

Which Rooms Require a Mezuzah (Ownership)

Rabbi Aryeh Lebowitz

I. **Introduction.** In previous essays we have discussed which rooms require a מזוזה on account of the way that they are used. In this essay we will shift our attention to the requirements of ownership that must be in place in order for a room to require a מזוזה.

II. **Jointly owned properties – Time Shares.**

A. **When two Jews are partners.** The גמרא (יומא דף יא:) states that homes owned by women or by partners require a מזוזה. The גמרא explains that while one may have derived from the masculine singular formulation of the מצוה – "ביתך" that a woman and partners would be exempt, the very fact that the תורה follows up the מצוה of מזוזה with a promise of long life for those who fulfill the מצוה properly (למען ירבו ימיכם) indicates that anybody who would be interested in a long life is obligated in this מצוה.

1. Although the גמרא's halachic conclusion is clear, the exact exposition of the פסוק is not as clear. רבי עקיבא (גליון הש"ס שם) points out that the idea that anybody who would be interested in the blessing associated with מזוזה is obligated in the מצוה, would explain why women are obligated to put up a מזוזה on their homes, it would not explain why partners are obligated to place a מזוזה on their jointly owned properties. After all, there was never a thought that each partner as an individual is exempt from the מצוה, only that those properties that they own together should not require a מזוזה. The logic that anybody who would like a long life is obligated in the מצוה only serves to teach which people are obligated in the מצוה, not which *properties* require a מזוזה. After all, people who live in rented apartments for less than 30 days at a time also want long life, but need not put a מזוזה on the apartment because the *property* is exempt from the מצוה, not because the *people* are exempt from the מצוה. In addressing

this problem, the רש"ש (שם) explains that the logic to require properties owned by partners in the מצוה of מזוזה has nothing to do with who is interested in the promise of long life. Rather, the fact that the promise was written in the plural ("ירבו ימיכם") indicates that it applies to jointly owned properties as well.

B. **When a Jew and non-Jew are partners.** The above conclusion in the גמרא relates specifically to a home owned jointly by two Jews. When the home is owned by a Jew and a gentile, though, the הלכה is not as clear:

1. **The lenient view.** The (סימן רפו ס"ק א) דרכי משה cites the view of the מרדכי who maintains that homes owned jointly by Jews and non-Jews are exempt from a מזוזה. The דרכי משה, however, does not explain the logic for arriving at this conclusion:

a. The מרדכי (עבודה זרה פרק קמא אות תתי) records a conversation between רבינו אביגדור and his father in law ה"ר חיים relating to this issue. רבינו אביגדור questioned whether the house should be exempt because we never find the גמרא explicitly excluding such partnerships from the obligation to place a מזוזה (to the contrary the גמרא states that partners are obligated in מזוזה without ever qualifying that both partners must be Jewish), or perhaps since the idea that partners are required to place a מזוזה is derived from the "למען ירבו ימיכם" פסוק (see above) we may conclude that only those whose lives the תורה is interested in lengthening would require a מזוזה, as opposed to a גוי whose life the תורה would have no interest in extending. ה"ר חיים responded to this query by stating that the home would be exempt from having a מזוזה, implying that he accepted the idea that the תורה could not have included properties owned by a Jew and non-Jew in the מצוה because the תורה has no interest in extending the non-Jew's life.

