. The widespread custom is to say, instead of the Song [at the Sea], the song Ha'azinu. (Deut. 32:1-52)



"אָן אַס" as on other fasts,<sup>103</sup> and says נחם in the blessing "נחם" "יְרוּשָׁלַיִם." It is not the same as the other public fasts, neither concerning the 24 blessings [said on a public fast] nor concerning the closing prayer [neither is said on Tisha B'Av]. (Pesachim 54b) Rav Amram wrote: It is our custom to multiply prayers for forgiveness in the blessing נחם, but we do not say Tachanun, for it [Tisha B'Av] is called a מועד [an appointed time, or festival; a day on which supplication is inappropriate].<sup>104</sup> And if it falls on Monday or Thursday, one should say [the verse] אֵל אֵלֶיךָ אָפִים (cf Exodus 34:6) [when removing the Torah from the ark] and do not say וְהוֹרַחֲנוּם [in the extended Tachanun service]. In Sephard, they do not say אֵל אֵלֶיךָ אָפִים, and they take out the Sefer Torah and read three aliyot from parsha וְאֵתְּנָהּ (Deut. 4:25-40) [beginning with] "when you shall beget children." The maftir is the third aliyah, and the maftir [portion] is in Jeremiah, "I shall utterly

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<sup>103</sup> Thus wrote Hagahot Maimoniot, and it is not according to the custom of Rabbi Yoel HaLevi [the father of the Ravad] who did not say it, because of Lamentations 3:8 ["When I cry and call out, He shuts out my prayer"].

<sup>104</sup> So it is written in Hilchot Tisha B'Av, in the Mordechai, at the beginning of Moed Katan. The Rokeach wrote that, it follows from this reasoning that they do not say Tachanun; they base this both on Lamentations 3:8 and Lamentations 3:42 [We have transgressed and we have rebelled; You have not pardoned]. The Hagahot Maimoniot wrote, "one does not say t'chinot nor וְהוֹרַחֲנוּם nor אֵל אֵלֶיךָ אָפִים (Exodus 34:6), even if it [Tisha B'Av] falls on Thursday. Ravad wrote that there are some who say אֵל אֵלֶיךָ אָפִים even if it [Tisha B'Av] falls on other weekdays, and not on Monday or Thursday. And this is the minhag in some places." In the Hagahot Maimoniot Hadashot, the words of the Ravad are written: "There are some who say אֵל אֵלֶיךָ אָפִים and, in some places, their minhag [to say it] if it falls on Thursday." The Hagahot Asheri [commentary on the Rosh] wrote, "It was already the custom of our fathers in all places not to say מְלִיחָה on Tisha B'Av, because it is called a set time. And it is a mitzvah incumbent upon us to uphold the custom of our fathers."

destroy them" (Jer. 8:13-9:23). (Megillah 31b)<sup>105</sup> Ravad wrote: "And roll up the Sefer Torah in its place so as not to diminish its glory."<sup>106</sup> But tractate Soferim states, "there are those who read the book of Lamentations in the evening, and there are those who delay [reading kinot] until the morning, after the Torah reading, for after the reading from the Torah scroll, one should stand and cover oneself with ashes and one's clothing should be torn, and [then] read with wailing and lamenting. If one knows how to translate it, it is preferable, and if not, [they] give it to someone who does know [how] to translate it, so that the entire people and the women and the children will understand, for women are obligated just as men are, and how much the more so, male children [are obligated]. And the reader on Tisha B'Av should say 'blessed is the true Judge.' There are those who place the Torah's

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<sup>105</sup>The tannaim dispute this in Megillah 22b (Find this). The halachah is according to Rabbi Ḥ, who reasons this way. The Kolbo wrote, "The maftir at both shacharit and minchah blesses one blessing before [the haftarah], and three afterwards, for he does not say [the blessing] 'over Torah,' but rather concludes with 'shield of David.' And thus is on all other fast days, [the blessing] 'over the Torah' was not ordained, except for on Shabbatot and Yamim Tovim when they mention in the [blessings] the essence of the day, and they thank God for the honored gift which He gave us on these days."

<sup>106</sup>They place a cloth, which is not pleasing, on it [the Torah], and, in addition, they are accustomed to turning it over. And if you were to argue that they should move it from the place where they read it to the place where it is custom to wrap it, that would diminish its honor all the more [since then it would not be present at all]. Hagahot Maimoniot wrote that, "after the reading of the Torah, he [the prayer leader] stands and reads Ashrei (Psalms 85:5; 144:15; 145; 115:18). There are those who customarily say Psalm 20. And there are those who do not customarily say it, and say *ובא לציון בידלוג*, as explained above, and Kaddish, which is not the full Kaddish with *תתקבל*.

container on the ground and say 'The crown has fallen from our head [woe to us that we have sinned]' (Lamentations 5:16) and they tear [their clothing], and they lament as a person whose dead lies before him. There are those who alter their places [stand in a different place in synagogues], and there are those who descend from their benches [sit on the floor], and everyone covers himself with ashes, and no one says exchanges greetings all night and all day, until the entire people has completed their [reading of kinot]. And at the time of the [reading of] . it is forbidden to speak a word, or go outside, in order not to distract oneself from mourning. And how much the more so that one should not converse with gentiles."<sup>107</sup> If there is a mourner in the city, he should go

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<sup>107</sup> All this, from "but in tractate Soferim" until "speak with a gentile," is from Soferim, chapter 18. The Ramban wrote all of this in Torat Ha'Adam. As for the word "אבל," which the Tur writes, the reason is that previously, he wrote that Lamentations is read at night, and he did not write that it is read during the day. For this reason, he writes, "but in Tractate Soferim, it is written that some do not read it until the daytime and do not read it at night. It is also possible to say that this is what he [the Tur] means: 'I already have explained the day's liturgy in another manner, but Soferim presents a different practice.'"

The Ramban wrote, in Torat Ha'Adam, concerning this baraita of Soferim, that "this masekhet presents a distinct practice. This was their custom: one person would read Lamentations, and everyone else would listen, just as is done in the case of Megillat Esther. He would recite the benediction '... concerning the reading of the megillah/מגילה,' as is mention in Soferim, chapter 14. Likewise, it is said that he recited the blessing 'the true Judge/דין האמת,' so that two benedictions would be recited over Lamentations [again, similar to Esther]. And what is the meaning of his words, that 'they rend and lament'? These are minhagim. Thus, in a place where they customarily change their places, they do it in a way resembling the second week of mourning [when one sits in an altered place]. And, in a place where they lower [themselves] from the benches, they do it as on the first week [of mourning]. This is still the custom. For if this were the law [as opposed to a minhag], [there would be a problem, inasmuch as] there is no Talmudic reference to changing places or sitting on the ground on Tisha B'Av, let alone turning over the bed."

It appears from his words that his explanation is that the statement in tractate Soferim, that  
(continued...)

at night to the synagogue and also [go to shul] in the day [and be there] up until [the time] they finish the kinot.<sup>108</sup> If there is an infant to circumcise, circumcise him after you/they finish the kinot. And there are those who delay circumcising him until after midday.<sup>109</sup> There are those who say that one should not bless over the cup [of wine at the brit milah], but rather bless without a cup,

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<sup>107</sup>(...continued)

one should say "blessed is the true Judge," means that [one should say it] over the reading of Lamentations. But the plain sense of the language itself implies one should say it over the reading of Torah. Thus it appears [that the benediction ברוך הוא is recited over the reading of the Torah rather than over the Lamentations], because these references do not appear consecutively in Soferim. For in halachah 17:4, he begins "there are those who read the book of Lamentations in the evening," etc. until "and how much the more so, gentiles." In halachah 7, he begins, "and the reader says 'blessed is the true Judge,' and there are those who place the Torah on the ground as in deepest mourning and they say, 'the crown has fallen from our heads,'" until "and how much the more so, one should not converse with a gentile." If this is the case, it is taught that the reader should say 'blessed is the true Judge,' not over the reading of Lamentations, but rather over the reading of Torah, as explained. [Thus, the issue of saying the blessing ברוך הוא does not arise until 17:7, when the focus is on Torah reading, and not reading Lamentations. Karo thus disagrees with Ramban's interpretation of Soferim; he does not see the this benediction as a parallel to the Purim practice of reciting two blessings over the megillah] And so is the general custom, that before he says the blessing over the reading of Torah, one should say "blessed is the true Judge."

