

- I. **Introduction.** In order for a room to require a מזוזה three basic criteria must be met: First, the room must be used in a way that can be labeled “living” in the room. Second, the requirement to place a מזוזה can only take hold when a Jew is a proper owner of the room. Finally, the basic structure of the room and doorway must meet the structural requirements for a מזוזה. In this essay we will discuss the first of these three criteria, and determine which rooms, based on their usage should require a מזוזה.
- II. **Rules of doubt relating to מזוזה.** Before discussing specific cases where a מזוזה is required, it is important to realize that many cases will leave us with some level of doubt about what the הלכה requires of us. As such, it is imperative that we develop a protocol of to follow in situations of doubt.

A. The Contradiction.

1. The (אורח חיים סימן סז אות א') writes that if one is uncertain as to whether he had recited קריאת שמע already, he must recite קריאת שמע along with the attendant ברכות. (Only if one is certain that he read קריאת שמע but is uncertain if he did so with the ברכות, is he exempt from reciting the ברכות).
2. When it comes to other cases of doubt, though, the שולחן ערוך seems to contradict this ruling. If a person is of ambiguous gender (טומטום) there is a doubt whether he is obligated in the מצוה of ציצית. The שולחן ערוך (סימן יז סעיף ב') rules that he should not recite a blessing on the מצוה, as the ברכה is only rabbinic and may be omitted in cases of doubt. (It should be noted that according to Ashkenazic practice a ברכה may certainly be recited, as even women who are exempt from the מצוה have the custom to recite the מצוות עשה שהזמן גרמא on ברכה).

B. Resolving the Contradiction.

1. The פוסקים (סימן סז ס"ק א') cites earlier משנה ברורה who distinguish between cases where the doubt revolves around whether the person is obligated at all and cases where the person is certainly obligated, but is unsure whether or not they had fulfilled that obligation. In the former case, one would not have to recite a ברכה when performing the מצוה. In the latter, such as the case of one who does not recall whether or not he had recited קריאת שמע, one must recite a ברכה.
2. The ראשונים (שם) משנה ברורה points out that a number of reject this distinction. In their view one would never recite a ברכה in a case of doubt about the מצוה. Perhaps קריאת שמע is a lone exception to this rule because the ברכות are part of the actual מצוה and are not considered to be a separate entity.
3. Regardless of which approach we accept, it should be clear that the cases of doubt involving מזוזה should require one to place a מזוזה without a ברכה. If we accept the second approach we had suggested, all cases of doubt involving מצוות do not warrant a ברכה (with the lone exception of קריאת שמע), and according to the second approach all cases of doubt whether the obligation exists, such as the doubts that arise with מזוזה are exempt from a ברכה.

III. **Dwelling places.** The גמרא (בבא מציעא דף קא:) discusses the responsibilities of each party in a lease arrangement. The owner must take care of basic structural necessities while the renter must add safety features (מעקה) and protect the home from weather damage (לעשות לו מרזב ולהטיח את גגו). When it comes to the responsibility of placing a מזוזה, though, the גמרא states explicitly that he who lives in the house bears the responsibility of placing a מזוזה on it's doorpost (מזוזה חובת הדר היא). A simple reading of this גמרא would indicate that one who does not actually live in the house need not put a mezuzah on its doorpost. Thus, if one has a summer home that he visits only

sporadically, but lives somewhere else, he would not need a מזוזה on the doorpost of the summer home. Indeed, the ריטב"א cited by the שיטה מקובצת (ב"מ שם) states that the תורה only requires a מזוזה in a house that one both owns and lives in. If he only lives in the house, but does not own it, the requirement of a מזוזה is only rabbinic in nature. The ריטב"א makes no mention of any requirement (even only rabbinic) for a מזוזה in a home that one owns but does not live in, clearly implying that such a home does not require a מזוזה. (See our previous essay for a discussion of the opinion of the אשכול on this matter.)