- i. The *Leבוש* (עטרת זהב) states that gates of courtyards and cities where both Jews and non-Jews reside are exempt from *mezuzah* because the obligation of *mezuzah* only takes effect for those who are interested in life, which excludes any homes with non-Jewish ownership. The *Sh"ך* (רפ"ו) vehemently disagrees with this explanation, and suggests that these gates are exempt because it is dangerous in many societies for Jews to flaunt their religious articles in so public a fashion. The *Mנחת חינוך* (מצוה) *Sh"ך* (though, wonders why the *Sh"ך* took exception to the explanation of the *Leבוש*. After all this was the exact *סברא* that the *מרדכי* had suggested to exempt homes owned jointly by Jews and non-Jews from a *mezuzah*. It seems, though, that even if the *Sh"ך* were to accept the ruling and logic of the *מרדכי* he is well justified in rejecting the explanation of the *Leבוש* for exempting city gates for a number of reasons. First, the *מרדכי* only used this logic to exempt homes owned jointly by Jews and non-Jews as not requiring a *mezuzah*. City gates, even when non-Jews live in the city are technically required to have a *mezuzah* (as the *שולחן ערוך* רפ"א rules explicitly). While the *Leבוש*'s explanation accounts for why there should not be an obligation to place a *mezuzah* in these locations, it does not account for why the *שולחן ערוך* requires the *mezuzah*, and we routinely ignore this *הלכה*. Furthermore, it should be noted, though, that the *סברא* rejected by the *Sh"ך* was not identical to the *סברא* of the *מרדכי*. While the *מרדכי* explained that non-Jews are exempt because the *תורה*

is not interested in their living longer, the לבוש had said that non-Jews are exempt because *they* are not interested in life as is evidenced by the fact that they do not observe the תורה.

ii. One may argue that the explanation of the מרדכי is questionable for a variety of reasons. First, to suggest that the Torah is not interested in the lives of non-Jews is a startling assertion that would seem to require a Talmudic source to support it. Second, even if the logic is correct, the fact that the תורה is not concerned with the אריכות ימים of non-Jews would only explain why the non-Jew is not obligated in the מצוה, but would fail to explain why his Jewish partner is exempt by virtue of their partnership.

b. The מרדכי (חולין ריש פרק ח' סימן תשמא) offers an entirely different explanation for the exemption of homes owned jointly by Jews and non-Jews from the מצוה of מזוזה. The מרדכי points to the law that a home owned jointly by a Jew and non-Jew is not subject to צרעת because regarding the צרעת of טומאה the house is only half a house (the half that belongs to the non-Jew is not subject to צרעת. צרעת can only afflict a complete house, not half a house. Similarly, a room has a certain size requirement to warrant a מזוזה. If the room is smaller than four אמות in width and four אמות in length, the room is exempt from מזוזה. Therefore, if each inch of a room is owned partially by somebody who is not obligated in the מצוה of מזוזה, the room (or home) cannot be accurately labeled a complete home vis a vis the מצוה of מזוזה.

i. Interestingly, (סימן קסז) שו"ת בנימין זאב fuses the two explanations of the מרדכי into one as follows: Since the פסוק of *למען ירבו ימיכם* cannot apply to a non-Jew his portion of any house is exempt from מזוזה. As such, a house that he owns jointly with a Jew is completely exempt from מזוזה because there cannot be an obligation to have a מזוזה on "half of a house".

2. **The stringent view.** The בית יוסף (סימן רפו) cites the opinion of the רשב"א who rejects the halachic conclusion of the מרדכי. In the רשב"א's view, even in the non-Jew is a partner in the home, and is exempt from putting up a מזוזה, the Jewish partner is still obligated to put up a מזוזה for his own protection. The פוסקים debate how to understand the conceptual basis of this מחלוקת between the רשב"א and the מרדכי:

a. (שו"ת מהדור"ק סימן סו) רבי עקיבה איגר explains that this מחלוקת may relate to two opinions cited by תוספות (מנחות דף מד. ד"ה טלית) relating to the nature of the obligation of a renter to have a מזוזה. According to one view in תוספות the renter requires a מזוזה after thirty days because it is labeled his living quarter (even though it does not belong to him) after thirty days. According to the other view, the tenant is only rabbinically obligated to place a מזוזה after thirty days, but on a biblical level he is exempt because the home does not belong to him. Apparently, the two opinions in תוספות debate whether a home must belong to you in order for the biblical requirement of a מזוזה to be incumbent upon you. It therefore stands to reason that the מרדכי who exempts a home owned jointly by a Jew and non-Jew does so because he maintains that you must own the home for any obligation to be binding. The רשב"א, however, maintains

that full ownership is not a prerequisite for the obligation of מזוזה to be binding, and therefore concludes that a Jew who owns a property together with a non-Jew must nevertheless affix a מזוזה to the doorpost of the property.

