

HALOCHOSCOPE



This week's question:

A tenant moved into a house and is affixing the *mezuzos*. The top floor has a squirrel infestation problem. The new resident has been told not to use that floor until all the squirrels have been removed. When should he affix the *mezuzos* to those rooms?

The issues:

- A) *Mezuah*, who is obligated? When?
- B) *Dirah*, living space
- C) *Tashmish shel kavod*, space used for respectable living needs

A) *Mezuzah*

The terminology used by the Torah is to affix the *mezuzah* to the door-posts of '*baisecha uvish'arecha*, **your** doors and **your** gates'. The Talmud derives from here that there are two conditions for the obligation: one must own the house, and he must live there or otherwise occupy it. It must be considered livable by normal residents. This includes storage areas that could be lived in, or are used for living-related purposes. Offices, some garages (when used to store indoor type items, rather than cars and lawnmowers) and many types of warehouses are included. All rooms that meet the minimum dimensions and have the correct type of doorway require a *mezuzah* on their door-post.

An owner is obliged to affix a *mezuzah* when he occupies the premises. A tenant is only obliged at the end of the first thirty days of residence, except those who rent in Eretz Yisroel. This will encourage the quick resettlement of the home, if the tenant leaves, and will help *yishuv* Eretz Yisroel, the settlement of Israel by Jews. If one affixes a *mezuzah*, it will stay when he leaves (see below). It is easier for a landlord to find a new tenant if the doorway has a *mezuzah*. Therefore, rather than wait thirty days, by which time the current tenant might have changed his mind, the obligation begins immediately.

Outside Eretz Yisroel a tenant is obliged only after thirty days. In a minority view, the term *baisecha*, your house, only applies to living, implying permanent residence. A renter could be viewed as having taken up temporary residence, until he stays for thirty days. This view considers the obligation on a tenant after thirty days the same as an owner – Scriptural, according to some commentators. The majority consider a tenant obliged Rabbinically. The best known interpretation of this Rabbinical obligation is that the home is *nir'is keshelo*, resembles his own house. Accordingly, it was felt necessary to impose a Rabbinical obligation. For the first thirty days of occupation, this appearance does not show. This can be explained in two ways: The onlooker knows that the tenant did not own this house previously. He considers him a mere lodger. After thirty days, the onlooker assumes that the house belongs to him. The other way to explain it is that the onlooker might know that he is renting. Nonetheless, he considers a long term tenant to be a resi-

dent, tantamount to an owner, living in *his* house! Besides, a rental agreement is like a purchase for a limited time period. This perception is sufficient to warrant a Rabbinical obligation. A third theory compares renting to borrowing, that is *nir'is keshelo* after thirty days. This requires one living in borrowed space, free of charge, to affix a *mezuzah*.

There is a view that if a tenant has agreed to rent for a year, even outside Eretz Yisroel, he must affix a *mezuzah* immediately. The reason a regular tenant does affix his *mezuzah* for the first thirty days is due to the temporary nature of his residence. One who signs a lease for a longer period has committed to a more permanent residency. Others contend that this is based on the minority view that a tenant has a Scriptural obligation.

There is some debate on a whether a tenant who chooses to affix his *mezuzah* before the end of the first thirty days may recite a *brocha*. Not being obligated, can he say '*vetzi-vanu*', [Hashem] commanded us, when doing the *mitzvah*? May he accept the *mitzvah* voluntarily, and recite a *brocha*?

In our case, we may assume that the tenant is obligated to affix his mezuzos on the thirtieth day. However, there might be an issue with the attic rooms. They might be exempt of the *mitzvah* until they are cleared of the infestation. If this is the case, should the mezuzos then be affixed immediately, or after another thirty days? Clearly, the rent includes the entire house. It is possible that the landlord agrees to waive some of the rent due to the uselessness of those rooms. Once they are livable, the rental will presumably become obligatory immediately. Is this like a new rental? If he affixes the mezuzos before thirty days, should he recite a *brocha*? If he affixes them right now, relying on the original *brocha* on the rest of the house, should he re-affix them later again? [See Shabbos 22a Pesachim 4a Yuma 11b 21a 26a Menachos 44a Chulin 110b 135b-136a, Poskim. Chinuch 423. Tur Sh Ar YD 286: esp. 22, commentaries. Avnei Nezer YD 180.]