A. Supporting the notion that the obligation is only when one lives in the home.

1. The מגן אברהם (סימן יט ס"ק א') also seems to accept the notion that one only places a מזוזה on a home once he actually lives in the home. In discussing the timing of the מצוה the מגן אברהם states that the only reason a blessing is recited upon placing the מזוזה is that one usually places the מזוזה when he begins living in the house. If, however, a person had put up the מזוזות prior to moving in, he would have to recite a blessing (אקב"ו לדור בבית שיש בו מזוזה) as soon as he moves in.
2. Furthermore, רבי עקיבה איגר also seems to assume that when a home is left vacant it has no need for a מזוזה. In fact, (הו"ד בפתחי תשובה סימן רצא ס"ק ד') רבי עקיבה איגר writes that when one leaves his house for an extended period of time, he must recite a new ברכה on the מזוזה upon his return home because while he was away there was no need for the house to have a מזוזה. This would be so even if he were to leave family members in the home while the homeowner is away. The family members have no obligation to have a מזוזה on the house because they are similar to tenants who are only rabbinically obligated after thirty days.
 - a. The author of פתחי תשובה, in his ספר נחלת צבי disagrees with the ruling of רבי עקיבה איגר. The

נחלת צבי points out that when family members remain in the house, the house certainly requires a מזוזה. After all even a tenant must put a מזוזה up after thirty days. Surely then, family members who had been living there for well over thirty days would also have a חיוב to keep the מזוזה on the house. The fact that while the rest of the family (who are considered as tenants) remains in the home the obligation is only rabbinic, whereas when the homeowner returns the obligation is biblical, is irrelevant. We do not require a new ברכה on מזוזה when a house goes from a rabbinic obligation in מזוזה to a biblical one. We do not require a new ברכה when a tenant purchases the home that he had been living in. Nor do we require a child who placed a מזוזה to make a new ברכה when he becomes a בר מצוה. Irrespective of the particular dispute between רבי עקיבה איגר and נחלת צבי, it would seem that both would agree that if nobody were left in the home while the homeowner were away, there would be no obligation to leave a מזוזה on the home during that time.

B. The רבינו יהונתן שיטה מקובצת (ב"מ שם) cites the רבינו יהונתן who rules that if one owns ten homes, and does not live in any of them consistently (but visits each of them annually), all of them still require a מזוזה. One may understand this comment of רבינו יהונתן in multiple ways, each of which would place the רבי עקיבה איגר at odds with רבינו יהונתן:

1. The implication is that, unlike the מגן and ריטב"א, אברהם, the רבינו יהונתן holds that one need not actually live in a home in order to be responsible for putting a מזוזה on its doors. Indeed, רבינו יצחק אלחנן ספקטר (שו"ת עין יעקב) equates the view of the רבינו יהונתן with the view of the נימוקי יוסף that the owner of a vacant rental property must keep a מזוזה on its door because, although he does not live there, he does visit occasionally. In Rav Spector's view, even the

ריטב"א (and the ר"ש) who do not require a מזוזה in this case, would not accept the ruling of רבי עקיבה איגר. They only exempt homes from a מזוזה when none of the homes are the owners primary residence. When, however, a person only possesses one home, there is no doubt that his only home is obligated in a מזוזה both while he is living in it and while he is traveling.

2. One may, however, suggest that רבינו יהונתן would not require a מזוזה on a home that he does not live in at all. The case where he required a מזוזה was one where the person owned and lived in multiple homes. The fact that one cannot be counted on to stay in any one of his homes from more than a couple of months at a time does not remove its status as a home in which he lives. When an owner does not live in a home at all, but hopes to rent it to somebody else, רבינו יהונתן would acknowledge that there is no requirement to put up a מזוזה.

IV. **Storage facilities.** The (יו"ד סימן רפו סעיף א') rules that cattle stables, chicken coups and rooms used to store wine and oil require a מזוזה. The type of "storage facility" which would require a מזוזה needs to be defined in a precise fashion. We will discuss some of the issues that relate to the definition of a storage facility and briefly outline some of the parameters of this obligation:

- A. On the surface, it seems that if one moves all of his possessions into a new home, but has not begun living in the home yet, the home should still require a מזוזה due to its usage as a facility that stores all of the person's belongings. However, upon further analysis, it seems that one would not have to put up מזוזות in such a situation. A storage facility only requires a מזוזה when its primary purpose is to be used for storage. When, however, the house is primarily used for living, but is simply not ready yet for its primary purpose, it would not require a מזוזה.