- b. The רש"י (חלק ב' סימן פ) points out that this analysis of רבי עקיבה איגר is highly questionable because the רשב"א himself, in his מסכת תו חידושים to מסכת (דף קלא:), explicitly states that a rented house is only rabbinically obligated in a מזוזה, apparently maintaining that the home cannot be obligated מדאורייתא unless it is completely yours.
3. **The unclear view.** (מסכת יומא דף יא. ד"ה אבולי דמחוזא) רש"י states that the gates of the town of מחוזא require a מזוזה because the majority of the residents in the town are Jewish. Unlike the opinions of the מרדכי and רשב"א who came to an all inclusive ruling on the matter of properties owned jointly by Jews and non-Jews, רש"י seems to conclude that the matter depends on the percentage of ownership, a factor ignored by the other two ראשונים. The אחרונים, though, assume that the מרדכי and רשב"א do factor in the percentage of Jewish ownership. There is a dispute, however, to determine exactly how the ראשונים account for different percentages of ownership:
 - a. מרדכי (שם) understands that even the רבי עקיבה איגר, who normally exempts properties owned by partnerships with non-Jews from having a מזוזה, would require a מזוזה when the Jew is a majority owner.
 - b. The גבורת ארי (ליומא שם), however, understands that the מרדכי will exempt the property from a מזוזה regardless of how small a percentage is owned by a non-Jew. The רשב"א though, who normally requires a מזוזה on such properties,

would exempt the property from a מזוזה if it is under a majority non-Jewish ownership.

- c. The אור שמחה (סימן פ') cites the רש"י comment has no bearing on this dispute at all. רש"י spoke about the gates of cities whose residence were not all Jewish. In such a case, the requirement for a מזוזה is not a function of the ownership of the city, but a function of the city serving as a gateway to the homes. Thus, the gates of the city must be labeled as a gateway to Jewish homes or as a gateway to non-Jewish homes. A simple majority determines this categorization. In the case of a home owned jointly the obligation cannot be determined by a majority, but by the obligation of the Jewish partner on the given home.

4. **Halacha.**

- a. **Opinion of the שולחן ערוך** (רפ"א). The שולחן ערוך rules that homes owned by partners require a מזוזה. The שולחן ערוך makes no distinction between partnerships between Jews and partnerships between non-Jews and Jews, implying that in either case a מזוזה would be required.
- b. **Opinion of the רמ"א**. In his glosses to the שולחן ערוך, the רמ"א writes that homes owned in partnership only require a מזוזה if both partners are Jewish. If a non-Jew owns even a small percentage of the home, no מזוזה is required. The ט"ז (שם ס"ק ג') points out that the primary concern of the רמ"א is that the non-Jewish partner will be suspicious of the מזוזה, creating a potentially dangerous situation for the Jew who placed the מזוזה. The שולחן ערוך (שם סעיף ב'), however, points out that nowadays we rarely have cause for concerns of danger, and the

opinion of the מרדכי has been rejected by many great authorities (רשב"א, בית יוסף, מהרש"ל), so even Ashkenazic Jews should place a מזוזה on homes owned in partnership with a non-Jew, albeit without a ברכה.