<sup>108</sup>So wrote the Rosh at the end of Ta'anit [4:38] in the name of the Ram. He wrote that the reasoning was that the mourner, during the entire first three days of mourning, may not pay a condolence call upon another mourner. After that, but during shiva, the mourner may perform the mitzvah of comforting the mourner, but he must sit with the mourners, and not among those who have come to offer condolences. On Tisha B'Av, the mourner [presumably, even the mourner in his first three days of mourning] is considered as though he is a mourner from the third day onward; he goes to synagogue [i.e. the "house of mourning" for all Israel].

<sup>109</sup>These two opinions were written in the Mordechai on Moed Katan, and he gave the reason to delay it until after midday. Before midday, mourning is upon him [that is, he is in the category of a mourner], and one should do circumcision in a state of happiness, as it is written "I rejoice over your Promise [as one who obtains great spoil]." (Psalm 119:162) According to the Mordechai, the Sefer HaChokhmah criticizes those who delay the milah on Tisha B'Av on the grounds that they annul the custom to be נחמץ, that is, eager to do the mitzvah as soon as possible. And Hagahot Asheri wrote, "if there is a child to circumcise, we delay him until minchah, when we say נחמץ," for the same reason as above [Psalm 119:162]. The general custom is not to circumcise until after midday, but not to wait until the time they say נחמץ. The Rokeah wrote at chapter 113, that in Speyer, they customarily do not circumcise before midday because before midday, one is still subject to mourning.



but it is the opinion of the Tosephot that one should bless over the cup [of wine] and give it to a child to drink on Tisha B'Av, and we need not worry that he would become accustomed to it, that is, that he will come to drink even after he is grown, since it is not a regular thing [to have a bris on Tisha B'Av].<sup>110</sup> For this reason,

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<sup>110</sup>This is from Eruvin 40b. They said that on Yom Kippur, it is not possible to say the Shehechyanu [that is, to say kiddush and Shehechyanu] over the cup, because it is not possible to taste it, for as soon as he has said the Shehechyanu, he has accepted Yom Kippur upon himself, and it is forbidden for him to give [the cup] to a child [to drink], lest he become accustomed [and continues to do this even after he grows up]. The Tosephot wrote, "Rabbeinu Samuel said that this applies precisely to the case of [blessing] the 'time,' which is fixed. [In this case] we are concerned that [a child] might become accustomed, but if there is a brit milah on Tisha B'Av or Yom Kippur, which is a [random] occurrence in the world, we do not worry that he might become accustomed to it." And so wrote the Mordechai, and the Ran wrote in Shabbat (on chapter 10) that the Rashba has a difficulty with this, concerning a cuscuta in a vineyard (is a forbidden mixture; Shabbat 109b; 139a), about which they said there that one may not give it to a child to plant it, lest he become accustomed to it. But for me, it is not a difficulty, for if we permitted cuscuta to be planted by a Jewish child, he will come to do it in this way every year. But this is not the case with a circumcision on Tisha B'Av or Yom Kippur, which does not happen every year. In any case, the Gaonim said that they should not bless over the cup, but instead, they should bring myrtle and bless it."

The Mordechai wrote in Yoma, in the name of Rabbeinu Tam, that "concerning washing for the sake of the circumcision, we do not worry that one might become accustomed to doing it, for it does not resemble the case of [blessing] 'time' [over the cup] on Yom Kippur. In that case, he drinks the cup for the sake of Yom Kippur. So, too, in the case of cuscuta in the vineyard, which is forbidden in Shabbat (109b), lest one become accustomed to it, for there, in that case, it is habitual, it is on account of 'כלאים,' and they become accustomed." In the Mordechai Yashan, he wrote that "in the case of a very young child, we do not worry that he will become accustomed. 'Because we worry he will become accustomed': this phrase refers to a child who is slightly older and he takes it into his head [and will absorb the custom], as tractate Shabbat implies with respect to cuscuta in the vineyard." The Mordechai wrote at the end of Eruvin, chapter three, "once, a huppah [wedding] occurred on the tenth of Tevet, and the Rashbam ruled that one should bless over the cup, and then give it to a child."

Rabbi David Abudraham wrote that the Rambam wrote in a responsum according to the words of the Gaonim, and the opinion of the author of the *Itur* is similar. Additionally, the Rashba wrote in a responsum in the name of the Rif, "any fast on which a woman who has given birth does not drink, one should not bless over the cup of the brit milah." The halachah is that we do according to the words of the Gaonim and the Rif and the Rambam: to bless the blessing of the brit milah without a cup. And on Tisha B'Av, we do not bring myrtle either, based on the reasoning that one should not bless over the spices when [Tisha B'Av] falls on Sunday. And on the seventeenth of Tammuz, the third of Tishrei and the tenth of Tevet, when a woman who has given birth may drink, one should bless over the cup, and that woman drinks the cup.



we do not say that when Tisha B'Av falls on Sunday, that havdalah is recited over a cup which is then given to a child to drink. In such a case, we are concerned that he will become accustomed to this practice, since this is indeed considered a "regular thing," [which then takes precedence and should be observed], since Tisha B'Av falls on Shabbat or on Sunday every few years. The Ba'al Brit [the father of the infant] should dress in other clothes, but not truly white ones.<sup>111</sup> A story: Tisha B'Av fell on Shabbat and was postponed until the next day, and Rabbeinu ץלל״ was the Ba'al Brit. He davened minchah while it was still day and he washed and did not complete his fast,<sup>112</sup> since it was a holiday for him, and the proof

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<sup>111</sup> According to the Mordechai at the end of Ta'anit.

<sup>112</sup> So wrote Hagahot Maimoniot, and the Mordechai at the end of Ta'anit. The ba'al brit appears to be the father of the son. But according to the Mordechai, [the phrase was] ba'alei brit, and according to that, it is possible that the mohel and the sandek are also included. This is the language of the Tashbets: once, it happened in the days of Rabbeinu Ya'akov ben Rabbeinu Yitzchak, assistant to the Levites, that there was a brit milah on the tenth of Av, and Tisha B'Av fell on Shabbat and was postponed until after Shabbat, in accordance with the rabbinic ruling. He [Rabbeinu Ya'akov] was the father of the son. He waited until after midday and he commanded to pray minchah gedola [at 12:30 p.m. as opposed to minchah katanah, which is from 4:45 p.m. onward]. Then he went and washed, he and the mohel [or perhaps the sandek; literally, the "master of the bris"] and then they circumcised the boy. And they ate all that they desired, and did not complete [the fast] with the community. This is from the reasoning of Ta'anit 15b, 'and on Thursday, it [cutting hair] is permitted in honor of the Shabbat.' How much the more so for a brit milah, which is more important than [the case of hair-cutting on] Thursday to honor Shabbat.\* We derive from these words that the ba'al brit is the sandek or the mohel, since it is a festival for them, as it is for the father of the son. But, according to the words of Hagahot Asheri, in Moed Katan, it appears that the sandek, but not the mohel, is called a ba'al brit. In any case, it appears that a mohel is not inferior to the sandek, and it seems to me that, with respect to [the case of] Rabbeinu Ya'akov, that this applies when the Tisha B'Av fell on Shabbat and was postponed to the next day, that since it was postponed, it was not all that stringent. But had it not been postponed, but rather it fell on one of the days of the week, that is, if this leniency had been meant for the "regular" as well as the postponed Tisha B'Av, the Tashbets should have written without specification that "we fasted on Tisha B'Av, and do not complete it, because it is a festival for us." You can't explain this (continued...)

is from here, which teaches [Eruvin 41a] that Rabbi Eleazar bar Tzadok said, "I used to be among the students of Seneab of the tribe of Benjamin, and Tisha B'Av fell on Shabbat, and they postponed it until after Shabbat, and we fasted on it, but did not complete it, because it was a festival/holiday for us." And it is the custom not to slaughter [animals] and not to prepare the needs of a feast until after midday.<sup>113</sup> At minchah, [one should] read למנוח [Exodus 32:11-14; 34:1-10] as on the other fast days, and the maftir is למנוח (Isaiah 55:6-56:8)<sup>114</sup> And Rabbeinu Hai wrote that "it was customary to recite as the maftir למנוח" (Hosea 14:2-10). One

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<sup>112</sup>(...continued)

in the following way: that the reason it was stated that this was on a postponed Tisha B'Av is to tell us that even so we [those involved in the circumcision] fasted most of the day, as it says, "they celebrated it;" this surely comes only to say that they did not complete [the fast], because it was a festival for them. If so, why does [he bother to] mention that Tisha B'Av fell on Shabbat and was postponed to the next day? This teaches that only on a Tisha B'Av which was postponed are you not required to complete your fast, if you are a participant in the circumcision. But if Tisha B'Av falls on one of the weekdays, one is required to complete the fast.