B) Living space

We mentioned limitations on the *mitzvah* based on living space. A home is normal living space. Even storage space can be considered living space if the items stored are meant for indoor living. Occupying premises means living there or using them regularly. A temporary dwelling, such as a *sukah* on *sukos*, is exempt from *mezuzah*. The Talmud and poskim cite a 'store in the marketplace' as an example of a place that is exempt. Some attribute this to its temporary nature, something like a booth. According to this, a regular store would require a *mezuzah*. Others say that a store is not used by night. Some maintain that if it can be used for storage all the time, it is not exempt. According to some, daily use is automatically considered permanent 'dwelling'. Others maintain that daily use is the issue being debated. Premises used less frequently would automatically be considered temporary. What if a space is avoided at certain times due to the presence of something unpleasant? For example, one might be unwilling to sleep overnight if there are animals roaming the area. By daylight, one might not feel uncomfortable. What if one does not wish to move any furniture into a space, because of the presence of such rodents? Some poskim maintain that if a room is such that it cannot be used normally, infrequent usage does not count as *dirah*. Thus, a walk-in fridge is too cold to be considered a *mekom dirah*. This is complicated by the fact the the business-place itself is not lived in at night. A similar question is raised about a bank vault. Perhaps our case may be compared with

that case, since the tenant's obligation is less than that of a homeowner. In addition, the fridge and the vault are indeed used. In our case, the rooms are avoided totally.

The Talmud exempts the doorway of a ship's cabin from *mezuzah*. Even if one stays on board for two months, the 'dwelling' is, by definition, built to be used temporarily. The Talmud seems to obligate a hotel guest only in Eretz Yisroel, and only after thirty days, (as opposed to a tenant in Eretz Yisroel who is obliged right away.)

The poskim ponder the status of a long-term care patient in a hospital facility. He pays for his room, but no-one really views it as his own. Some suggest that the chance of his being moved at the whim of the facility administrator is also a factor. Another case discussed by the poskim is a jail cell or a temporary residence when fleeing an epidemic. These are undesired dwellings. In fact, the Talmud discusses the short term lodgings of the *kohain gadol* in the *Bais Hamikdash* prior to *Yom Kippur*. The poskim also discuss a summer home, used for a short term, and having some of the aforementioned factors.

The *mitzvah* of *mezuzah* applies to all doorways equally. However, in our case, some of the rooms are not being used, or are unusable. The poskim debate the status of a second house. If the owner does not live there, should he still affix a *mezuzah*? It seems that a tenant who rents more than one house is treated somewhat more leniently, since the entire obligation is Rabbinical. In our case, it is one house, but with some unused rooms. [See Yuma 10a-11b Menachos 44a, Poskim. Tur, Sh. Ar. YD 286:1 11 16 18 22 23 287:2, commentaries. Ar Hash. Sdei Chemed Kl. Mem 118. Avnei Nezer YD 180. Igros Moshe YD I:179. Chovas Hadar 2:1 3 4:5-7, notes.]

C) *Tashmish she'aino shel kavod*

If a space is used for immodest or non-respectful needs, such as a bathing or toilet area, the Talmud says that it is exempt from the *mitzvah* of *mezuzah*. This includes tanneries and other spaces where there is a bad odor or fumes. The reason they are exempt is due to the immodest use of the space. The reason for the exemption is not due to the lack of *dirah* value. In fact, some poskim even exempt a married couple's bedroom, which is used for constant *dirah*. The reason is that the *mezuzah* contains Hashem's name. It is sanctified item. It is inappropriate to place this item on a room used in these ways.

