

HALOCHOSCOPE

This week's question:

Someone moved into a rented house on a Thursday. He will be there for a few months. In keeping with common practice, he did not affix his *mezuzos* right away, but waited until he lived there for thirty days. The thirty-first day arrives on a *Shabbos*. When should he affix his *mezuzos*: on Friday or on *Motzai Shabbos*? If he affixes the *mezuzos* on Friday, should he recite the *brocha* then? If not, should he recite it on *Shabbos*, or should he adjust a *mezuzah* on *Motzai Shabbos* and recite the *brocha* before he does that?

The issues:

A) *Mezuza* for a tenant

B) Affixing *mezuza* before the obligation applies

A) *Mezuza for a tenant* [Excerpted in part from Halochoscope XII:38.]

The terminology used by the Torah is to affix the *mezuza* 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 *mezuza* on their door-post.

An owner is obliged to affix a *mezuza* 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 *mezuza*, it will stay when he leaves (see below). It is easier for a landlord to find a new tenant if the doorway has a *mezuza*. 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. One explanation of this is that the person living there for the first thirty days cannot be considered a real resident. After thirty days, he may be considered a resident, but since the home does not belong to him, there is no Scriptural obligation.

However, 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 im-

pose 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 longer period even outside *Eretz Yisroel*, he must affix a *mezuzah* immediately. A regular tenant does affix his *mezuzah* for thirty days due to the temporary nature of his residence. By signing a lease for a longer period one commits to permanent residency. Others contend that this is based on the minority view that a tenant has a Scriptural obligation. This does not apply in our situation. The tenant happens to have been given this rental as a temporary replacement. He hopes to move before a year is up. [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. Chikrei Lev YD:128. Sdei Chemed, Mem:112.]

B) Affixing the mezuzah before he is obliged

There is some debate on 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*? Perhaps the Rabbis would have obligated a tenant immediately, but allowed a delay of thirty days. Or did they mean that until thirty days there is no *mitzvah* at all? If so, while it is nice to have the *mezuzah* up early, there can be no *brocha*. Accordingly, it would be better to wait, so that he may recite the *brocha*.

Generally, a *brocha* must be recited *ovair la'asiyan*, before the performance of the *mitzvah*. Once the *mitzvah* has been performed, it is too late. In specific instances, the *brocha* is not possible beforehand. In those cases, it is either recited during the performance, between two parts of the performance, or immediately afterwards. Could one affix the *mezuzos* early and recite the *brocha* later on? This touches on two issues. First, the *mitzvah* of *mezuzah* has two aspects to it. The actual performance is the act of affixing. In addition, the doorways must have a *mezuzah*, which is like a passive part of the *mitzvah*. In this case, the language of the *brocha* is *likboa*, to affix. It applies to the active part. If the *mezuzah* is already on the door post, one cannot recite a *brocha* in this way.

The question runs deeper. Will he even perform the *mitzvah* at all? Perhaps he is not only not obliged, but his performance does not even count! Thus, when the time arrives that he is obliged, he will not be considered in compliance. Furthermore, perhaps he will not be able to fulfill the *mitzvah* then, because the *mezuzos* will already be in place. Thus, by affixing them early, he will forfeit both the *mitzvah* and its *brocha*.

The main two issues dealt with are whether one may forfeit a *brocha* and whether one may forfeit the act of doing the *mitzvah*, relying on the passive part. An additional issue is raised by some poskim. The Talmud says that one may not attach the *mezuzah* to a

detached door post, and then attach the door post. This involves *taase velo min he'asuy*. This means that *mitzvos* that require something to be made may not be performed with a ready made item. This issue really applies to an item that has already had the action done to it. In our case, one does the action himself, but it is done early. Does the rule of *taase velo min he'asuy* apply to doing something too early?

Various similar *mitzvos* are compared to the *mezuzah*. The Talmud itself compares *mezuzah* to *tzitzis*. On a borrowed *talis*, one is exempt from the *mitzvah* for thirty days, just like a tenant or a borrower is exempt from *mezuzah*. If one puts on a *talis* before the time for the *mitzvah*, such as by night, he does not recite the *brocha*. He may move it around when the time comes, and recite a *brocha* then. However, the *brocha* in that case applies to the wearing, rather than the attaching. Furthermore, moving the *talis* around can count as the active part of the *mitzvah*.

Pidyon haben, redeeming a firstborn son, is only obligatory after thirty days. The Talmud debates whether one could give the money beforehand, so that it should take effect when the time arrives. The money must still be intact after the thirty days. However, even according to those who recognize it, it seems that it is not ideal. Furthermore, in that case, there is a transaction. Transactions have an active part and an effectuation. Nothing physical changes, but the action causes the effectuation, which in turn, depends on the mindsets of the parties. This can be done with a delay in mind. *Mezuzah* has no such rule.