<sup>113</sup>So wrote the Rosh at the end of Ta'anit, in the name of the Ram. And he wrote that the words of the Tosephot imply this conclusion [that is, the one cited in the name of the Rabbi Meir of Rothenberg, the Ram]. As the baraita states: "We prepare on Tisha B'Av for the night after Tisha B'Av," which means from the end of the day, such as from minchah onward. The Mordechai wrote accordingly at the beginning of Moed Katan, and he wrote 'it is good to wait until minchah onward.' His words imply that one should wait until minchah katanah. This is what he meant, but the general custom is to wait only until midday.

The Rashba wrote in a responsum, concerning one who slaughtered before midday: "These stringencies are in force so that a person will sit and be in mourning for Jerusalem, and be grieved, and [then] to engage in the study of Nehemiah and kinot as a mourner [would do]. If it is the custom not to slaughter animals until midday, or until evening, then it is forbidden to be lenient about this.

<sup>114</sup>R. David Abudraham wrote that the haftarah is למנוח [Hosea 14:2-10], and he did not mention any other practices.

prays the 18 blessings and says "נחם" בונה in "ירושלים" <sup>115</sup> and "ענינו" in "שומעתפילה" and the leader says [it] between "גואל" and "רפואה", <sup>116</sup>

560: When the Temple was destroyed, it was decreed/ordained that in every thing of joy that there should be in it a reminder of the destruction of the Temple. Therefore, they said that when a man plasters his house with lime/whitewash, he should leave a square cubit with out whitewash, as a reminder of the destruction of the Temple. <sup>117</sup> And the Rambam 7"1, wrote that one should not build a whitewashed building [because the Temple was whitewashed with lime] like a royal building, but rather one should plaster his house with plaster/mud, then whitewash it with lime. (Other versions of this text read: like lime and like binding cement [and therefore not permitted for use on the Temple])). And one should

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<sup>115</sup> This is already written in the Tur's rulings in chapter 557, and the ruling about ענינו is explained in chapters 565 and 566. The Tosephot wrote at Ta'anit 16a, concerning what they said, "that they visit the graveyard on the day of a public fast." This is the origin of the custom in some places to walk to the graveyard on Tisha B'Av, since Tisha B'Av is a public fast.

<sup>116</sup> It is written in Tashbets in chapter 461 that, "in the days of Rabbeinu Ya'akov Sagen Leviah [assisant to the Levites], a man died on Tisha B'Av, and he could not be put to rest [until they] said over him צדוק הדין, as it is written, 'declare upon me a set time.' (Lamentations 1:15)" [That is, Tisha B'Av is a Moed, and, as on other moedim/festivals, one does not recite the funeral liturgy even though burial is allowed.]

<sup>117</sup> This is an undisputed statement in Baba Batra 60a. He explains there that this measure should be over against the doorframe. This point was written by the Rif, the Rambam and the Rosh. The Tur, who was simply copying the passage in the Gemara, omitted this rule accidentally.

leave over a remaining square cubit of it." (Hilchot Ta'aniot 5:12, Mishneh Torah) But it does not appear thusly in the Gemara, since after it brings that baraita: "the rabbis taught a man should not whitewash his house with lime, but if he mixes in it sand or straw, it is permitted. Rabbi Judah taught [a mixture of] sand makes cement binding/stony and is forbidden, but straw is permitted." It [the sugya] concludes [apparently rejecting the baraita on which Rambam based his opinion]: "The sages therefore said that a person may plaster his home with lime but he should leave over a remainder of a square cubit." (Baba Batra 60b)<sup>118</sup>

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<sup>118</sup>It appears from his words that he understands that the Rambam's argument forbidding building whitewashed buildings like royal buildings is based upon this baraita, "the rabbis taught, 'one should not whitewash his home with lime.'" And it is therefore a difficulty to him, since the Gemara concludes by saying "if a person may whitewash his house with lime, leaving over a [portion bare] . . ." (Baba Batra 60b) Therefore, by means of leaving bare a square cubit, one is permitted all manner of plaster. I [Karo] am puzzled by several aspects of the Tur's ruling. First, the baraita that reads "a man may whitewash his home with lime. . . ." is not the final result [according to Rambam, and] this interchange is not about the ruling whether he may plaster his house with whitewash, but rather it comes concerning this [story]: "The rabbis taught, when the First Temple was destroyed [note: the Talmud says, "when the Temple was destroyed for the second time," not the first.], many in Israel became ascetics, [vowing] they would not eat meat nor drink wine. R. Joshua had a conversation with them and said to them, "Why do you not eat. . . Not to mourn at all is impossible. . . but to mourn overmuch is also impossible. . ." The sages therefore have ordained that 'a man may whitewash his home, but he should leave a little bare.'" But since the baraita is stated independently, one cannot say "the Talmud concludes," for this is not a conclusion. Furthermore, if you can say [this is a technical term, implying that even granting this point, I can still refute your argument], that the baraitot are in dispute, the halachah may follow the first [that is, Rambam] and not the second [baraita], for simply because the editors of the Talmud cite it last does not prove decisively that the halachah accords with it. Additionally, some say there is no contradiction [between the two baraitot]; rather, [they come to show that] either one of two procedures is permitted: either by admixture of sand or straw, or by leaving a square cubit unplastered.

Moreover, according to his words, what is the meaning of the phrase "whitewash like the buildings of royalty," and what is the meaning of "plaster his home with lime." For both of them are lime, and what is the difference between the two, that the Rambam would permit one, and forbid the other? It seems that the Tur was not precise in his understanding of the words of the  
(continued...)



<sup>118</sup>(...continued)

Rambam at all, for the Rambam does not refer to "lime," which includes every kind of lime/plaster equally. He only wished to forbid stucco and paneling work. This is the sense of Rambam's words according to our text [of Rambam]: "the sages of that generation ordained that one should never again build a building stuccoed and paneled like a royal building." This is an explicitly-stated baraita at the conclusion of chapter חזקת הבתים [Baba Batra], a position stated without dispute: "one should not stucco or panel or paint [a house] in our time." (Baba Batra 60b) This implies that stuccoing or whitewashing and paneling and painting are kinds of crafts and artistry, and it is possible that "one should not panel nor paint," since they are crafts and artistry, but [concerning the statement that] "one should not stucco/whitewash," perhaps it does not refer to artistry, but to its plain sense [whitewash]. If so, this is what the text means: "one may not whitewash and adorn that whitewash with artistry and craftwork," for artistry and craftwork without [a base of] whitewash is not considered adornment. Therefore, the Talmud does not forbid [plain whitewashing].

Furthermore, it is possible to say that the way of the world is that when people wish to whitewash their houses, they plaster with plaster first, and afterwards, they whitewash with lime. But royalty does not plaster with plaster first, but instead, it is all whitewash. As it teaches, "one should not whitewash," in this manner, for it is the way of greatness and superiority. And concerning this kind of whitewashing, as well as paneling, there is no rabbinic takannah [or means to permit it], even with a cubit remaining [bare]; for this reason, the baraita stated no remedy for this type of paneling, not even by leaving a square cubit unplastered. It is concerning this that Rambam wrote "one should never build a building, which is whitewashed a paneled like a royal building." And his use of the word "never" implies that there is not remedy. With respect to the other two baraitot, the Rambam reasons that they do not contradict one another, but rather one baraita teaches one remedy, and the other teaches another remedy. He wrote explicitly the remedy about the "remaining cubit." Concerning the remedy of the admixture of sand or straw, according to the Tur's version of the Rambam, which requires a square cubit of "binding cement," he rules according to Rabbi Yehudah. And according to our version, which does not mention "binding cement," he rules like the rabbis. He does not need to mention the takannah concerning mixing [the lime] with sand or straw, because that is called "binding cement." And he only had to mention the "square cubit" requirement with plaster, for with binding cement it is permitted, even without that bare space.