c. **Practical examples.**

- i.* This issue is frequently relevant in offices and businesses where Jews and non-Jews may share space. It would seem that Sephardic Jews certainly should put up a מזוזה, and Ashkenazic Jews should also put up a מזוזה in the view of the ערוך השולחן.
- ii.* In the case of a time share where a Jew owns an apartment for a few months of the year and a non-Jew owns it for a few months, רבי עקיבה איגר is cited by the (ס"ק ג') as having ruled that it requires a מזוזה because during the time that the Jew is in control it is completely under his ownership. It would seem, though, that according to this logic, each time the non-Jew takes control of the home, it becomes completely exempt from מזוזה, and when the Jew moves back in he would require a new ברכה as a new obligation has been generated.
- iii.* It is important to note that the ש"ך (ס"ק ז') points out that if there is ever a concern that a מזוזה, if left up, will be desecrated, one should not affix a מזוזה, even if the room is biblically obligated in מזוזה. This can frequently be a legitimate concern in offices or public storage places where the custodial staff may notice something

hanging on the doorway and not knowing what it is may remove it in order to keep a tidy appearance. The (ס"ק ד') suggests in this case to try to affix the מזוזה in a way that it will not be visible to other people, so that it may be saved from desecration and one will not have to neglect the מצוה.

III. Shuls and בתי מדרש.

A. **Shuls.** The גמרא (ברכות דף מז.) records an episode when רבין and אביי were traveling together. When אביי noticed that רבין consistently went through narrow passages ahead of אביי, he began to think that רבין had become arrogant and was not interested in showing him any respect. Once, however, they arrived at the door of the shul, רבין insisted that אביי go ahead of him (in a manner of showing respect for אביי). When אביי questioned why רבין had not respected him until this point, רבין cited the ruling of ר' יוחנן that it is only necessary to show honor by allowing somebody to go through a door with a מזוזה ahead of you. The גמרא questions this ruling, though, because a בית מדרש and a shul do not require a מזוזה, yet רבין honored אביי by allowing him to walk through the door of the shul ahead of him. The גמרא explains that the doorway through which you honor somebody need not actually have a מזוזה. Its structure must resemble that of a doorway that would require a מזוזה, even if in this particular case it does not warrant a מזוזה because of the usage of the room. The clear implication of the גמרא is that a shul does not require a מזוזה. Indeed, the שולחן ערוך (רפ"ג) rules that a shul would only require a מזוזה if there is a residence attached to it. The רמ"א adds that if the living quarters are located in the courtyard in front of the shul, the courtyard would require a מזוזה but the shul itself would not.

B. בתי מדרש.

1. **The argument to exempt.** Based on the גמרא we have just cited it seems obvious that a בית המדרש

should not require a מזוזה. Indeed, (יומא דף יא: ד"ה תוספות) rules that a בית המדרש does not require a מזוזה.

2. **The argument to require a מזוזה.** Although, the גמרא in ברכות strongly implies that there is no need for a מזוזה on a בית המדרש, the גמרא (מנחות דף לג.) states explicitly that רב הונא had a מזוזה on the doorway to his בית המדרש. The גמרא explain that although רבי did not have a מזוזה for his doorway into the בית המדרש, רבי's doorway was only exempt because it was not the main entrance into the בית המדרש (רש"י explains that רבי had his own small doorway right near his seat that only he would use so as not to trouble the occupants of the בית מדרש to stand in his honor). In order to reconcile the apparent contradiction between the two passages in the גמרא, (יומא דף יא, גמרא) suggests that the גמרא in מנחות (which implies that a בית המדרש requires a מזוזה) is only speaking about the doorway between the בית המדרש and a home. A normal entranceway to a בית המדרש, though, would not require a מזוזה. However, the רא"ש (מנחות) reports that once when the מהר"ם רוטנבור"ק was taking an afternoon nap in the בית המדרש an evil spirit confronted him and would not leave until he fixed the מזוזה on the בית המדרש.

3. **The הלכה.** Considering the dispute with regards to a בית המדרש, the שולחן ערוך (סימן רפו סעיף י') cites both opinions and rules that a מזוזה should be affixed to a בית המדרש but no ברכה should be recited. The ש"ך (שם) points out that as with all cases of doubt, ideally one should put up another מזוזה at the same time that he is affixing the מזוזה to the בית המדרש and recite a ברכה with intention to exempt both מזוזות.