Ner Chanukah may not be kindled before the time. If it was kindled before the time, it does not count, and it must be extinguished and rekindled. However, in that case, besides the language of its *brocha*, there is a practical issue. One who does not see the person kindling it at the correct time can think that the person had this light on for his personal use, rather than for the *mitzvah*.

Ner Shabbos may also not be kindled early. It must be rekindled. Here too, it might have little to do with *taase velo min he'asuy*. The reason might have more to do with the appearance of personal lighting rather than dedicated *Shabbos* lights.

In *Eretz Yisroel*, the Rabbis obligate a tenant immediately. Assuming that some poskim maintain that tenants are obliged Scripturally after thirty days, because until then they cannot be considered dwellers, how could the Rabbis obligate them to do it early? This would mean that for Scriptural purposes, it is ready made! The Rabbis override the Scriptural obligation! The poskim debate whether one who performs a *mitzvah* when obligated Rabbinically can exempt a later Scriptural obligation. According to the stringent position, this Rabbinical obligation in *Eretz Yisroel* seems to show that *taase velo min he'asuy* does not apply when the *mitzvah* is actively performed, but before its time.

A similar question is raised with regard to attaching *tzitzis* by night. The poskim debate whether the attaching part of the *mitzvah* may be done at night. According to the stringent view, if one attached them by night, must he detach them and reattach them by day? On the other hand, the *mitzvah* of *sukah* applies specifically on *Sukos*. Yet, the *sukah* is built beforehand, and this is also part of the *mitzvah*. Indeed, one of the sources for *taaseh velo min he'asuy* is the *mitzvah* of *sukah*. If one hollows out a haystack creating ready made *sechach* and walls, the *sukah* is invalid. Apparently, making it early does not count as *taaseh velo min he'asuy*.

Most poskim do not raise the issue of *taase velo min he'asuy*, but they do raise the issue of missing out on the *brocha*. In our case, there is a twist. While most tenants can claim to follow the ruling that signing a lease for a year is sufficient to create an immediate obligation, these tenants do not plan to stay long term. In fact, they would prefer to leave as soon as possible. Therefore, other tenants can affix the *mezuzos* early, based on the view that obligates them. In addition, our case presents an opposite problem. The thirty-first day will be *Shabbos*, when one may not affix a *mezuzah*. If they cannot do it early, the tenants will need to wait until *Motzai Shabbos*, the thirty-second day. Their home will be lacking *mezuzos* for a day when they are indeed obligated. Some maintain that one may not live there until affixing it. They will also be delaying their performance of the *mitzvah*. In some similar situations, it is obvious that one cannot be held accountable for neglecting performance of a *mitzvah* that is forbidden on *Shabbos*. In this case, however, if they can find an acceptable way to do it early, they might be held accountable.

This issue is discussed by poskim. The comparison is made to *pidyon haben*, when the thirty-first day falls on *Shabbos*. Can the money be given before *Shabbos*, to take effect on *Shabbos*. Aside from the issues of effectuating a transaction on *Shabbos*, since it is an abstract transaction, it can be delayed, as explained earlier. *Mezuzah* requires a physical act at the correct time. One suggestion is to place the case on the door post before *Shabbos*, and to slip the *mezuzah* into it on *Shabbos*. This assumes that no violation of *Shabbos* occurs. However, if there is an issue of living there without affixing it, affixing it makes the house 'livable'. This is a *tikun*, constructive action on *Shabbos*.

Another suggestion is to attach the *mezuzos* right before kindling the *nairos Shabbos*. This is done on *Chanukah*. While the time has not yet arrived to fulfill *ner Chanukah* until after one accepts *Shabbos*, it is impossible to perform the *mitzvah* then. Therefore, one does it early, but at the latest possible minute. Some maintain that in this case, preparing for the *mitzvah* counts as part of the performance, and that one may recite a *brocha* on it. In our case, this would require attaching many *mezuzos* right before *Shabbos*. This could involve *chilul Shabbos*, if it is not finished in time. [See Refs to Section A. Sdei Chemed, Mem, 113-115, refs there. Igros Moshe YD:I:189.]

In conclusion, the tenant should affix a few *mezuzos* to some main doorways before *Shabbos*, without reciting the *brocha*. His intent should be to fulfill the *mitzvah* by both having these in place and affixing the others later, in the correct time. He should affix the remaining *mezuzos*, as soon as *Shabbos* is out, with a *brocha*, to cover all of them.

On the parsha ... Should the cloud linger .. many days .. few days .. overnight .. a day and a night .. two days .. a month or a year .. they shall camp and not travel ..[9:19-22] Why mention all these time periods [see Ramban, Or Hachaim]? Perhaps there is a message here. Camping 'by the word of Hashem' and with the *Mishkan* is always 'permanent' – for a short period, a month or a year [see also *Shabbos 31b*].

Sponsored for the zechus of a refuah shelaimah bimehairah for Yosef Yitzchok ben Yehudis

Chaya, besoch she'ar cholei Yisroel.

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