The Rif and the Rosh wrote at the end of Ta'anit the baraita concerning a person who whitewashes his house with lime and leaves over a remaining square cubit: even though they did not write the statement which teaches "one should not whitewash nor panel nor paint," [Why didn't the Rif and the Rosh cite this second baraita?] It is possible that they omitted it, not because they believed that it is not according to halachah [for if so, then they disagree with Rambam], but because inasmuch as simple plastering is permitted only if a square cubit remains bare, it is obvious that "whitewashing and paneling after the manner of kings" is surely prohibited even if a square cubit is left bare. It is also possible that they believe that these [whitewashing and paneling] are also permitted when a cubit is left bare. But the Ran, in his comment to the Rif, cites the baraita "one may not plaster [in the manner of kings]," indicating that he believes that Rif holds this baraita as halachically authoritative, as I wrote before. The Ramban also wrote this way, in Torat Ha'Adam. And you should know that in this baraita, that "one should not whitewash nor panel," it concludes, "if a person buys a house which is whitewashed, paneled or painted, he is entitled to keep it. If it falls down, he may not rebuild it," (Baba Batra 60b), which means he may not whitewash it and panel and paint it. And the Rambam wrote, "One who buys a courtyard/homestead which is whitewashed and paneled, it is permitted, and he is not obligated to peel it off the walls." And he did not bother to write "if it falls down, he may not rebuild it," because that is obvious.



Therefore, by means of a remaining square cubit, all kinds of plaster/whitewash is permitted. And a woman may dress with her ornaments, and leave out some little thing. And what should that be? [to remove] the hair on her temples (Baba Batra 60b) -- that means to dress with lime in the place of her temples.<sup>119</sup> And when a person prepares everything for a feast, he should leave out from it a small thing, even a pie of fish-hash. It was ordained to place ashes/dust on the head of grooms, in the place of the tefillin (Baba Batra 60b). They also forbade a crown for grooms (Sota 49a), and this was particularly for grooms, for they did not forbid it

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<sup>119</sup>This is the explanation of the Rashbam. The Ran wrote at the end of Ta'anit in the name of the Itur, that when a woman plaits her hair, she should leave out of it a small piece between her ear and her forehead, opposite her temples. The Rambam wrote, (Hilchot Ta'anit 5:13, Mishneh Torah) that "when a woman has a set of silver or gold made, one of the pieces should be left out. This is the custom of them in order that it would not be a complete ornament." And, concerning the statement "it is taught, 'when a prepares everything for a feast, he should leave out a small thing,'" the Rambam wrote, "Thus they ordained, that when arranging a banquet for guests, something small should be omitted, and one should leave an open space without tableware that would normally be there. . . and they ordained that a bridegroom should put ashes upon his head, at the place where his tefillin lie." This is also at the end of the chapter [Baba Batra 60b]. And the Tur wrote, in Even HaEzer, chapter 65, "thus is the custom in Ashkenaz: at the time of the Sheva Brachot [the wedding blessings], they place ashes on the bridegroom's head, at the spot of the tefillin. In Sephard, they customarily affix a crown to his head made of olive leaves, because the olive is bitter, and serves as a symbol of the mourning for Jerusalem, and 'each stream according to its flow.' [everyone should follow the custom of his own community]"

The Kolbo wrote, "There are places where they refrain from putting ashes on the groom's head, in the place of the tefillin, because the people in those locales are not presumed to be scrupulous in the mitzvah of tefillin; thus, the ashes should not come in place of the crown [i.e. the practice should not remind us that they never do were that crown of tefillin]. And they also worry that it, likewise, will not be a crown in place of the ashes. The custom [in those places] is to make another symbol [of the mourning] instead; they put a black cloth on the head of the groom and bride, and on the basis of this minhag, the custom spread to break the cup after the seven blessing [in the wedding ceremony]."

except at the time of great joy.<sup>120</sup> But for other people, it is permitted. "Rav said, '[The decree against wearing crown] applies only to those made of salt and sulphur,<sup>121</sup> but one made of roses and myrtle, it is permitted.' And Samuel said, 'Even [one made of] rose and myrtle is forbidden, but those made of reeds or rushes are permitted.'" (Sotah 49b) Rambam 7"I ruled in accordance with Samuel,<sup>122</sup> but I do not know why, for we hold like Rav on matters of ritual law. And the Tosephot explain that this does not refer to a crown for the head, for there is no way to make one from reeds and rushes, but rather a sort of arching canopy that they make for the groom to sit in it.<sup>123</sup> And for it is all permitted [to be make

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<sup>120</sup>This is Ramban's opinion, in Torat Ha'Adam, about the issue of crowns for brides. He wrote, "It is precisely for the bride [that it is forbidden], but other women are permitted [to wear them], as it is taught in Shabbat 57a. 'Nor with a 'city of gold.' 'What is meant by 'a city of gold?' A golden Jerusalem, such as Rabbi Akiva made for his wife.' (Shabbat 59a,b) Thus we see that it is only forbidden for brides. So, too, in the case of crowns for grooms, for we are taught precisely [it is forbidden] for 'grooms,' but other people are permitted them, for they did not decree it [the prohibition against crowns] except at times of joy." The Tosephot also wrote this way, at Shabbat 59b, and at Gittin 7a. And HaRav HaMagid agreed.

<sup>121</sup>Rashi explained that the phrase "of salt or sulphur/pitch" relates to crowns they made from salt rock, which shines like bedullium stone, and they colored it with tracings of sulphur just as they did the gold and silver instruments which was called in Old French "naykah."

<sup>122</sup>But Rambam does not rule as Samuel did, for Samuel permits crowns of reeds and rushes, but Rambam forbids all crowns, without specifying a particular type. He wrote, "They decreed concerning crowns of grooms, that they should not wear them at all." (Hilchot Ta'aniot 5:15, Mishneh Torah). He did not distinguish between other kinds [of crowns] and those made of reeds and rushes. His reasoning is based on the Gemara which follows the dispute between Rav and Samuel. "Levi said, 'even those made of reeds and rushes are forbidden.' And so Levi stated the baraita that 'It is also prohibited if it is made of reeds and rushes.'" (Sotah 49b) He [Rambam] ruled like Levi, because he [Levi] was greater than either Rav or Samuel.

<sup>123</sup>In Gittin 7a, the Tosephot wrote this, since it does not seem to them to be a real crown, as Rashi explained.

of anything] except "a city of gold" [a kind of ornament], which they forbade even for brides.<sup>124</sup> And the Ramban wrote that "it does not [apply] only to a 'city of gold,' but rather anything consisting primarily of silver or gold is forbidden, even for brides, and they did not permit them except if they [the decorations] consisted primarily of dyed wool, even though there may be gold woven into it."<sup>125</sup> And so wrote the Rambam 7"1: "they