1. This suggestion may be proven from the following sources:

a. The (סימן רפו סעיף ג') rules that a shul that does not have a living quarter attached to it, does not require a מזוזה. One may have argued that although nobody lives in the shul, it is still used for the storage of all of the חומשים, סידורים, and chairs that are kept there. Why doesn't the shul require a מזוזה like any other storage facility. We must conclude that the fact that items are stored in a particular place does not automatically label the place as a storage facility. Since the primary purpose of the shul is to use it as a מקום תפילה, it cannot be called a "storage facility" even if it is used to store certain items.

b. The (הלכות קטנות מנחות הלכות מזוזה סימן יא) writes that although a house without a roof does not require a מזוזה, a gateway to a courtyard requires a מזוזה even when there is no roof. The reason for this distinction, the רא"ש explains, is that a courtyard does not typically have a roof, whereas a house certainly does normally have a roof. Apparently, when חז"ל determined that a courtyard would require a מזוזה, they did not demand that it meet the standards required for a house. The fact that it is generally used in a different manner alters its criteria for the requirement of a מזוזה. Similarly, the fact that a house is generally used as a place to live, and not a place to store items, allows the house to be judged by the criteria set forth for a בית דירה rather than the criteria set forth for a storage facility.

2. Based on this approach we may answer the following questions that were posed by the פוסקים:

- a. As we have mentioned previously, רבי עקיבה איגר had suggested that while one is away from his home (on a vacation or the like) the home is exempt from having a מזוזה. As such, upon returning from the trip, the homeowner should be required to recite a new ברכה on the מזוזות in his house, as a new obligation has begun upon his return. The author of פתחי תשובה, in his ספר רבי עקיבה נחלת צבי questioned the novel ruling of רבי עקיבה איגר by suggesting that even when one is not home, his house should still require a מזוזה by virtue of the fact that it is being used to store all of the person's belongings. Based on what we have suggested, though, the storage function of a place that is used primarily as a residence should not suffice to make the house require a מזוזה.
- b. As we will discuss in a future essay, the שולחן ערוך (סימן רפו סעיף י') rules that stores do not require מזוזות. The פתחי תשובה (שם ס"ק י') cites the ספר יד הקטנה who wonders why stores should not require a מזוזה by virtue of the fact that the items one sells remain "in storage" at the store. After all, isn't the store considered a "storage facility" in certain respects? Based on the approach we had suggested, we can easily answer this question. The defining criteria for a store or a דירה are vastly different than for a storage facility. Because the store is not used primarily for storage, the fact that it does in fact store certain items does not alter its very identity as a store, and not a storage facility.
- B. בית העצים ובית התבן. The גמרא (יומא דף יא) records a dispute whether rooms used to store grain, cattle, or wood require a מזוזה or not. ר' יהודה maintains that only if women use such rooms to adorn themselves in perfumes and jewelry, the rooms are obligated to have a מזוזה, while ר' כהנא rules that regardless of whether women use these rooms to adorn

themselves they require a מזוזה. The debate how to rule in this מחלוקת:

1. **The רי"ף and רא"ש**. The (סימן טו) and the רא"ש rule in accordance with רב כהנא that these rooms require a מזוזה regardless of whether women use them to adorn themselves.
2. **The רמב"ם**. (הלכות מזוזה פרק ו' הלכה ז') rules in accordance with ר' יהודה that only if the room is used by a woman to adorn herself (or any similar "living type" of usage) does it require a מזוזה.
 - a. The (שם) כסף משנה explains the root of the dispute between the רמב"ם and the רא"ש revolves around how to understand the introductory phrase in the "תני רב כהנא קמיה דר' יהודה" גמרא ("Rav Kahana taught this in front of Rav Yehuda"). In the רמב"ם's view this phrase indicates that רב כהנא was a student of רב יהודה which would lead us to the conclusion that we follow the opinion of רב יהודה because אין הלכה כתלמיד במקום הרב – we do not rule like a student over his own rebbe. (See who explains that although we have a seemingly competing concept of מרגליות הים לסנהדרין דף ו: – הלכתא כבתראי – we always rule in accordance with the later authority, when the student expressed his opinion to the rebbe and the rebbe still did not accept it, we rule in accordance with the more authoritative opinion of the רבי rather than the later opinion of the student.) In the view of the רא"ש and רי"ף apparently רב כהנא was not a student of רב יהודה. In fact he was a student of רב as is well documented in the (בבא קמא) גמרא. In the instance recorded in this גמרא, רב כהנא happened to have been speaking in front of ר' יהודה, but that is no indication that ר' יהודה was his rebbe.
3. **הלכה**. The (י"ד סימן רפו סעיף ב') clearly rules in accordance with the רא"ש (and רב כהנא) that such

