

The Question of Yom Tov Sheini for Visitors to Israel

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SHE'ELAH

Should a visitor to Israel observe Yom Tov Sheini or should he follow the custom of *Eretz Yisrael* to only observe one day of a Yom Tov?

TESHUVAH

The prevailing practice has been that a visitor to Israel observes Yom Tov Sheini. This is based on Mishnah *Pesahim* 4:1: *Notrin alav humrei makom sheyatza misham vehumrei makom shehalakh lesham* (We impose on him the restrictions of the place from where he came and the restrictions of the place where he has gone). Based upon the discussion in the Gemara *Pesahim* 51a, and following the opinion of Rav Ashi that the Mishnah refers to a person who intends to return to his place of abode (*da'ato lahzor*), many *posekim* have stated that visitors to Israel must observe Yom Tov Sheini if they intend to return to the Diaspora (*Arukh Hashulhan, Orah Hayyim* 496:5; *Mishnah Berurah, ibid.*, par. 13). In *Ma'aseh Geonim* (no. 47, pp. 31-32), we find the opinion that a visitor to Israel must observe Yom Tov Sheini. Only after dwelling in Israel for twelve months would the "visitor" be considered a resident and a part of the community. Then the "visitor" would follow the local custom, observing only one day of Yom Tov.

All of the above opinions are based upon the Mishnah and Gemara *Pesahim*, which deal with the reverse situation of residents of Israel who find themselves in the Diaspora (Babylonia) on Yom Tov. The situation we

are discussing is mentioned neither there, nor in the Shulhan Arukh. However, the principles involved there apply to our case as well, leading many authorities to require the observance of Yom Tov Sheini by temporary visitors to Israel.

Until recently, the number of temporary visitors to Israel was not great. Visits to the Diaspora occurred in greater numbers. Therefore, the principles involved in observance were stated in terms of residents of Israel visiting the Diaspora. It could very well be that people who travelled to Israel did so with the intention of settling there permanently, and therefore the question of "temporary visitors" never arose. With the advent of air travel, this situation has changed drastically. In fact, many Diaspora residents spend a Yom Tov in Israel, or spend a prolonged period of time there. Consequently, it is necessary to re-examine this issue to see if the prevailing practice is the only acceptable one.

In a responsum written for the Committee on Jewish Law and Standards, Rabbi Theodore Friedman reaches the conclusion that a visitor to Israel does not have to observe Yom Tov Sheini.¹ He bases his conclusion on the following reasons:

- (1) The Committee on Jewish Law and Standards, in a Majority Opinion, stated that the retention of the observance of Yom Tov Sheini should be the prerogative of the *mara d'atra*. Based upon this, it may be assumed that some congregations in the United States do not observe Yom Tov Sheini. Since the observance of Yom Tov Sheini is not universally observed, the visitor is free to either observe or disregard the custom (*humrei hamakom sheyatza misham* does not apply).
- (2) The observance of Yom Tov Sheini would evoke amazement. Therefore, one is not obligated to observe *humrei hamakom sheyatza misham*.
- (3) There is a strong halakhic presumption that one is to follow the practice of the community in which one finds himself, even if he is there only temporarily. Examples of this include:
 - (a) *Megillah* 19a requires a *ben kefar* who has already read the Megillah on *Yom Hakenissah* to read it again if he is in town on the 14th of Adar when the community reads the Megillah. Therefore, a one-day residency makes the *ben kefar* a city dweller with respect to the reading of the Megillah; and
 - (b) The case of a visitor to a city where a charity tax is imposed on the residents of the city. In such a case, his tax shall be given to that city. The principles of *hakol keminhag hamedinah* (all is according to local usage) and *al tifrosh atzmekha min hatzibbur* (one should not separate himself from the community) also apply.

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The following objections have been raised to Rabbi Friedman's approach:

- (1) The number of congregations which have abolished the observance of Yom Tov Sheini is so small and insignificant that one cannot say that it is not universally observed..
- (2) Since the chief rabbinate and hotels make arrangements for tourists to observe Yom Tov Sheini and special services are held, it is impossible to argue that the observance of Yom Tov Sheini would evoke amazement on the part of Israeli residents.
- (3) It is difficult to assume that Yom Tov Sheini, which is a universal custom of the Diaspora, can be equated to local custom (*hakol keminhag hamedinah*);
- (4) The case of a *ben kefar* is not dependent upon a residency requirement, but rather on observing the reading of the Megillah on the proper day, which supersedes the permission to read it on *Yom Hakenissah* -- and not because they are considered residents.

A completely different approach has been taken by the Hakham Tzvi (Responsum #167). According to the Hakham Tzvi, the principle of *notnin alav humrei hamakom sheyatza misham* applies only to those cases where it would be permissible for the permanent residents to act in accordance with the visitor's stringent custom. In our case of Yom Tov Sheini, this means that the principle of *humrei hamakom sheyatza misham* applies only if Israeli residents in Israel could observe Yom Tov Sheini (the stringencies of the Diaspora). Since it is prohibited for residents to observe an extra day of Yom Tov because of the prohibition of *bal tosif*, therefore *humrei hamakom sheyatza misham* does not apply. Since this principle does not apply, therefore temporary "visitors" or temporary residents of Israel are not permitted to observe Yom Tov Sheini, since there is no requirement to do so. If the visitors' native community would move to Israel, it is clear that they would not be permitted to observe Yom Tov Sheini. Consequently, since the place is determinant, and since the question of Yom Tov Sheini by visitors to Israel is not affected by the principle of *humrei hamakom sheyatza misham*, therefore, visitors are prohibited from observing Yom Tov Sheini.