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<sup>124</sup>It is written in Sotah 49a: "During the war of Titus, they decreed against crowns worn by brides." In the Gemara (Sotah 49b), [it is written], "What is the meaning of 'crowns worn by brides'? . . . Rabbah b. Bar Hanah said in the name of R. Yohanan, 'A golden city.' There is a baraita which teaches the same thing: 'What are crowns worn by brides'? A golden city. But they may make her a cap out of fine wool." Rashi explains, "a city of gold is a crown of gold [ornamented with a miniature city of gold]." The Ramban wrote in Torat Ha'Adam, "we learn in Gittin 7a, 'Ravina found Mar bar Rav Ashi weaving a garland for his daughter. He said to him, 'Sir, do you not hold with the interpretation of 'Remove the mitre and take off the crown' (Ezek. 21:31). . . [that the entire time the High Priest wears the mitre, ordinary people may wear a crown, but when the mitre is removed from the head of the High Priest, the crown should be removed from the heads of ordinary people]? He replied to him, 'The men [have to follow] the example of the High Priest [but not the women].'" And if the garland was for his daughter, who was a bride, and so it must be men who are prohibited from [wearing] them, including bridegrooms. For concerning bridegrooms, it is taught that men follow the [the High Priest], whereas women are permitted. Thus Rabbeinu Tam explained that 'we find that bridegrooms are forbidden [to wear] all crowns, whereas brides are permitted all types except a 'city of gold.' And other men and women are permitted all of them.' (Shabbat 59a) But this is a difficulty for me, concerning their statement in Shabbat 58b, concerning a frontlet, 'in the name of R. Eleazar b. R. Simeon, who said, 'it does not fit into the category of crowns.' But rather, some say that anything made of cast metal is forbidden as a crown, although they are not exactly a city of gold. A frontlet itself is adorned with designs of gold. But, since it is principally an article of clothing, they did not decree [against wearing it]. Ravina's case concerned [a crown made of] all kinds of colors, the threads resemble the mitre, which is forbidden to bridegrooms and permitted for brides. For it is impossible [that the rabbis wanted] women to look totally plain and unadorned. That is the meaning of the baraita, 'what is the meaning of 'crowns for brides'? a city of gold. . . But you may make her a cap of fine wool.' This does not permit a crown with silver or gold in it, but rather of wool." HaRav HaMagid wrote that this was the opinion of Rambam, who wrote [crowns] 'of silver or gold.' But in our text of Rambam's book, it is written 'if there was silver in it,' which implies, according to this formulation, that even if it is made primarily of twisted threads, if there is an ornament of silver or gold affixed to it, it is forbidden.

<sup>125</sup>Ramban's statement teaches that other women are not forbidden, since anyone who is not the bride is not prohibited at all, but he need not say that bridegrooms are forbidden [because that is obvious]. Rather, his statement is to teach that crowns are forbidden also for brides.

forbade crowns for brides of silver and gold, but crowns of twisted threads are permitted for brides, and all other people, aside from the bridegroom and the bride, are permitted." And they forbade all kinds of music, whether on an instrument or by voice.<sup>126</sup> And Rashi explains, [this means,] for example, singing in a house of feasting. (Gittin 7a) And the Tosephot explain that: "even if there is no drinking/feast, it is also [forbidden] and especially to the one who is used to such, as it is brought in the Yerushalmi (Y. Megillah 24b): 'The exilarch would lie down to sleep and get up in the morning to the sound of singing' which means--in his lying down and in his rising up, there would be singing before him." And the Rambam's (7"1) language implies that it is forbidden to listen to instrumental music, in any manner, but

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<sup>126</sup>In Sotah 48a, the Mishneh states, "when the Sanhedrin ceased, song ceased from the places of feasting, as it is said, 'They shall not drink wine with song.' (Isaiah 24:9)." In Gittin 7a, [it is written], "An inquiry was once addressed to Mar 'Ukvau. 'Where does Scripture tell us that it is forbidden [in this time] to sing [at places of feasting]?' He sent back these lines: 'Rejoice not, oh Israel, unto exultation like the peoples, for you have gone astray from your God.' (Hosea 9:1) Should he not have sent back this: 'They shall not drink wine with music; strong drink shall be bitter to them that drink it.' (Isaiah 24:9) From this verse, I might conclude that only musical instruments are forbidden, but not song. That I learn [from the Hosea verse]." Rashi explains the word 'זמיר' [heb] as "singing at the house of feasting." The Tosephot wrote, "This also could be derived from what is said above, 'and he should have sent this: 'they shall not drink wine with music.' And it is appropriate to be stringent about this. And this follows from the statement in the Yerushalmi (Y. Megillah 24b), which refers to... song in which one rejoices over much, but a song for a Mitzvah is permitted. For example, at the time of the Huppah, when one rejoice with bride and groom." Additionally, Sefer Mitzvot Gadol wrote in Hilchot Tisha B'Av that "to rejoice with bride and groom, which is a song of mitzvah, is permitted." And the Tur wrote in chapter 338, in the name of the Ravad, that "it is permitted to tell Gentiles on Shabbat to play music on instruments at weddings, for telling Gentiles on Shabbat [to do so] for a mitzvah is permitted, and there is no rejoicing with bride and groom without instruments of song."



vocal music is forbidden only over wine.<sup>127</sup> But he explains in a responsum to a question that vocal music is forbidden even when it is not over drink, and he does not distinguish between [singing] in Hebrew language and Arabic - all the more so if they are foolish words, which is forbidden to hear, even without style and instrumentation. And these words apply to love-songs, such as one praising a beautiful one, and all such songs. But it is permitted to say songs and praises over wine in a banqueting house.<sup>128</sup> It is forbidden, however, for a person to fill his mouth with laughter in this time, as it is written, "Then our mouths will be filled with joy/laughter." [when we rebuild the Temple] (Psalm 126:2)<sup>130</sup>

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<sup>127</sup> The Tur learns this from Rambam's statement in Hilchot Ta'anot 5:14 (Mishneh Torah): "Similarly, they decreed that one may not play music on a musical instrument, all kinds of music, and anyone who listen to the voice of song is forbidden to rejoice in them. And it is forbidden to listen to them, because of the destructions. Even vocal music over wine is forbidden, as it is written, 'They shall not drink wine with music.' (Isaiah 24:9) It has long been the custom of all Israel to say words of praise or music of thanksgiving to God, and similar words, over wine."

<sup>128</sup> The Rif and the Rosh wrote accordingly in the fifth chapter of B'rachot in the name of a gaon. And so wrote HaRav HaMagid in the name of a gaon, and so, too, the Rambam.

<sup>129</sup> We learn in Sota 48a, "Rav said, 'The ear which listens to song should be torn off.' Rava said, 'When there is song in a house, there is destruction on its threshold, as it is said, 'Their voice shall sing in the windows, desolation shall be in the thresholds, for He has laid bare the cedar work.' (Zeph. 2:14). . . Rav Huna said, 'The singing of sailors and ploughmen are permitted, but that of weavers is forbidden.'" Rashi explains "of sailors": "their singing is permitted, for it is only singing to encourage them in the work." "of the ploughman": "for their singing when they plow it only to direct their oxen to the furrows, for they walk to the sound of the song which pleases them." "of the weaver": "[their singing] is only to be frivolous."

<sup>130</sup> This is from Brachot 31b: "It is forbidden for a person to fill his mouth with laughter in this world." The Tur explains that in this time particularly [after the Temple was destroyed]. And so (continued...)



561: When one sees the cities of Israel in their destruction, one should say, over the first one that one sees, "Your holy cities have become a wilderness" (Isaiah 64:9) and then rend [one's garment] and one does not need to rend again over the other [cities]. (Moed Katan 23b)<sup>131</sup> And when one sees Jerusalem, one should say "Zion was wilderness, Jerusalem was laid waste" (Isaiah 64:9) and rend.<sup>132</sup> And when one sees the Temple, one should say "Our holy and glorious house, where our fathers praised You is burned with fire and all of our treasures were for destruction"

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<sup>130</sup>(...continued)

explained the Ramban in Torat Ha'Adam. But HaRav Jonah explained that it is not in this time [only], for the excess joy will accustom a man to forget the mitzva.

<sup>131</sup>This is from Moed Katan 26b, but there is written "the cities of Judah," and so, too, the words of all of the authorities. Additionally, the Tur wrote in Yoreh Deah, chapter 140, "not only the cities of Israel," as written here. The minhag is that they only rend over the cities of Judah alone. This is hard for me to understand, since the Gemara derives it from: "And the people come from Schehem and from Shiloh and from Samaria; they shaved their beards and rent their clothing." (Moed Katan 26a) It should have said, "over all the cities of Israel," for these are Israelite and not Judean cities, so why does the Gemara say that we rend when we see the "cities of Judah?" Perhaps the people did not rend their clothing until they see the Mount, which itself is one of the cities of Judah.