rooms require a מזוזה even if not used by women for adornment. The באור הגר"א (ס"ק א') explains that in fact ר' יהודה's view seems to be rejected at the conclusion of the גמרא, thus leading the שולחן ערוך to the obvious ruling that רב כהנא's view is accepted. In fact, it is somewhat troubling that the רמב"ם ruled like ר' יהודה in light of the fact that his view was rejected. The שולחן ערוך, though, points out that according to our text of the רי"ף, he in fact agrees with the רמב"ם. This should not be surprising because the רמב"ם generally follows all of the rulings of the רי"ף. It is reasonable to assume that the רמב"ם had the same text in the רי"ף as we have, and not the text that the בית יוסף quotes which sides with the רא"ש. In light of this revelation, the שולחן ערוך (סעיף ט) points out that the שולחן ערוך probably would have ruled like the רמב"ם had he been aware of the proper text of the רי"ף. As such, while we cannot ignore the actual ruling of the שולחן ערוך and must affix a מזוזה to a storage room, we should avoid reciting a ברכה when doing so in deference to the opinion of the רמב"ם and probable opinion of the רי"ף. Nevertheless, the שולחן ערוך points out that the common custom is to put up a מזוזה on such a room with a ברכה.

- a. Although, on the surface the opinion of the רמב"ם seems to be a leniency there is one case where ruling in accordance with the רמב"ם may turn out to be a stringency. The אור שמח (הלכות) was asked about an apartment building that is owned by a Jew and a majority of the residents are Jews. The hallway of the building is also used to store certain items for the benefit of the residents of the building. Generally speaking rooms that are jointly owned by Jews and non-Jews are exempt from מזוזה. A gateway into a home, while not obligated in מזוזה as a room that one lives in (בית) requires a מזוזה on account of the home that it leads into. Thus, in the view of the שולחן ערוך that a storage facility where women do not

adorn themselves is generally considered a room that is obligated in מזוזה, this hallway would be exempt because it is jointly owned by Jews and non-Jews alike. In the view of the רמב"ם, however, this area would not have the status of a "room" that requires a מזוזה and would instead be viewed as a gateway to a home. As such, the fact that it also serves as a gateway to the homes of non-Jews is irrelevant, so long as its primary usage is as a gateway to Jewish homes. In this unique case therefore, the רמב"ם would require a מזוזה while the שולחן ערוך would not require a מזוזה to be affixed to the doorpost.

- b. The issue of whether an area is considered a residence or not has ramification beyond הלכות מזוזה. The הלכה demands that anybody who has a roof of an area that is used as a residence must place a fence around the roof so that people would not fall and injure themselves. Interestingly, in the context of the laws of מעקה the שולחן ערוך (חושן משפט סיימן תכז סעיף א') rules that a roof of a place used for storage purposes does not require a מזוזה. It is somewhat puzzling that the שו"ע rules a storage facility to be enough of a living quarter to require a מזוזה, but not enough of a living quarter to require a מעקה. The סמ"ע (ח"מ שם ס"ק ב') suggests that the distinction is as follows: Since it is unusual for one to use the roof of a storage facility, the שו"ע was not concerned with the danger inherent in the occasional visit to the roof of the facility. A מזוזה on the other hand is not there for physical protection, but to remind a person of God's presence, and is therefore appropriate in spite of the infrequency of its usage.

4. **Practical application.** It would seem that the difference between אוצרות יין ושמן and בית העצים והתבן is in how frequently one enters the respective facilities.

a. In the case of storage of wine and oil it seems that it would be fairly common for one to go fetch extra wine or oil from storage in middle of a meal. It is the modern day equivalent of a walk-in pantry or attached garage that is used for storage of everyday items. Thus, such pantries and garages certainly require a מזוזה and a ברכה should be recited upon affixing the מזוזה. It should be noted that an attached garage through which a person enters his home may require a מזוזה for a different reason entirely – because it is a בית שער – a gateway into the home (עיין שו"ת תשובות והנהגות ח"א סימן תרמ"ז). Similarly, a walk in closet that is used for storage may fall in this category and require a מזוזה (provided that it is 4 by 4 אמות – see, however, המודי דניאל according to whom it would require a מזוזה even if less than 4 by 4. We will discuss this in greater detail in an upcoming essay).

b. On the other hand, בית העצים והתבן seems to refer to places that one does not enter as a matter of course. It would seem to be the equivalent of a detached garage or a storage shed that has a door. Such facilities obligation in a מזוזה is subject to a מחלוקת רמב"ם ורא"ש and we are generally stringent in requiring a מזוזה in such places. Whether or not a ברכה is to be recited upon affixing the מזוזה is a matter of dispute as the ערוך השולחן has pointed out, with the prevalent custom being to recite a ברכה. (see שו"ת באר משה חלק ב' סוף סימן פה who requires a מזוזה on a garage that is on the same property as one's home, provided that it is used for storage of items other than just a car.) Rabbi Mordechai Willig has confirmed that the same would be

true of a long-term storage facility, where one rents a storage room for an extended period of time. It should be noted, though, that before putting up a מזוזה one must be certain that the custodians of the facility would not remove the מזוזה, as this would lead to a desecration of the sanctity of the מזוזה that cannot be tolerated.

