

# שו"ת מהרש"ם

## THE MAHARSHAM PROJECT

*Weekly Teshuvah Insights from the Maharsham of Brezhan*

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### A HOUSE THAT REMEMBERS

A beis haknesses empties out. Yidden don't want to live in a "former shul." Can its owner rent to a non-Jew, or must he suffer with an empty, unusable property and mounting financial loss?

A Jewish homeowner in Tarnow had hosted a minyan in his house for twenty years. When the congregation finally purchased their own building and moved out, no Jewish tenant would touch the space. They were afraid of its lingering kedushah. A non-Jewish tenant stood ready to pay handsomely. The Maharsham was asked: does the holiness of a place where Yidden once davened forbid renting it to a non-Jew, even at ruinous cost to the owner?

**To Rav Avraham Yehuda Arshitzer,  
moreh tzedek of Tarnow, Galicia (today  
southeastern Poland).**

#### THE QUESTION

For twenty years, a steady minyan gathered in a rented room inside a house in Tarnow. Year after year, the arrangement was renewed. The congregants paid rent, and the homeowner provided the space.

Eventually, the congregation prospered. They raised funds, purchased a proper beis haknesses, and moved out.

The homeowner was left with an empty room and a serious problem.

No Jewish family would rent the space. Word had spread: this was a place of longstanding tefillah. The room carried an aura of kedushah, and people were reluctant

Translator's Note: Tarnow was home to a substantial Jewish community in the late nineteenth century. The question reveals a social reality rarely addressed explicitly in halachic literature: the economic burden that kedushah could impose on ordinary Yidden. A homeowner who had done a chesed by hosting a minyan for two decades now found himself unable to use his own property, effectively penalized for his generosity.

to treat it as ordinary living quarters. No one wanted to be the one eating, sleeping, or conducting mundane activity in a room that had housed a Sefer Torah and echoed with Kaddish.

A non-Jewish tenant appeared, offering close to one hundred reinish, a significant sum. Without him, the house would remain empty, and the owner would suffer a substantial financial loss.

Rav Arshitzer examined the issue carefully. He found support in the Shulchan Aruch (O.C. 154:2) and the Chasam Sofer that kedushah created through rental does not persist after the rental ends.

However, a difficulty remained.

The Knesses HaGedolah, cited in the Sha'arei Teshuvah, rules that even after kedushah lapses, one may not treat the space with disrespect. The Taz writes that the presence of a non-Jew, or of filth, constitutes such disrespect.

Caught between the owner's financial loss and the stringency of the Taz, Rav Arshitzer turned to the Maharsham.

## **THE MAHARSHAM'S ANALYSIS**

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### **1. Reframing the Taz**

The Maharsham challenges the assumption. The Taz states that a non-Jew's presence constitutes bizayon. However, the Magen Avraham (55:15) explains that the concern is not the non-Jew himself, but the possibility of avodah zarah being brought into the space. The Dvar Shmuel agrees.

True, others, citing the Beis Dovid, disagree. But even they are discussing a space where tefillah is still ongoing. Their concern is that a gentile presence disrupts the sanctity of active tefillah.

Here, however, the minyan has left. The kedushah tied to active use has already ceased. Why should a non-Jew living there now be considered a bizayon?

### **2. Rental to a Non-Jew Functions as a Sale**

Even if the tenant were to bring avodah zarah into the space, the Maharsham addresses this as well.

The Rosh (Avodah Zarah, Perek 1), cited by the Shach (Y.D. 151:17), establishes that for a non-Jew, rental is halachically equivalent to a sale. Once rented, the space is considered his domain for the duration.

And all the more so here, where the kedushah itself originated through rental. That which entered through rental departs through rental.

### **3. Even More Permanent Kedushah Can Be Removed**

The Maharsham cites R' Yisrael of Shklov (Pe'as HaShulchan, Responsa 131), who rules that when sacred vessels are seized, their kedushah departs entirely, based on the Gemara: "Ba'u bah pritzim v'chileluha." If even theft can remove kedushah, then certainly a legitimate rental can do so.

The Tashbetz adds that a private room designated for a personal minyan retains the status of private property. The owner may sell it or repurpose it, even for mundane use. The kedushah never left his control. He is permitted to remove the kedushah lechatchila.

#### 4. The Village Shul Precedent

The Maharsham's decisive proof comes from the Shulchan Aruch (O.C. 153:9): a village shul, sold by the sheva tuvei ha'ir, may be converted by the buyer to any use, even degrading ones.

If an actual beis haknesses can be repurposed while still bearing kedushah, then certainly a private home, whose rental-based kedushah has already lapsed, may be rented to a non-Jew.

The warnings of the Knesses HaGedolah, of avoiding uses of bizayon, apply only lechatchila, before transfer. Once the property is transferred, b'diavad, any remaining kedushah is removed.