<sup>132</sup>This is from the aforementioned Amoraic statement. And HaRav HaMagid wrote in the name of the Rambam, "I am astonished, for since the baraita says 'one rends over the cities of Judah in their destruction,' why does he need to mention the ruins of Jerusalem? Was Jerusalem not included among the Judean cities? The reason is that if one rends over the cities of Judah, he must rend again over Jerusalem. But if one rends over one of the cities of Judah, he does not need to rend over another one of them. But he should rend both over the cities of Judah, for their own sake, and again over Jerusalem, for its own sake. But, if he rends over Jerusalem first, he need not rend over the other cities of Judah, for he has already rend over the holiest of them."

Also, the Rosh wrote, "It seems that over the cities of Judah, one only needs to rend over the first of the cities, and over all the others, he need not rend. For if he needed to rend over each and every one that he saw, why would it say 'he rends over Jerusalem,' for it, too, is included in the cities of Judah. It is not reasonable to say that it mentioned Jerusalem specifically simply because of another proof-text he can cite. On this account [the Gemara] says 'rend,' in order to set Jerusalem in a category apart from the other Judean cities."

(Isaiah 64:10) and rend. From [w]here, one is obligated? As soon as one arrives at Mount Scopus,<sup>133</sup> and if one saw the Temple first, rend over the Temple, and enlarge the rend over Jerusalem. If one saw Jerusalem first, one should rend over Jerusalem for its own sake, and over the Temple for its own sake. (Moed 26a)<sup>134</sup> If one is walking and comes [upon it], if one has tarried 30 days in which one has not seen it [if it has been at least 30 days since one has seen the Temple], one must rend; less than this, one is not required to rend. (Y. Moed Katan 18a) And one is required to rend while standing, though all the clothes on him/which he is wearing until one uncovers his heart.<sup>135</sup> And it is forbidden to "join

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<sup>133</sup>It appears to me that in this case, if one sees the Temple or Jerusalem before one arrives at Mount Scopus, it is not considered, "seeing," since it is far away from the place. But, once one has arrived at Mount Scopus, it is considered "seeing." This tells us that the same is true about the cities of Judah, that one does not rend over them until one is actually within them, equivalent to the measure from Mount Scopus to Jerusalem.

<sup>134</sup>Concerning the issue that it is possible to see the Temple before Jerusalem, Rashi explains that [this is possible] "if one, for example was brought into Jerusalem in a chest or ark or turret, so that one could not see Jerusalem until he saw the Temple." The Rambam wrote that, "when one comes from the way of the wilderness [that is, from the east], and comes upon the Temple first, he will then see Jerusalem [afterwards]" Concerning the statement "he should rend over the Temple and enlarge the rend somewhat," the Ramban in the Torat HaAdam explained that this means when one encounters the Temple, one should make a rend as long as a handbreadth. And concerning the statement "[one should rend] over Jerusalem for its own sake, and over the Temple, for its sake," his means, he should rend more for each one. This is obvious; we learn this from the rule about one who experiences one [relative's] death after another. (Moed Katan 26a)

<sup>135</sup>So wrote the Rambam, and he wrote further that "one must rend by hand," that is, without an instrument. (Hilchot Ta'anit 5:17, Mishneh Torah) HaRav HaMagid wrote that "his reasoning was based on what is taught in Moed Katan 26: 'these are the rendings one may not repair: the rend over one's father, over one's mother, and over one's rabbi. . . and over the cities of Judah and over the Temple and over Jerusalem.' He reasons that all of these things are equivalent rendings, so that, just as over one's mother and father, the rending must be by hand and are until his heart (continued...)

them" [mend them/sew it up/make them one], which means: a stitch from below and another from above. (Moed Katan 26a) However, it is permitted to hem them or to baste them or to gather them or to use a ladder-stitch (Moed Katan 26a,b), which means: sewing which is not straight.

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<sup>135</sup>(...continued)

is uncovered, it is the same for these.\* And in Hagahot HaRavad 'it does not appear this way from the Gemara, since it is taught in the Tosefta that one should not equate this to one's father or mother, but rather to one's brother only. Thus [concerning the issues of rending] with an instrument and [rending] all the clothing he is wearing until he uncovers his heart, they are not equivalent.' And even Rambam agrees.\*

## Appendix of Halachic Sources

1. Abudraham: David ben Joseph Abudraham was a fourteenth century Spanish commentator on liturgy. His major work, Sefer Abudraham or Sefer Ha'Adur, was written in Seville in 1340. He based his book on both Talmuds, as well as the rulings of the Gaonim and commentators. He examines both halachah and minhagim in his writings. Some claim he was a disciple of the Tur himself.

2. Hagahot Maimoniot - Hagahot Maimoniot was written by Meir HaKohen of Rothenberg, a student of the Maharam. He lived at the end of the thirteenth and beginning of the fourteenth centuries. He wrote the Hagahot Maimoniot in order to supplement the Mishneh Torah with the most recent responsa and decisions of the German and French rabbinic authorities. (Elon 1234-5; E.J.)

3. Hai Gaon - Hai, son of Sherira, Gaon of Pumbedita, was born in 939, and eventually followed his father as the Gaon of the yeshiva, a position he held until his death in 1038. His death was the end of the gaonic era and the spiritual, and halachic, hegemony of the Babylonian Jewish center. Hai Gaon was productive in various fields, including philosophy, Bible and exegesis; nevertheless,

his specialty was in halachah, and Hai was said to have spread the light of Torah throughout Jewry. He wrote many responsa, often responding to a query of a distant community. While his responsa were written in Hebrew and Aramaic, his books, such as Sefer Ha'Mikah ve'ha'Mimkar, were originally written in Arabic. His writings were lucid and precise, making him a favored source among the rishonim.

4. Sefer Kolbo: Literally "everything is in it." This anonymous work contains both an extensive listing of the halachah, as well as a certain amount of commentary on it. This codification is arranged by topic, and relies heavily on Rambam's Mishnah Torah and the decisions of primarily Ashkenazi halachic authorities in Germany, France and Provance. The Kolbo was written at the end of the thirteenth or beginning of the fourteenth century, but was not published until 1490 or so. Some modern scholars believe that the Kolbo was an earlier version of the Aaron ben Jacob HaKohen of Lunel's Orchot Ha'im. (Elon 1258; E.J.)

5. Magid Mishneh: Vidal Yom Tov of Tolosa, Spain was a fourteenth century commentator on Rambam's Mishneh Torah. The purpose of his work was to explain difficult sections of the Rambam's terse



halachic language, and to identify the sources upon which Maimonides relied. He also confronts and refutes the criticisms of Abraham ben David of Posquieres; at times, the Magid Mishneh is almost indignant at what he considers the Ravad's disrespectful tone. Like the Mishneh Torah itself, the Magid Mishneh, also known as HaRav HaMagid, tends to be clear and terse, but he quotes his sources, rather than simply summarizing them anonymously; he relies especially on Ramban, and Solomon ben Abraham Adret, among others. His rulings are often stringent. This commentary is now the standard, and indispensable, one for the Mishneh Torah. (Elon 1232-3; E.J.)

6. Rabbi Meir of Rothenberg (ר"מ) -- The Maharam was the foremost teacher, scholar, tosaphist and judge in ritual, legal and communal issues in Germany in the thirteenth century. Rabbi Meir wrote numerous responsa, thus influencing the work of later codifiers in their standardization of Jewish ritual and civil law. As both a halachic authority himself, and a teacher of many influential thinkers including the Rosh, his role in determining Ashkenazi law and ritual was tremendous. Such basic halachic works as the Mordechai, Hagahot Maimoniot and Agudah were founded in the thought and responsa of Rabbi Meir. All of these were, in

turn, used as the basis for the work of Moses Isserles, in his Mapah to the Shulchan Aruch. (E.J.)

7. Mordechai - Mordechai b. Hillel HaKohen lived in Germany in the second half of the thirteenth century. He was a student of Rabbi Meir of Rothenberg (the Maharam) and a halachic authority in his own right. His major work, Sefer Mordechai, followed the ordering of Alfasi's Sefer HaHalachot. In this giant compendium, Mordechai supplemented the Rif's work with the opinions of German and French authorities, from Rashi through the Maharam of Rothenberg. He also included passages from various gaonim, Rabbeinu Nissim, and others. The Rif's opinion, however, is not given any greater weight than other decisions. While this work includes opinions found nowhere else, as well as sources from the Talmud and post-Talmudic learning, its quotations are not completely reliable, because the book has survived only in truncated form. Copyists have deleted and added to this book over the years. Early on, there were two editions of this gigantic work: the "Austrian Mordechai," which was longer, and the abbreviated "Rhenish" edition, which appears in standard versions of the Talmud.