The Talmud discusses spaces regularly used secondarily for immodest uses, but primarily for regular respectful uses. The Talmud uses as an example a cattle barn or a chicken coop, that is occasionally used by women for private uses. The implication is that a cattle barn itself could be obligated in *mezuzah*. The only reason to exempt it would be the other uses. Thus, the fact that it is reserved for use for animals is not a reason to consider it a non-respectful use. The poskim explain, a person would also not mind spending time there for normal living uses. In fact, the Talmud discusses other, normal and respectful, uses. The fact that these animals might also relieve themselves in the barn or coop does not render the space non-respectful. It is only deemed such when used by humans in this way. The presence of the waste matter is also a matter of debate. A minority view maintains that this is the source of the objection to placing a *mezuzah* there. Accordingly, modern rest-rooms where the waste matter is removed immediately, could be obligated in *mezuzah*. The majority object to this interpretation. It seems clear from the Talmud that the exemption is based on the activity, rather than the presence of the

waste. However, the poskim maintain that if the smell is very strong, it is exempt. This is based, in part on the exemption for a tannery. The materials used in the tanning process, including the waste matter of some animals, is foul smelling. Thus, it is possible that the guiding principle is the disrespect to the *mezuzah*. This can come in the form of an activity or of the overpowering presence of something foul-smelling.

Thus, in our case, the question is whether the mere presence of rodents, including their free roaming and droppings, would anyhow exempt the rooms from *mezuzah*. If, indeed, there is an overpowering smell, this could serve as an exemption in its own right. Since these animals are not domestic, one could argue that the room is not to be treated the same as a barn or coop. Both of those are used for animals that commonly share their space with humans. People are used to them and their accompanying habits and smells. Even caged pet rodents do not cause unpleasantness to humans.

The issue seems to depend on how one measures disrespect to Hashem's Name. The examples given by the Talmud and poskim are activities that are acceptably normal in private, but considered disrespectful in the presence of others. In addition, smells that one normally avoids unless he absolutely needs to tolerate them are grounds for exemption. Both of these seem to depend on human nature, rather than on societal standards. However, it might be that standards could change based on lifestyle changes. In Talmudic times, a shed used specifically for laundering was exempt. Not only were the clothes filthy, the materials used in the process could also be foul-smelling. Nowadays, people do this in a regular room inside the house, in a sanitary environment. Indeed, if the room is used for other uses, the consensus is that nowadays it is obligated in *mezuzah*.

Perhaps people who are unused to being overrun with rodents and will leave the room or house because of them, live by a different standard. They might be able to maintain that they find this to be the same as a tannery. However, in our case, the room is not made for this activity or use. It happens to be used this way temporarily. Therefore, it cannot be inherently considered a *tashmish she'aino shel kavod*. The only reason to exempt would be the fact that the tenant has not yet moved in. [See Yuma 11a, Poskim. Tur Sh Ar YD 286:2 4 18, commentaries.]

In conclusion, the tenant may wait until he 'moves in' to these rooms. However, if it is past thirty days, once the infestation is removed, he is obliged immediately.

On the parsha ... Where do the Rabbis derive that in a space reserved for disrespectful activity a *mezuzah* should not be affixed? In our parsha: *[the kohain] shall bare the head of the [wayward] woman[5:18] it is a disgrace for a Jewish [married] woman to go bare-headed [Rashi]. She is also bared other ways [Sotah 7a].* How could this be done in the presence of the holy *Shechinah*? Is this not a precedent for allowing such disrespect in a *shul*? Not at all! Perhaps this is in keeping with the previously mentioned erasing of Hashem's Name for the sake of matrimonial harmony. Indeed, from here we learn how objectionable such activity is under other circumstances. Only for this lofty cause is this allowed! From this very instance we learn that it is disrespectful for Hashem's Name when a space is reserved for such activity.

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