

# HALOCHOSCOPE

**This week's question:**

**A Jewish tenant is moving out. The incoming tenants are a Jew with his non-Jewish 'spouse'. When she is away, he will sub-let rooms to others, some of whom will undoubtedly be non-Jews. May the current tenant remove his *mezuzos* and take them with him?**

**The issues:**

- A) *Mezuzah*; the obligation on a tenant
- B) Removing a *mezuzah* from its place
- C) *Bizuy*, protecting a *mezuzah* from abuse
- D) The obligation of *mezuzah* if the residence is a partnership between Jew and gentile

## **A) *Mezuzah* for a tenant**

The terminology used by the Torah is to affix the *mezuzah* to the door-posts of '*baisecha uvishe'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 three ways: (i) 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. (ii) The onlooker might know that he is renting. Nonetheless, he considers a long term tenant to be a resident, tantamount to an

owner, living in *his own* house! Besides, a rental agreement is like a purchase for a limited time period. This perception is sufficient to warrant a Rabbinical obligation. (iii) 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 '*vetzivanu*', [Hashem] commanded us, when doing the *mitzvah*? May he accept the *mitzvah* voluntarily, and recite a *brocha*? [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) Removing a mezuzah**

The Talmud forbids removing a *mezuzah* from a rented property, when moving out. This applies even to the *mezuzah* affixed by this same tenant when he moved in. According to most of the explanations provided, this also applies to a seller.

The explanations are: (i) *Mezuzah* affords protection to the house. Removing the *mezuzah* allows access to destructive forces. (ii) Some add, the incoming Jewish tenant will not be required to affix his *mezuzah* for thirty days. The outgoing tenant will be indirectly liable for any harm befalling the incoming tenant. According to this, if the incoming tenant or buyer will affix his *mezuzah* immediately, the restriction against removal is lifted. (iii) Removal of the *mezuzah* lowers the level of holiness on the door-post; *maalin bakodesh velo moridin*, one may not lower sanctity. (iv) Removal of the *mezuzah* removes the *Shechinah*, divine Presence, from the house, another manifestation of *horada bikedusha*. (v) It lowers the level of *kedusha* of the *mezuzah* itself. While attached to the door-post it is serving its holy purpose. This reasoning would allow moving it from one door-post to another. Accordingly, if one cannot get *mezuzos* for his new home, he may remove the old ones and affix them immediately in his new home.

The Talmud relates, King Munbaz took a *mezuzah* with him on his travels. He had no permanent residence, and wanted a memento of *mezuzah* wherever he went. However, he did not affix it to the door-post. He affixed it to a stick and placed it by the door. Some suggest that had he affixed it, he could not have removed it when he moved on. Even though he was clearly not obliged, as his lodging was of a very temporary nature, once attached, it could not be removed. [See Baba Metzia 101b-102a Avoda Zara 14a Yerushalmi Peah 1:1 Menachos 32b, Poskim. Tur Sh Ar YD 291:2, commentaries.]

### **C) Bizuy**

One may never allow holy items to be abused or neglected. This is based on the general concept of *bizuy mitzvah*, and the *mitzvos* to show respect and awe for holy items. *Bizuy mitzvah* is derived from the *mitzvah* to cover the blood of certain animals after they are slaughtered. *Morah mikdash*, showing awe for holy items is a *mitzvah* in its own right. It also relates to the *mitzvos* forbidding destruction of holy items, learned from the

mitzvah to show awe for Hashem. It is also learned from the *mitzvah* to destroy idols and their trappings. The Torah says: 'You shall not do this to Hashem'. For these reasons, all holy items must be treated with the utmost respect. This includes behaving in a dignified manner in their presence. For example, a *mezuzah* is not affixed to a bathroom, since the living usage is *genai*, not respectful. [Is a room where institutionalized violations of *halacha*, such as the intermarried couple in our case living together, considered *tashmish dira shel genai*?!] It should be affixed to the outside of a bedroom. If affixed on the inside of the doorway, it should be covered when intimate activities are done in the room. Likewise, holy artifacts must be protected from mistreatment by others who do not necessarily know or appreciate their sanctity.

