

## על המשכיר לבדוק דחמירא ידידיה הוא –

Is it the responsibility of the landlord to search, for it is his חמץ

### OVERVIEW

The גמרא posed a query; what is the ruling if a landlord rented out his house to a tenant on the fourteenth of ניסן. Is the landlord required to be בודק since the חמץ in the house belongs to him; or is the tenant obligated to be בודק since the חמץ is found in his domain? תוספות discusses (one side of the query) and explains the reason that the משכיר should be בודק since the חמץ is his.<sup>1</sup>



אין לפרש הטעם כיון דשלו הוא ואין אדם יכול לבטל אלא הוא חייב לבדוק –

We cannot explain the logic of חמירא ידידיה הוא (which should make the משכיר liable for the בדיקה) as follows; the משכיר must be בודק, since the חמץ is his, and no other person can be מבטל this חמץ except for the משכיר<sup>2</sup>, therefore the משכיר is obligated to be בודק (in order that he should be מבטל).

תוספות explains why this explanation is incorrect:

דאם כן אמאי נקט משכיר לחברו ביי"ד –

For if this is indeed so (that the משכיר must be בודק since only he can be מבטל), then why mention a case where he rented out a house to his friend on the fourteenth of ניסן (and the reason why the משכיר should be בודק is on account of the ביטול) -

אפילו ביי"ג יתחייב המשכיר מהאי טעמא לבדוק -

Even if he rented out the house on the thirteenth of ניסן, the משכיר should still be חייב to be בודק for the very same reason; only the משכיר can be מבטל therefore he should be בודק. It should make no difference when the rental took place (if we assume the reason for the משכיר to be בודק is because only he can be מבטל).<sup>3</sup>

תוספות offer his explanation:

<sup>1</sup> שלא יבא לאכלו is בדיקת חמץ that the reason for בד"ה אור מסכת in the beginning of the תוספות explained (according to תוספות) there is no reason for the משכיר to be בודק (even if the חמץ is his) for there is no concern that the משכיר may come to eat it (only that the שוכר may come to eat it).

<sup>2</sup> Only the person who owns the חמץ can be מבטל the חמץ, therefore since the חמץ belongs to the landlord; only the landlord can be מבטל the חמץ. The חכמים instituted that the (first) ביטול should be done in conjunction with the בדיקה; therefore since the משכיר must be מבטל, he must also be בודק. See 'Thinking it over' # 1.

<sup>3</sup> We must therefore conclude that even though only the משכיר can be מבטל; however this is not a sufficient reason for the משכיר to be בודק. The שוכר can be בודק and the משכיר will be מבטל the חמץ of the rented house (at the same time when he is מבטל the חמץ [after he performs the בדיקה] in the house which he lives in).

לכך מפרש רבינו יצחק דחמירא ידידיה הוא –

**Therefore, explains the ר"י, that the reason of חמירא ידידיה הוא** means that since it is the משכיר of the חמץ –

וחל עליו חיוב בדיקה שעה אחת קודם שהשכירה –

**And the obligation of בדיקה rested on the משכיר for at least one 'hour' before he rented it.** The query is in a case where the house was rented out on the fourteenth (by day, or at least) some time after the חיוב בדיקה began. When the חיוב בדיקה began it was the obligation of the משכיר to be בודק; the house was not rented yet, therefore the obligation remains with the משכיר even after it was rented.<sup>4</sup>

גמרא continues to explain the תוספות

ומייתי<sup>5</sup> ראייה ממזוזה דאף על פי דחל חיוב קודם שהשכיר על השוכר לעשות מזוזה –

**And the גמרא brought proof that the tenant must be בודק from the ruling by a מזוזה; that even though the obligation (on the משכיר) to put up a מזוזה was effective before the house was rented out (for it is his house), nevertheless it is the obligation of the renter to put up the מזוזה.** This proves that even if the initial responsibility is on the משכיר, nevertheless when the שוכר retains possession, the obligation is transferred to the שוכר, and the same should apply to חמץ בדיקת חמץ.

ודחי דמזוזה חובת הדר הוא –

**And the גמרא rejects this proof; for putting up a מזוזה is the obligation of the dweller** (and not necessarily the owner); not as it is by בדיקת חמץ (as תוספות will shortly state). חובת הדר explains the term תוספות

כלומר<sup>6</sup> אפילו לא היה משכירה היה יכול ליפטר ממזוזה שלא היה דר ומשתמש בבית.

**The meaning of חובת הדר is that even if the landlord would not have rented it out, he still could have been פטור from putting up a מזוזה; if he would not live and make use of the house** (from this moment on). We cannot therefore state that the משכיר had an obligation to put up a מזוזה –

אבל גבי חמץ [אילון] לא ישכיר לאחר יצטרך לבדוק:

**However by חמץ it is different, for even if the משכיר would not rent out the house to another, he would be obligated to be בודק** (even if he should decide that he does not want to live there [from this moment on]).

<sup>4</sup> It is now understood why the query could not be ב"ג for then there was never a חיוב בדיקה on the משכיר.

<sup>5</sup> See מזוזה ראייה from ראייה אין לפרש that according to the תוספות הרשב"א the שוכר by מזוזה because even though by מזוזה the שוכר is עיי"ש מה שתירץ. מבטל since he must be בודק because the משכיר by בדיקה nevertheless, חייב.

<sup>6</sup> The term כלומר is used when the explanation does not necessarily follow the simple and obvious meaning. One would assume that by חובת הדר we are referring to the שוכר who is living there now. However תוספות rejects this meaning and explains that חובת הדר means there is no obligation for putting up a מזוזה in a house that you own; but rather there is only an obligation to put up a מזוזה in a house in which you live.

## **SUMMARY**

The fact that it is **חמירא דידיה** at the onset of **חייב בדיקה** should require the **משכיר** to be **בודק** even if he rented it out later. There can be no **חייב מזוזה** for merely owning a house (without living in it); there can be a **חייב בדיקה** even if one does not live in the house (on **פסח**).

## **THINKING IT OVER**

1. Can<sup>7</sup> the **משכיר** appoint the **שוכר** as a **שליח** to be **מבטל** the **חמץ**?<sup>8</sup>
2. The **גמרא** should have said **על המשכיר לבדוק** since **חל עליו חובת בדיקה**; why does it state **חמירא דידיה**?<sup>9</sup>
3. **תוספות** explains that by **חמץ** even if the **משכיר** does not live there (during **פסח**); he is obligated to be **בודק**. Why then is there an **איבעיא**?! The **משכיר** should be **בודק**! Why does renting it out to the **שוכר**, change anything?<sup>10</sup>

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<sup>7</sup> See footnote # 2.

<sup>8</sup> See **חדש**.

<sup>9</sup> See **ח"ב מ"ת אות טו**.

<sup>10</sup> See **ח"ב אות לב**.