V. Porches, decks and patios.

A. **Background.** The שולחן ערוך (סימן רפו סעיף א') writes that the gateways to courtyards and cities require a מזוזה. Clearly, a חצר need not have a roof in order to require a מזוזה because the normal usage of a חצר is without a roof. The exact reason that a חצר requires a מזוזה is the subject of a dispute amongst the ראשונים. As we will see, this dispute has practical ramifications.

1. **The opinion of (הר"ד בט"ז סימן רפט ס"ק ד')** The מהרי"ל understands that a חצר is part of a person's residence and is therefore considered to be a room within the home. Unlike other rooms that are used for normal living and therefore require a roof to be considered a room, a חצר is used for fresh air and other outdoor enjoyments, and is therefore considered a legitimate room requiring a מזוזה even when it does not have a roof. The מהרי"ל concludes that if the courtyard is completely enclosed and its only outlet is into the house, one should put the מזוזה on the right side going from the house to the courtyard (regardless of which way the door swings open). If the חצר has an outlet to other areas (i.e. the street) which side of the doorpost would require a מזוזה depends totally on the direction in which the door swings open (the room that it swings open into, is considered the "inside").

2. **The opinion of (פרק ו' הלכה ח')** The רמב"ם explains that courtyards only require a מזוזה because houses that require a מזוזה open up into these courtyards. Thus, in the רמב"ם's view courtyards are

not considered rooms in their own right. They only require a מזוזה on account of their usage for the home to which they are attached. It would seem obvious that according to the רמב"ם the מזוזה between a house and a courtyard should always be placed on the right side entering into the home as the courtyard is considered a mere entranceway into the home and not a room in its own right.

- a. The (שו"ת יו"ד סימן שפב) אבני נזר points out that the רמב"ם assumes that a courtyard cannot be considered a "dwelling place" in its own right, just as the רמב"ם maintains that a storage house of grains and wood is not considered a "dwelling place" and is exempt from מזוזה. The מהרי"ל on the other hand, probably assumes like the opinion cited in שולחן ערוך that storage places also require a מזוזה even though one does not technically "live" in them. Apparently, according to the מהרי"ל the definition of a "בית" is expanded beyond places where a person actually lives.
- b. Rav Moshe Feinstein (שו"ת אגרות משה יו"ד ח"א סימן קפא) suggests an explanation of the רמב"ם that would not put him at odds with the מהרי"ל. Rav Feinstein suggests that even the רמב"ם would agree that a doorway between a house and a completely enclosed חצר would require a מזוזה on the right side going into the חצר. The רמב"ם views the חצר as a room of the house just as the מהרי"ל does. That which the רמב"ם writes that the חצר is only obligated in a מזוזה on account of the house, only means to say that if the חצר were not attached to a house its usage would not be considered the usage of a "dwelling place". Only because it is attached to the house is it used in a way that it may be considered a room like any other that one lives in.

B. **Halacha of porches, decks and patios.** There are major halachic ramifications to how one understands the רמב"ם view and whether or not we accept the opinion of the מהרי"ל. If a person has a completely enclosed porch, deck or patio that only opens to the house (as is common in apartments) according to the מהרי"ל and Rav Feinstein's understanding of the רמב"ם, the מזוזה should go on the right side going out to the patio. According to the אבני נזר's understanding of the רמב"ם, though, it would go on the right side going into the house. The פוסקים debate how to rule in this case:

1. The חזון איש (תשובות וכתבים כד:ח) writes that even if the porch is four by four אמות the מזוזה should be placed on the right side entering the house. This is true of a completely enclosed porch and would certainly be true of a porch that opens into a street. Apparently the חזון איש assumes the אבני נזר's analysis of the רמב"ם to be correct and rules in accordance with the רמב"ם against the מהרי"ל.
2. Based on Rav Moshe Feinstein's approach to understanding the רמב"ם, there is no debate between the רמב"ם and the מהרי"ל. Thus, all would agree to place the מזוזה on the right side going out to the enclosed porch. If the porch has an outlet to the street the house and the porch would be considered like any other two rooms that open to each other in which case we follow a standard set of criteria (to be discussed in future essays – רוב היכר ציר הילוך, עיקר תשמיש, היכר ציר מזוזה) to determine which side the מזוזה goes on.