One may not leave holy items in possession of a gentile. He will not treat them correctly, even if he understands that Jews consider them holy. Even if he considers them holy himself, he does not have the same notion of their sanctity as does the *halacha*. For example, a *mezuzah* is a scroll rolled and wrapped inside a case. An ignorant person might ask: "Why hide the scroll? Why not open it for display (actually, the practice of the Karaites)? Maybe one should insert thumb-tacks in it to hold it up! Maybe one should nail the rolled scroll directly to the door, through the parchment!" If it gets damaged superficially, he might throw it in the garbage. *Halachically*, even if it becomes *passul*, invalid, it must be placed in *geniza*, buried or put away respectfully. He might expose it to the elements. It is very common for gentiles to believe that the real holy item is the case, and that the 'paper' inside it is just an extra. Even allowing a gentile to handle the *mezuzah* is considered lowering its sanctity! For these and many more reasons, it is forbidden to leave a *mezuzah* behind on a door-post if there is a possibility that it will end up in the hands of a gentile tenant, landlord, buyer or even worker. If the home is left empty and unoccupied, and gentile workers will work there unsupervised, *mezuzos* must be removed. Painting destroys *mezuzos*, due to the chemicals present. Even before the painting, the painter might come through the house and pull off these 'ornaments' attached to the doors, to save himself time later preparing the surfaces. The reason to leave a *mezuzah* on a door-post is based on *horada bikedusha*. In these cases, leaving it behind is just as bad, if not worse, *horada bikedusha*.

If a Jew is present with the gentile, he will be able to protect the honor and sanctity of the artifacts. However, the Jew must be on a level of observance to appreciate the sanctity himself. If the Jew is non-observant, he might himself show disrespect, albeit unwittingly. If the Jew has abandoned observance, he might believe the *mezuzah* to be a primitive superstition. Or he might have a resentment to things attached to religion. He might actively show disrespect. In our case, the Jew is estranged from his roots, since he married a gentile woman. This does not necessarily mean that he opposes Judaism. He might be considered an errant Jew unaware of holy matters. Nonetheless, one may not risk disrespect to the *mezuzos* in the house. In the circumstances, the *mezuzos* are decidedly at risk of *bizuy*. Perhaps the tenant leaving should remove the *mezuzos*. [See YD 291:2. Igros Moshe YD I:182.]

#### **D) Jew-gentile partnership**

The aforementioned concern applies to a non-observant Jewish landlord or worker. However, a non-observant tenant has an obligation of *mezuzah* in his own right. While he

will probably show disrespect to it, one might not be permitted to deprive him of the fulfillment of his obligation. Therefore, the old tenant might be required to leave behind the *mezuzos* anyhow. However, in this case there might be no such requirement. Firstly, it is unclear whether the former tenant has any responsibility with regard to the new tenant's *mitzvah* in the first place. Secondly, It is unclear whether one has an obligation to a fellow Jew who blatantly violates *halacha* consistently. Intermarrying formalizes *halacha* violation in a very blatant manner. Thirdly, the new tenant's obligation is itself somewhat questionable. He signed the joint-lease in partnership with his gentile wife. He also made a provision to sublet the rooms to students, the majority of whom will be gentile.


For some *mitzvos* connected to ownership, the personal obligation is limited to one in sole possession. In particular, the Torah sometimes uses a singular form, such as *baisecha uvishe'arecha, your* ... indicating individual obligation. Accordingly, if a plural form is used, the *mitzvah* can apply to partners. In the case of *mezuzah*, the Torah links observance to longevity, written in plural form: *lema'an yirbu yemaichem*. However, the singular form used for the doorways must teach us something as well. In other such instances, the *mitzvah* is limited to partnerships of Jews, and excludes partnerships with gentiles. The Talmud does not specify this in the case of *mezuzah* on a Jewish-gentile shared property, giving rise to a debate.

A gentile is not obligated to affix a *mezuzah*. One should not give him one, or leave it in his care. Aside from the reason mentioned earlier that he might mistreat it, there is another reason not to give it to him. *Mezuzah* is a *mitzvah*, but it also affords protection to the home as a fringe benefit. The gentile probably wants it for its protection alone. This demeans the *mitzvah* aspect. These are part of the reason a part-gentile-owned property is not eligible for *mezuzah*. A second factor is that most partnerships may be split. Thus, even before splitting, there is a distinct 'independent' part owned by the Jewish partner, that might carry the *mitzvah* obligation. The Jew would therefore be obliged due to his own share. A doorway cannot be divided. Since it cannot be viewed as the independent share of the Jew, it must be viewed as a gentile's. Accordingly, most poskim exempt such partnerships from *mezuzah*. A minority maintain that the Jew still needs the protection.

In our case, the tenants are partners, a Jew and a gentile. They share the rooms equally. While there is an opinion that considers this an unsolved question, others see no reason to obligate the Jewish partner. [See Yuma 11a Chulin 135b-136a, Poskim. Tur Sh Ar YD 186:1, commentaries, Chovas Hadar 2:2 *note 10*.]

In conclusion, the old tenant may consider the new tenants to have the status of a gentile. The old tenant should remove his *mezuzos*.

**On the Parsha ...** *Hate/attack the Midianim, for they hate/attacked you with their plots involving Peor and Kazbi their sister ... [25:17-18]* In which way were the Jews attacked or hated? By tempting the Jews to bond with gentile women, *Midian* caused the Jews to abandon their Judaism and worship idols. Causing self-destruction is the same as attacking them. A Jew who intermarries has formally and officially shown hostility to his Jewishness and sanctity.

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