What the Hakham Tzvi is saying is that when there are two conflicting principles concerning one issue, we resolve the conflict by reinterpreting one of the principles involved. In that way, we maintain both principles instead of choosing one over the other, while at the same time resolving the conflict. In our case, the conflicting principles are *humrei hamakom sheyatza misham* and *bal tosif*. Since *bal tosif* is biblical and *humrei hamakom sheyatza misham* is rabbinic, the rabbinic principle is reinterpreted.² Thus, *humrei hamakom sheyatza misham* applies, for example, to the practice of abstaining from work on the Ninth of Av. That

is to say, a visitor to Israel who comes from a community where people abstain from work on the Ninth of Av, would be bound to refrain from work on that day while in Israel. This is so because a resident of Israel could also observe this restriction. But in the case of Yom Tov Sheini, *humrei hamakom sheyatza misham* does not apply because *bal tosif* would be involved. Therefore, a visitor would not be permitted to observe Yom Tov Sheini. This method of reinterpretation is widely used in rabbinic literature and is acceptable as long as the reinterpretation does not violate the text (in our case, *humrei hamakom sheyatza misham*).

Rav Ashi (*Pesahim* 51a) states that *humrei hamakom sheyatza misham* applies only if the visitor intends to return to his native locale (*da'ato lahzor*). There are grounds to claim that *da'ato lahzor* should not be applicable to our case. Rambam (*Hilkhot Melakhim* 5:12) states that Jews are required to live in Israel, and he who leaves the land of Israel is like one who practices idolatry. For us to legislate a halakhah based on the premise that visitors to Israel intend to leave (*da'ato lahzor*) would go against the prevailing attitude of the halakhah, which assumes that each and every Jew is *behezkat kashrut* and tries to observe all the mitzvot. In addition, even if the visitor were to explicitly announce his intentions to leave, we cannot accept his pronouncement because *ein adam mesim atzmo rasha*. Therefore, we may not assume or even accept that the visitor intends to leave. We are not really dealing with a case of *da'ato lahzor*. Therefore, *humrei hamakom sheyatza misham* does not apply, and thus there is no reason for the visitor to observe Yom Tov Sheini.

The following objections have been raised to the approach of the Hakham Tzvi:

- (1) The prevalent practice is the opposite of the view of the Hakham Tzvi;
- (2) The Geonic responsum (*Ma'aseh Geonim, ibid.*) is so clear in invoking the principle which the Hakham Tzvi rejects that it is possible (and even probable) that the Hakham Tzvi would have retracted his statement had he known it;
- (3) Observance of only one day would minimize the distinction between Israel and the Diaspora;
- (4) This approach is taken only in order to alleviate the inconvenience and discomfort of tourists in Israel.

CONCLUSION

In my opinion, visitors to Israel should observe only one day of Yom Tov, but for the following reasons:

- (1) The approach of the Hakham Tzvi is not only acceptable, but is

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preferable. (The fact that the current prevailing practice differs from the Hakham Tzvi's point of view is not sufficient grounds to discount it.) As stated above, this approach is a successful attempt to reconcile two opposing halakhic principles -- without violating the text (*humrei hamakom sheyatza misham*). The fact that the Hakham Tzvi did or did not know the Geonic responsum is immaterial. While his interpretation may be different, his approach is one that is perfectly acceptable within the halakhic framework. To argue that we cannot accept a point of view, even though it is halakhically sound, simply because it is not in agreement with prevailing practice, would mean that halakhah cannot develop and change. The fact is that there are other authorities who have adopted the approach of the Hakham Tzvi. In addition to the *Shulhan Arukh of the Alter Rebbe (Orah Hayyim 496 end)*, Rabbi Samuel Salant, the late Chief Rabbi of Jerusalem, agreed with this position (as reported in *Netzer Matta'ai*; cf. note #2 below). In reality, the Hakham Tzvi does not reject the Geonic response per se. What he does is reinterpret *humrei hamakom sheyatza misham* and apply it accordingly.

- (2) It is doubtful that the observance of only one day would minimize the distinction between Israel and the Diaspora. Were we to claim that following Israeli custom would minimize the distinction between Israel and the Diaspora, we would prohibit a *kohen* who is visiting Israel from reciting *Birkat Kohanim* on all days except those on which it is recited in the Diaspora. Clearly, this should not be prescribed. The fact that a person lives in the Diaspora and observes Yom Tov Sheini there is a sufficient enough distinction between the Diaspora and Israel. A visitor's observance of the Israeli customs while in Israel, and of the Diaspora customs in the Diaspora, will not minimize the distinction between Israel and the Diaspora, but will, in effect, highlight it.
- (3) To claim that the reason for permitting visitors to observe one day is to alleviate the inconvenience and discomfort of tourists would be to ignore the principle of *bal tosif*. *Bal tosif* is a biblical prohibition and not some handy excuse to be used in order to alleviate the inconvenience of tourists.

In conclusion, we should instruct our congregants who will be in Israel for a festival to observe only one day of Yom Tov, based upon the approach of the Hakham Tzvi, and upon the uniqueness of observing a Yom Tov in *Eretz Yisrael*.

NOTES

1. RALA, unpublished responsum.
2. See *She'elot u'Teshuvot Netzer Matta'ai LeNatan Tzvi Friedman*, no. 10, which discusses the question of whether a rabbinic decree (in our case Yom Tov Sheini) is considered biblical on the basis of *kekhol asher yorukha* and whether Yom Tov Sheini therefore does not fall under the purview of *bal tosif*. He concludes that since the rabbinic decree of Yom Tov Sheini was never applied to the land of Israel, therefore the rule of *bal tosif* applies to those who are in Israel on a Yom Tov.

XV.

MISCELLANEOUS