C. The reason for the exemption.

1. **The Gemara's reason.** The Gemara (Yoma 47b) states that only an urban shul is exempt from mezuzah, while a rural shul would require a mezuzah. Rashi explains that the logic for this distinction is that an urban shul cannot be said to "belong" to anybody. In order for a place to require a mezuzah there must be clear ownership of the property. Thus, a rural shul would require a mezuzah, as it is typically only built for the local populace and it can accurately be called "beit".

2. **The Rambam.** The Rambam writes (הלכות תפילין ומזוזה) that shuls and beti midresh are exempt from a mezuzah on account of their sanctity. The source for the Rambam's reasoning might be (שו"ת חלק יו"ד סימן רפא). The contrary, it seems illogical to assume that the sanctity of the Beit Hachnasa can exempt it from a mezuzah on a biblical level, considering that the entire sanctity of the Beit Hachnasa is only rabbinic in nature. To address this problem, the Chofetz Chaim suggests that an alternate explanation of the Gemara's distinction between rural and urban shuls is necessary. Unlike Rashi, the Ri"ף explains that urban shuls do not require a mezuzah because generally speaking nobody lives in them. Rural shuls do require a mezuzah because somebody usually lives in them. Thus, in the Ri"ף's, and the Chofetz Chaim suggests the Rambam's view, any place that is set aside from human residence will require a mezuzah, while places designated for God's residence do not require a mezuzah. This is why a shul with a residence attached to it is indeed obligated in mezuzah. Even in the shul itself, the living quarter for the gadol (for the week before the Simchas Torah) required a mezuzah. The Rambam's intent in exempting a shul because of its extra sanctity was only to suggest that a dwelling place of God is not obligated in mezuzah. (וע"ע דבר אברהם. ח"א פרק לז ושו"ת שרידי אש סימן פ' אות ה')

IV. **Rentals.** When one rents a home, the requirement to affix a מזוזה is fundamentally different than when one owns a home.

A. **Outside of ארץ ישראל.** The שולחן ערוך (סימן רפו סעיף כב) rules that when one rents a home in חוץ לארץ he is exempt from affixing a מזוזה for the first thirty days. The commonly belief that there is a 30 day grace period for everybody who moves into a new home is a misconception that is derived from a corruption of this הלכה. The גליון מהרש"א states clearly that this exemption applies only to a renter and not to somebody who owns a home. There are, though, a number of halachic issues that arise pertaining to this exemption:

1. **What is the logic for this exemption?**

- a. In his commentary to the שולחן ערוך the ש"ך explains that the home is not called a true דירה for the first thirty days that a person resides there. It only becomes "home" for the person after 30 days. The נהלת צבי explains that this idea is the basis for the ruling of רבינו יעקב מליסא (author of the נתיבות המשפט) that if the original rental agreement calls for a rental of longer than thirty days, the מזוזה must be affixed immediately. Since the exemption is based on the idea that it isn't really a permanent home before thirty days, one who knows that he will have a sense of permanence in that home in advance would be obligated to affix the מזוזה immediately. From a slightly different angle, רש"י explains that the reason it is not considered to be his home within the first 30 days is that we are worried that the renter may change his mind and move out of the home. It would stand to reason then, that if the renter signs a contract that forbids him from defaulting within 30 days, he would be required to affix a מזוזה immediately.

- b. The נהלת צבי points out that this explanation of the ש"ך is highly questionable based on the following factors. (מנחות דף מד) records a dispute as to whether the obligation of a renter to affix a מזוזה after 30 days is biblical or rabbinic in nature. If the obligation is a biblical one the ש"ך may be correct, as after 30 days the renter is considered from a torah perspective to be a resident of the house. It therefore stands to reason that if the original lease was signed for more than 30 days, the renter becomes a full resident immediately. However, תוספות records a second view that holds the renter to be completely exempt on a biblical level from affixing a מזוזה. If we subscribe to this approach, one who rents a place for more than 30 days is only obligated on a rabbinic level lest it appear that he owns the home and has not affixed a מזוזה. If this assessment is correct, it would be very difficult to distinguish between a long term and short term lease agreement. Either way, the renter does not appear to be the owner of the home until thirty days have passed. Furthermore, it may be argued, if the rental is in a building that very obviously does not belong to the renter (i.e. a chain hotel) he may never have to affix a מזוזה. Similarly, the אבני גזר (יר"ד סימן שפ) points out that a patient who remains in a hospital for an extended stay is exempt from affixing a מזוזה because nobody will get confused and believe that the hospital belongs to the patient (see אבני גזר שם who raises another possible explanation for the concern of כשלו).