C. **Staircases.** The שולחן ערוך (סימן רפו סעיף ז') rules that a porch that leads to a staircase that goes to a second floor requires a מזוזה if a house opens up into the porch. If no house opens up into the porch, the שו"ע cites two opinions as to whether it requires a מזוזה. The ש"ך (שם ס"ק יז) writes that the opinion that requires a מזוזה in this case only does so on a rabbinic level. Certainly the porch is biblically

exempt from having a מזוזה. This discussion has practical ramifications when it comes to staircases:

1. If a door leads to a staircase the מהרש"ם (דעת תורה) rules that staircases can frequently be considered a wall rather than a room. If the incline of the stairs is such that one goes ten טפחים high in a span of four טפחים of width, the staircase is considered a wall and does not need a מזוזה. In most cases the staircases are not nearly this steep and would therefore require a מזוזה if they lead to a room. If a door leads to a staircase that has another door on top (with no platform of four by four אמות) and the door at top of the staircase leads to another room one should not recite a ברכה on the מזוזה placed on the bottom door unless he also plans on putting a מזוזה on the top door at the same time. If there is only one door at the top of the staircase and the stairs lead directly into a room at the bottom, one should place a מזוזה on the doorway at top of the staircase.

2. When approached with the question of requiring a מזוזה for an elevator or for a room that leads to the elevators, one is tempted to make the comparison between an elevator and a staircase, because they both take a person up and down. However, Rav Shlomo Zalman Auerbach (שו"ת מבנת שלמה תנינא סימן ק' אות א) ruled that neither the doorway of the room to the elevators nor the elevator itself requires a מזוזה. The elevator does not require a מזוזה because, in spite of its size (which may be four by four אמות in some cases) it is not considered to be a room because it is constantly in motion (and is not stationary like a staircase). Rav Auerbach compares the elevator to a horse that awaits a person when he needs it to take him somewhere. The carriage attached to the horse certainly does not require a מזוזה because it is not a stationary location. It follows, that the room leading into the elevators should also not require a מזוזה as it only has an

outlet to an empty elevator shaft (when the elevator is not there), and not to a legitimate staircase. Nevertheless, Rav Auerbach suggests placing a מזוזה on the door of the room that leads to the elevators without reciting a ברכה because practically people enter and leave their homes most frequently through that room.

VI. Disrespectful places.

A. Places where people are frequently unclothed. It is generally considered disrespectful to have a מזוזה on a room that people are frequently undressed. Thus, we do not place a מזוזה on a bathroom or shower room regardless of their size. The ב"ח had suggested that since women are frequently undressed (and even bathe) in bedrooms it one should refrain from placing a מזוזה on the bedroom. In fact, the ב"ח writes, the (formerly) prevalent custom to only place one מזוזה on the front door of the house and to leave the other rooms without a מזוזה is based on this concern. The שולחן ערוך, however, rejects this view. The special exemption of rooms where people stand undressed only applies if the primary usage of the room is to bathe. If, however, it is a normal bedroom, although people may sometimes be undressed in the room (either changing or having תשמיש המטה) the room would still require a מזוזה. Ideally, the רמ"א writes, the מזוזה should be placed in such a way that it remains on the other side of the door when it is closed.

1. Covering a מזוזה during תשמיש המטה. On the surface it seems obvious that if even standing undressed in a room is considered disrespectful to the מזוזה, having תשמיש המטה in the room is even more disrespectful. The פוסקים debate how to go about having תשמיש המטה in a normal bedroom with a מזוזה.

a. The ש"ך (ס"ק ט') concludes that our bedroom מזוזות should be covered so that the תשמיש המטה should not be considered a disrespectful thing to do in the room. The שולחן ערוך (סימן רפו סעיף יד) cites the

ruling of the מגן אברהם that in order to have תשמיש in a room that has a מזוזה one must cover the מזוזה with a double covering (כלי תוך כלי), and one of the coverings must be something that the מזוזה is not normally covered with. Unlike a bathroom which is exempt from a מזוזה because people stand there undressed, the bedroom is not exempt because it is not an objectively unclean place. One only does disrespectful and unclean activities there on occasion (ש"ך ס"ק יא וכך הבין הערוה"ש סעיף ה' בדבריו).