While the Mordechai does compile a good number of halachic decisions, as well as citing the Talmudic and post-Talmudic

sources, it does not discuss the conflicting opinions nor weigh their various merits. Contradictory rulings are simply juxtaposed; only occasionally does Mordechai express a preference, saying "such is the custom." Nevertheless, Sefer Mordechai was very influential with later halachic thinkers. Joseph Caro and Moses Isserles both relied heavily upon it in writing their halachic codes, and German decisors, particularly, used this compendium extensively. An abridged version, the Hagahot Mordechai was edited by S. Schlettstadt in 1376; this version made an impact among Sephardic scholars. (Elon, 1251-2; E.J.

8. Ravad--Rabbi Eliezer ben Yoel Ha'Levi (1140-1225) was one of the German Tosephists. His major work was Avi Ha'Ezri, which means "My Father is My Help." The Avi Ha'Ezri was a compendium of articles, later put into a book. It discusses various halachot and rabbinic decisions, as well as responsa and discourse into halachic difficulties. His methodology in dealing with the Talmudic sources other texts was complex, in the Tosephist style. Avi Ha'Ezri is arranged following the order of the Talmud. The Ravad's intent in writing his book was to summarize and settle the halachah, following a clear statement of the sources. His work was

foundational in all halachic discussions until the Shulchan Aruch. (Elon, 1238-9; E.J.)

9. Rambam - Also known as Maimonides, Rabbi Moses ben Maimon lived from 1135-1204. A physician by trade, Rambam was also a Sephardic halachic authority, a codifier of Jewish law, and a philosopher. His two most famous works are monumental: the Mishneh Torah, completed in 1180, and The Guide for the Perplexed, finished in 1190. The Guide for the Perplexed was a philosophic work, meant to be read by the Jew troubled by the apparent contradictions between reveal halachah and the truth of philosophy. By careful study of this work, one could resolve those difficulties, rather than being shaken by them.

In writing the Mishneh Torah, Rambam's goal was to make "all the laws--the rules of each and every commandment, and of all the enactments promulgated by the Sages and prophets--clear and manifest to young and old." (Mishneh Torah, Introduction, p. 14) In this book, he intended to include all that one would need to know in order to determine the halachah. On the other hand, Maimonides did not intend his work to be the authoritative source of Jewish law. Rather, all of the Talmudic and post-Talmudic writings remained as the classic sources of law; the Mishneh Torah was

simply the book of practical halachah; it contained the what's and how's, if you will, of Jewish law, but not the whys. He sought to compile all of the halachah simply, completely and systematically, and to set forth the law clearly and authoritatively, without mentioning contradictory opinions. This, he did. The Mishneh Torah is arranged by subject matter, and then subdivided into sections and individual halachot, making it readily accessible; its Mishnaic Hebrew made it understandable for the less learned. It was one of the most comprehensive books of halachic decisions in the history of Jewish law.

The Mishneh Torah did have detractors, however. Many objected to Rambam's omission of the sources and contradictory opinions. While his work gained acceptance in Sephardic communities, Ashkenazi Jews were more suspicious of the book. Critiques, such as the vigorous one of Rabbi Abraham b. David (Ravad), sprung up quickly; defenders and commentators followed, filling in the sources and surrounding the text of this simple code with extensive notes, explanations, discussion and glosses. Nevertheless, Rambam's work stands as a tour de force of halachic literature. His influence in subsequent halachic codes and compendiums would be hard to overrate. (Elon 1184-1235; E.J.)



10. Ramban--Moses ben Nachman, or Nachmonides, was a Spanish rabbi in the first half of the thirteenth century. In writing a variety of law codes, Ramban used three different styles. The first, used in his works on issues such as vows, he followed the example of the Rif: writing in accordance with the Talmudic sequence, using the Talmudic and post-Talmudic sources, and finally stating the halachic rule. In his book Hilchot Niddah, however, Nachmonides used the opposite style, creating a terse book of short halachic rules on a single subject. Only rarely does he state a source or contradictory opinion. In yet a third legal code, Torat HaAdam, Ramban discusses the laws relating to the sick, including the relaxations of religious law in cases of an endangered life, laws of mourning and of burial and mourning. The book, written in clear, precise language, is divided into sections and topics, which facilitates easy use. On each topic, Ramban lays out the Talmudic sources, and then the rabbinic discussion and opinions about the halachah up until his own day. He concludes with a definitive statement of the law. Torat Ha'Adam, in topics it covered, served as a foundation for later legal codes, including the Tur and the Shulchan Aruch. (Elon, 1242-43)

11. Ran--Nissim Gerondi (1310-1375) headed a yeshiva in

Barcelona, and also served as a judge. He was one of the foremost halachic authorities in fourteenth century Spain. He wrote responsa, sermons, a Torah commentary and a novellae on the Talmud. His most widely known work was a commentary on the Alfasi's code. The Ran's commentary to tractate Nedarim is also famous, and supersedes in that of Rashi. (Elon 1175-6; E.J.)

12. Rashba - Rabbi Solomon ben Abraham Adret (c. 1235-1310) was a Spanish halachic authority. He was a student of both Jonah Gerondi and the Ramban, and he wrote extensively in all areas of rabbinic literature, including thousands of responsa on all areas of Jewish law, in answer to questions sent from far-flung Jewish communities. Some consider these responsa to be part of the groundwork for Caro's Shulchan Aruch. His compilation of the halachah was called the Torat Ha'Bayit, or "Law of the House," and dealt mainly with regulations for the Jewish home, especially concerning laws of kashrut and family purity. A briefer version of this work, Torat Ha'Bayit Ha'Katzar sparked a commentary with glosses and critiques by Aaron Ha'Levi of Barcelona, called Bedek Ha'Bayit (the "Repair of the House"); Rashba, in turn, defended himself in Mishmeret Ha'Bayit (the "Framework of the House"). Adret supported a traditional reading of the Scriptural text,

scorning mystical and allegorical readings of the Bible.

13. Rashi -- Rabbi Solomon ben Isaac was born in Troyes, France and lived in the eleventh century (1030/40-1105). He wrote extensive commentary on both the Bible and the Talmud. Rashi's style is terse, and assumes a knowledge of the issues at hand. His biblical commentary begins with the p'shat or simple reading of the text, and then, often, embellishes with appropriate midrashim. In his commentary to the Talmud, Rashi clarifies difficult language, providing definitions and hints to help the scholar decipher the text. His commentary encompasses many of the notes of his teachers, Jacob b. Yakar and others. Rashi's genius was, in part, in his arrangement, editing and adaption of the comments of other scholars into a comprehensive running commentary, which virtually insinuates itself into the very Talmudic text itself. While halachic rulings were not his focus in that commentary, practical decisions were scattered throughout the text, and thus his commentary was a starting point for much Talmudic study throughout Germany and France. His grandsons, particularly Rabbeinu Tam, founded the Tosephist school. (Elon, 1116-7; E.J.)

14. Rif -- Rabbi Isaac ben Jacob Alfasi (1013-1103) spent most of

his adult life in Fez. He was regarded as the leading Talmudic authority of his generation. In addition to writing hundreds of legal responsa, his major contribution to Jewish law was a remarkable code, Sefer HaHalachot. He followed the arrangement of the Talmud, citing the relevant passages, summarizing their content and then discussing the halachic implications. He set out the major issues in the Talmudic discussion, and quoted the statements on which he based his ruling. He made use of the text of the Yerushalmi in his code, but followed the Bavli when the two texts contradicted themselves. Alfasi's code dealt only with those sections of the Talmud still relevant after the Temple's destruction. His inclusion of extensive Talmudic passages, both halachic and aggadic, earned his work the nickname Talmud Katzar; his intention seemed to be to make the study of Talmud easier. The Rif's compendium of sources and halachah was a remarkable achievement. It gained authority throughout Jewish communities, especially in Sephard, and Rambam himself praised it in his introduction to the Mishneh Torah. Its importance in halachic circles is testified to not only by the commentaries and literature composed around it, but also in the fact that Joseph Caro, some five hundred years later, used Alfasi's code (along with Rambam's Mishneh Torah and the Rosh's code) as one of his

three pillars of Jewish law. (Elon, 1167-1172; E.J.)