2. Can the renter put up the מזוזה within 30 days?

The מנחת חינוך (מצוה תכג) raises the question whether the מזוזה may be affixed within the first 30 days that the renter lives in the home. Considering that there

is no obligation at that time, perhaps having the מזוזה up at the time that the obligation sets in will pose a problem of תעשה ולא מן העשוי. The מנחת חינוך notes that a full discussion of this issue can fill an entire book, but compares this case to one who makes ציצית at night. As a practical matter the custom is to allow one to put up the מזוזה prior to the end of the 30 day grace period.

- a. **Reciting a ברכה**. When one puts up the מזוזה within 30 days, the אשל אברהם writes that he may recite a ברכה even though the obligation had not yet set in. Just as a child who is not yet obligated in מצוות may recite a ברכה on those מצוות that he does, a renter who is not yet obligated in affixing a מזוזה may recite a ברכה if he chooses to do so. The פתחי תשובה (ס"ק) points out that this may be compared to one who borrows a garment that has four corners, where the obligation to place ציצית only begins after thirty days, yet one who tied the ציצית on earlier is permitted to recite a ברכה on them according to the אברהם. However, the author of the פתחי תשובה in his נחלת צבי suggests that the comparison to the borrowed טלית is a faulty one. When one borrows a טלית reciting a ברכה within 30 days does not preclude the possibility that a ברכה will be recited after 30 day as well. After all, a person makes a new ברכה on his טלית each and every day. When, however, one affixes a מזוזה he only has one opportunity to recite the ברכה. It would be inadvisable to waste this opportunity at a time that he is not even obligated to have the מזוזה.
- b. **Removing the מזוזה and reaffixing it after 30 days**. The נחלת צבי points out that it is not helpful to remove the מזוזה after 30 days in order to reaffix it with a ברכה, because when one removes the מזוזה having in mind to

reaffix it shortly, no ברכה should be recited upon reaffixing the מזוזה and it is considered a ברכה לבטלה. Rav Moshe Feinstein, however, argues that reciting a ברכה after the 30 days are over is permissible and recommended. The idea of not requiring a ברכה when one removes the מזוזה in order to put it up again is only true when a ברכה was recited when the מזוזה was originally put up. However, in this case no ברכה was recited initially so it may certainly be delayed until such time that the obligation begins. This is similar to one who puts on his תפילין before the proper time who may recite the ברכה once the proper time arrives.

- c. **Purchasing a home that you previously rented.** The נחלת צבי raises a question relating to somebody who purchases a home that he had previously been renting. Should he recite a new ברכה on the מזוזה, as his obligation has gone from a rabbinic one to a biblical one or do we assume that he is still covered with his initial ברכה. The נחלת צבי leaves this question unanswered.
- B. **ארץ ישראל.** The שולחן ערוך rules that even rentals in ארץ ישראל require מזוזות immediately. The מצוה תכג points out that if one generally assumes that a rented house is only obligated to have a מזוזה by rabbinic law, the same would be true of a home in ארץ ישראל, even as the obligation begins immediately without a thirty day grace period.
- C. **Hotels.** The שולחן ערוך (רפ"כב) rules that one staying in a hotel, whether in ארץ ישראל or חוץ לארץ is exempt from affixing a מזוזה for the first 30 days. This is true from the perspective of the hotel guest. If a Jew owns the hotel, the owner of the hotel is responsible to affix a מזוזה to each guest room just as he would to the guest room in his house.