- b. The ערוך השולחן himself, however, disagrees with this ruling. After all, the גמרא tells us explicitly of a requirement to put a double covering over ספרים and תפילין (which may only sometimes be in the same room as people having תשמיש), but didn't mention a word about such a requirement for a מזוזה (which is *always* on the doorpost of the room). To conclude from this that bedrooms do not require a מזוזה would also be erroneous because of all of the places that the גמרא discusses are exempt from מזוזה, it never says that a room where a man and his wife sleep is exempt. We must conclude that the same תורה which requires us to have a מזוזה, also requires us to fulfill the מצוה of פרו ורבו. Since it is required to have a מזוזה on a bedroom, and it is normal to have תשמיש in the bedroom, the תורה must allow תשמיש in the same room as the מזוזה. תפילין on the other hand can just as easily be removed from the room, and are not typically left in the room so we have no basis in concluding that the תורה allows תשמיש in front of תפילין.

B. **Jails.** The פוסקים debate whether or not a jail cell requires a מזוזה.

1. The commentator to the שולחן ערוך, בית הלל, suggests that jails should not require a מזוזה because it is not

a respectable living quarter (דירת כבוד). To support this ruling he points to a comment of the גמרא (יומא דף where the גמרא discusses why the chamber where the כהן גדול would live for one week prior to יום הכיפורים required a מזוזה. The גמרא notes that even if technically exempt from a מזוזה (because he is forced to live there – דירה בעל כרחיה לא שמייה דירה – the rabbi decreed that one should be placed there because we don't want it to appear "as if he is in jail". The implication of the גמרא is that if he indeed were in jail he would not require a מזוזה.

2. The ברכי יוסף (סימן רפו אות ג') argues that one can only label something as not being a respectable living place (דירת כבוד) if the room smells or one behaves there in a manner not fitting the sanctity of a מזוזה (bathing etc.). A jail cell, on the other hand, can be treated with dignity and is therefore not subject to the exemption of דירת כבוד. The comment of the גמרא (יומא שם) that if the כהן גדול did not have a מזוזה people would assume he is in a jail, assumes the opinion that a forced living quarter is not halachically considered to be a living quarter. We, however, rule in accordance with the dissenting view of the רבנן in that גמרא who maintain that even a forced living quarter (דירה בעל כרחיה) is considered to be a living quarter and is therefore obligated in מזוזה.

a. The ברכי יוסף adds, though, that there may be another reason to exempt jail cells from having a מזוזה. The הלכה is that any place not meant for permanent living, even if one stays for more than 30 days, is not obligated in a מזוזה. For instance, if one stays on a boat for two months he still does not require a מזוזה because people typically do not plan on living on a boat. It could be argued that the same applies to a jail cell where people are only going to be there for a limited amount of time. It is possible that when the ברכי יוסף wrote this he assumed that there were no life sentences in the prison

system. Perhaps now that inmates are often incarcerated for life the jail will have the status of a more permanent dwelling. However, the logic of this approach may apply to a hospital or a dormitory in a school where it is not made to house people on a permanent basis, only to provide room and board as long as their services are needed. It seems difficult, though, to rely on this point of view to determine the הלכה.

- C. **Maid's rooms.** The ערוך השולחן (רפ"ד) rules that if one has a room in their house set aside for a non-Jewish maid, since it is still a part of the person's home, the room requires a מזוזה. One could argue that the room is provided in exchange for the work that the person is doing for you. If so, it is similar to a typical rental agreement where the non-Jew pays to live in the apartment and the landlord does not have to put a מזוזה on the door. However, Rabbi Avi Lebowitz suggests that there is room to distinguish between situations where room and board are provided and a typical rental. The maid is not working to pay for the room and board. Once she is in the house working for her salary, it becomes the homeowner's responsibility to provide room and board. In this way, the maid's room may be more similar to a guest room than to a rental agreement. As such it may require a מזוזה. If this logic is correct the same can be argued about a Jewish owned hospital where non-Jews are staying. The rooms are not "rented" to the non-Jews. They are being cared for in the hospital, and so long as they are there the hospital must provide them with room and board. This may also apply to yeshiva dormitories where the students aren't paying for room and board, but for their education, and the yeshiva is obligated to provide room and board. As such, it would be the administration's responsibility, and not the student's, to put מזוזות on each dorm room. If it were a secular college dorm room there would be no obligation upon either party to place a מזוזה on the doorpost.