15. R. Asher b. Yechiel (Rosh): The father of the Tur, he is also known as the Rosh, or as Rabbeinu Asher (1250-1328). He was born in Germany and studied under Rabbi Meir Rothenberg (the Maharam). When Rabbi Meir was imprisoned, the Rosh became the preeminent authority among German Jewry. He left Germany in 1303, and moved, by way of Italy and Provance, to Barcelona, where he was welcomed by Rabbi Solomon ben Abraham Adret (the Rashba). In 1305, he became the rabbi of Toledo. The Rosh was quickly acclaimed as one of the leading halachic scholars in Sephard, as he had been in Ashkenaz. The Rosh brought with him to Spain the Tosephist method of learning, as well as the influence of the German customs of his youth. As a scholar in both Germany and Spain, he was in a unique position to put the teachings of the leading authorities in both countries into one place. In his halachic work, he integrated the decisions of German and French codifiers, as well as the minhagim of the people of Ashkenaz, into the Spanish halachah. His major work was the Piskei Ha'Rosh, or Sefer Ha'Asheri, wherein, after quoting the relevant Talmudic passages, he summarized the views of the earlier authorities on the majority of Talmudic tractates. In both the order of the book, and in much of its content, Sefer



Ha'Asheri follows the Rif, quoting his opinions extensively. In addition, the Rosh discussed merits of various rulings and customs in both Ashkenaz and Sephard. The Rosh believed that only a law found in the Talmud itself is binding; other, post-Talmudic sources may be overturned, if the decisor uses acceptable methodology. He believed that the correct halachic decision could only be reached through careful study of the Talmud; any book of halachah, then, according to the Rosh, must include the sources of the law. The Rosh's work is so integral to the halachic study of Talmud that his writings can be found in the back of the Vilna edition of the Shas. His responsa, numbering well over 1,000, include many landmark decisions in the development of the halachah; a close examination of his work also yields much about the social and cultural life of both Ashkenazi and Sephardic Jewish communities. (Elon, 1251-3; E.J.)

16. Sefer HaRokeah--Eleazar b. Judah of Worms was one of the Kalonymus family. He was a halachic scholar in Germany, at the same time as the Ravad at the end of the twelfth century. Eleazar ben Judah was also the last major scholar of the Hasidei Ashkenaz movement. His book, Sefer HaRokeah, is arranged by topic. He began each topic with the sources for every law, drawing heavily

on his German predecessors, and then states the halachah. Eleazar was interested in educating the common reader in the details of halachah, as well as making accessible the law's Talmudic sources. The book covers mostly "religious" law, including prayer, festivals and the like. (Elon 1239; E.J.)

17. Sefer Mitzvot Gadol - Semag was written by Moses of Coucy. Moses b. Jacob of Coucy, France was a Tosephist in the first half of the thirteenth century. He often traveled to other countries in order to preach to Jewish communities about studying Torah, and observing the commandments. He was thus sensitive to a need for an enumeration of the halachot based on the 613 biblical commandments. In his book, Sefer Mitzvot Gadol, he first lays out the 365 negative commandments, and then the 248 positive obligations. For each halachah, he cites the biblical verse, and then gives the relevant exegesis, Talmudic sources, rulings and explanations of the gaonim, the Rif, Rashi, Rambam, other Tosephists, and other halachic authorities. Finally, Moses of Coucy states his decision. While he disagreed with Rambam's choice to omit the sources in the Mishneh Torah, he had great respect for Maimonides' work, and quotes it liberally. With minor changes, the Sefer Mitzvot Gadol follows the order of the Mishneh

Torah. The Semag gained widespread acceptance, particularly following the prohibition on studying, and burning of, the Talmud in 1242, at the command of Pope Gregory IX. Sefer Mitzvot Gadol came to be a popular summary of the Talmudic and post-Talmudic sources. (Elon 1261-3, E.J.)

18. Sefer Mitzvot Katan - Semak was written by Isaac b. Joseph of Corbeil, in the thirteenth century. Like the Semag, upon which it draws heavily, it is arranged according to an enumeration of the 613 biblical commandments. Isaac of Corbeil chose to divide his work into seven sections, one for each day of the week. While he uses verses and rabbinic customs in order to associate a given topic with a particular day of the week (i.e. virgins should marry on Wednesday - the fourth day), the randomness of this arrangement makes it difficult to find any given halachah, or even subject matter. Sefer Mitzvot Katan is characterized by simple language, and little discussion, in its statement of the Talmudic law, and a few rabbinic opinions. Little source material is used. It was meant to be used by the average, relatively unlearned person, but not as a basis for other rulings. However, the accessible language made this book into a popular one, which later halachic authorities did use in making subsequent decisions. (Elon 1263-5;

E.J.)

19. Sefer Shibbolei HaLeket - Zedekiah b. Abraham Ha'Rofe was a thirteenth century Italian halachic authority of the Anavim family. His great book, Sefer Shibbolei HaLeket, is arranged in sections, each of which is subdivided again into smaller chapters - shibbolim, or "ears (of corn)." His discusses the sources for the halachah at length, examining closely the text of the Talmud, and the subsequent opinions of the gaonim, and German, French and Italian rabbinic authorities. (Elon 1247-8)

20. Tosephot - The Tosephists were a school of Talmudic study, founded by Rashi's grandchildren in France and Germany, which flourished in the twelfth and thirteenth centuries. They produces Talmudic novelle, Tosephot picking up creatively where the sages had left off in the sixth century. As products of discussion on the Talmud and subsequent commentary, including Rashi's, the Tosephot themselves sound like the Talmud, full of question and answers, in a living debate. They compared the two Talmuds, as well as various discussions of the same subject within the Talmud itself. The Tosephists also dealt with post-Talmudic literature, and earlier literature, such as the Tosefta and baraitot. Their methodology

became dominant for centuries in France, and then Germany. Rabbeinu Tam, son-in-law of Rashi, was a driving force behind the Tosephists. He helped develop the pattern and final form. (Elon 1119-23; E.J.)

21. Trumat HaDeshen - Israel ben Pethahiah Isserlein lived from 1390-1460, and was a prominent rabbi in Germany. His book Trumat HaDeshen was a collection of responsa, although Isserlein himself put forth many of the questions, in order to investigate complex halachic issues and then state the practical halachic ruling. Isserlein tended to be strict about biblical prohibitions, but, in other matters, was often more lenient, particularly in relation to dealing with the surrounding Christian community. (E.J.)

22. Yerucham ben Meshullam - Rabbeinu Yerucham lived in Provance in the fourteenth century; upon the expulsion of Jews from France in 1306, he moved to Spain, where he studied with the Rosh. He wrote two books, Sefer Meisharim and Toledot Adam v'Havah, which, together, discuss all the halachot still relevant after the Temple's destruction. He carefully arranged his books to facilitate finding any given subject; the former book deals with civil laws, while the latter treats with religious law, including



family law, and is arranged chronologically, according to a person's journey through life. Each subject has its own section or "path." In addition, Yerucham explains the organization of the book in his introduction. He generally succeeded in making his presentation clear and easy to find. His books, as practical sources for Jewish law, were displaced by Jacob ben Asher's Tur, written slightly later. Yerucham's work was, however, considered important enough by later authorities to influence Caro's work. (Elon 1269-72; E.J.)

23. Rabbi Yitzhak (Ri) -- Rabbi Isaac ben Samuel of Dampierre was also known as Ri Ha'Zaken (the elder). He was one of the most important of the Tosephists, as well as one of the foremost halachic authorities of Ashkenazi Jewry in the latter half of the twelfth century. He, along with Rabbeinu Tam, was one of the central thinkers of the Tosephist school, and many of his responsa are preserved, primarily in the works of the rishonim. His major work was the Or Zarua. In addition, R. Yitzhak was the teacher of R. Meir of Rothenberg. (E.J.)

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