#### 5. One Must Not Cause Financial Loss

The Maharsham concludes with a fundamental principle:

Ein l'hafsid mammon Yisrael b'chinam. One may not cause a Jew to incur financial loss without justification.

The homeowner hosted a minyan for twenty years. Halachah does not require him to pay for that chesed with financial ruin.

He cites the Maharam of Padua (Siman 65), the source of the Rema (O.C. 153:16): the presumption is that a person does not rent out property on terms that would ultimately cause him loss. The rental itself was never intended to create a permanent kedushah that would harm the owner.

There is a brief addendum at the end of this teshuvah, permitting a bride during sheva brachos to sew clothing at home with her husband's consent.



### THE P'SAK

The Maharsham rules clearly: the homeowner may rent the space to the non-Jew.

The kedushah entered through rental and departed when the rental ended. The space returned to its status as ordinary property. Renting it to a non-Jew is treated as a transfer of domain, and any residual kedushah is fully removed.

The owner is not required to suffer financial loss for the sake of a sanctity that has already lapsed.



### HISTORICAL CONTEXT

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This teshuvah opens a window onto a common but rarely documented dilemma in Galician Jewish life. Hosting a minyan in a private home was widespread. Not every community could afford a dedicated shul, and even those that could often started with a rented room in someone's house. The transition from a house-minyan to a proper beis haknesses was a milestone of communal growth. But the host who made that growth possible could find himself holding a property that nobody would touch.

A room that became sacred through a lease lost that sanctity when the lease expired, not because holiness is cheap, but because the halachic system itself defines exactly how far sanctity extends.

### KEY TERMS

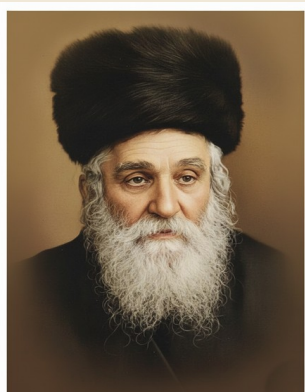
**Sheva tuvei ha'ir** — The seven trustees of a town, whose unanimous consent can authorize the sale of communal sacred property, including a beis haknesses.

**Kedushah she'ba'ah mi'sechirus** — Sanctity that entered through rental rather than ownership. The Maharsham treats this as inherently lighter. What came through a lease departs when the lease ends.

**Ba'u bah pritzim v'chileluha** — "Vandals entered and profaned it." A principle from Avodah Zarah 52b establishing that forced transfer strips sanctity from sacred objects. The Maharsham applies this kal va'chomer to voluntary, legitimate transactions.

### FOR THE SHABBOS TABLE

- The congregants moved to a nicer building and left the homeowner stuck. Did they owe him anything, financially or morally, for the transition?
- The Yidden of Tarnow refused to rent the space out of reverence for its history. Is that instinct admirable, or does the Maharsham's ruling suggest they were being machmir beyond what the law requires?
- When you've done a long-term chesed that eventually ends, have you ever felt that the chesed itself became a burden? How did you handle the transition?



### WHO WAS THE MAHARSHAM?

Rabbi Shalom Mordechai HaKohen Schwadron (1835-1911) served as the Rav of Brezhan in Galicia for over 40 years. He is best known for his seven-volume Shut Maharsham, containing thousands of teshuvos on every area of halachah, and his Da'as Torah commentary on Shulchan Aruch. Regarded as one of the foremost poskim of his generation, his rulings are cited in halachic works to this day.

**Coming next week: A shochet slaughters six of seven geese, then discovers the seventh is still alive. Now every bird is suspect.**

### PRINCIPAL SOURCES CITED

Gemara: Avodah Zarah 52b; Eruvin.

Rishonim: Rosh (Avodah Zarah, Perek 1); Tosafos (Eruvin); Tashbetz (Vol. 4, 1:7).

Shulchan Aruch & Nosei Keilim: O.C. 153:9; O.C. 154:2; Rema 153:16; Taz (end of 151); Magen Avraham 55:15; Shach Y.D. 151:17; Sha'arei Teshuvah O.C. 154:2.

Acharonim: Chasam Sofer O.C. 32; Knesses HaGedolah (cited in Sha'arei Teshuvah); Dvar Shmuel; Beis Dovid; Maharam of Padua 65; R' Yisrael of Shklov, Pe'as HaShulchan, Responsa 131.

A man who opens his door for twenty years of tefillah should not find that door locked against him when the tefillos move on.

**This translation is presented for Torah study and enrichment purposes only. It is not intended as halacha l'maaseh. The translator has made every effort to render the Maharsham's words faithfully, but this English adaptation may contain errors or imprecisions. For any practical halachic question, consult your own Rav.**

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