VII. **Temporary Residences.** The שולחן ערוך (סימן רפו סעיף יא) rules that סוכות, houseboats, and stores in the market place are all exempt from having a מזוזה. Each of the three categories mentioned by the שולחן ערוך have their own unique reasons and details that require individual explanation.

A. **סוכות.** Many people have rooms in their homes that have a retractable roof that they remove for סוכות and replace with סכך. The פתחי תשובה (רפ"ג) cites an authority who maintains that if such a room has a מזוזה, the מזוזה must be removed and reaffixed after סוכות ends because it was exempt throughout the duration of סוכות. The פתחי תשובה, however, cites the ארבעה טורי אבן who argues that such a room would not require a new placement of the מזוזה for a variety of reasons:

1. This room is one in which the homeowner lives throughout the year and is thus not subject to the exemption of דירת עראי. (It should be noted that the פרי מגדים cites the משנה ברורה סימן תרכ"ו ס"ק כא) who disagrees with this analysis and maintains that any structure used for the מצוה of סוכה is automatically labeled a דירת עראי and exempt from having a מזוזה. See, however, ערוך השולחן רפ"ז who holds that such a סוכה requires a מזוזה.)
2. Furthermore, the פתחי תשובה suggests, the problem of מן העשוי ולא מן תעשה is only an issue if the מזוזה was originally placed at a time that the room was exempt. If however, the מזוזה was placed at a time that the room was obligated, and subsequently became exempt while the מזוזה was up, there is not concern for מן העשוי ולא מן תעשה when the obligation returns.
3. Finally, Rav Moshe Feinstein (שו"ת אגרות משה או"ח ח"ה סימן ' points out that even if the room is exempt throughout the holiday of סוכות, there is not problem for the מזוזה to remain there, just as a שוכר keeps the מזוזות up in the home after he moves out (so the next person may use them) although there is some

time between one renter moving out and the other moving back in during which the home does not require a מזוזה.

B. **Houseboats.** Simply put, the שולחן ערוך seems to exempt all houseboats from having a מזוזה. However, the ערוך השולחן (רפ"כז) writes that if the boat is used as a person's permanent residence it would indeed require a מזוזה.

C. **Stores.** The שולחן ערוך exempts stores from having a מזוזה.

1. The reason for the exemption is the subject of a מחלוקת:

a. שיטת הש"ך ס"ק כא. The ש"ך states that the stores are exempt from a מזוזה because they are only considered temporary dwelling places. Indeed, the fact that the שולחן ערוך quotes this exemption along with the exemptions of the houseboat and סוכה implies that the reason for the exemption is the same.

b. The רמב"ם (פ"ו ה"ט) writes that while the סוכה and houseboat are exempt on account of their lack of permanence, the stores are exempt because they are not living quarters at all. The ט"ז (ס"ק י') adds that even though one spends most of their day in the store, since he does not sleep there at night it cannot be called his dwelling place.

2. The פוסקים dispute exactly what type of store is included in this exemption from a מזוזה:

a. The ט"ז (שם) states that any store one does not sleep in at night is exempt from having a מזוזה. Even the ט"ז acknowledges, though, that if the store is located in a person's house it would require a מזוזה.

b. The (ס"ק י') cites the *יד הקטנה* who maintains that the exemption for stores only applies to temporary structures that are actually dismantled at the end of the workday. The *יד הקטנה* argues that a regular store where one spends his entire day should be no worse than a storage facility that requires a *מזוזה*. Even if one would remove all of the items he sells every night, it should be no different than a *בית המדרש* which requires a *מזוזה*. The *ט"ז* argues, in his own defense, that the analogy to a storage facility is a faulty one. After all, the storage facility is used for its primary function 24 hours a day. The store, on the other hand, is primarily for people to go shopping. It is only used for this purpose during the daytime, and at night is relegated to a secondary usage as a storage place for the wares that the storekeeper sells. Furthermore, we may suggest, the question from the *בית המדרש* may be deflected because the *בית המדרש* is not only used during the daytime, but at night as well. After all, the *תורה* tells us that we have an obligation to learn torah both day and night.

D. פסק הלכה. Although a compelling logical argument can be made for the *ט"ז*, the *ערוך השולחן* suggests that the entire exemption of stores from having a *מזוזה* is only within the view of the *רמב"ם* that storage facilities are also exempt from *מזוזה*. As such, it seems that the *מהלוקת* remains unresolved and it is best to put a *מזוזה* up in a store without reciting a *ברכה*. It would also seem that the same would apply to an office that closes each night.