

HALOCHOSCOPE

This week's question:

A community has been having a hard time getting enough people to make a *minyan* on *Shabbos*. They have a large empty *shul*. They are planning on selling the building to move to a smaller building in a different neighborhood. They fear losing money on the deal, and have been offered an opportunity to avoid loss and actually make a profit. However, they will not be able to wait for the new building to be built, if they accept this offer. May they move to a rented *shul* for the interim?

The issues:

A) Selling a *shul*; profit or loss

B) Demolishing a *shul* before rebuilding; Having an alternative *shul* to *daven* in

A) Selling a *shul*

A community is obliged to build a *shul*, compelling each other to participate. Some consider it a Scriptural or Rabbinical obligation, based on the *mitzvah* to build the *mishkan* and *bais hamikdash*. Others maintain that it is one of the many communal obligations. When built, the *shul* is a 'small *mikdash*'. Various issues arise with regard to the sale of a *shul*. First, the site has sanctity. Even if it is sold, there might be restrictions on its uses. Second, usually, the *shul* is public property. Only certain people may be authorized to sell it at all. Third, the money that it is exchanged for may only be used for specific purposes. Fourth, the people who attend the *shul* need a place to *daven*. In our case, the additional issue of loss of money also comes into consideration.

Sanctity: One can redeem the sanctity of an item by transferring it to another item, or to money. Nonetheless, in the case of a *shul*, the grounds retain some of the sanctity. Two levels of sanctity can be attached to items used for holy purposes. Items used for a *mitzvah*, *tashmishei mitzvah*, have no intrinsic holiness. Their association with the *mitzvah* means that they are considered holy and are treated specially while they are in use for performance of the *mitzvah*. After the *mitzvah* is done the *kedusha* no longer applies. They are still treated respectfully and disposed of in a respectable manner.

Some items are invested with intrinsic *kedusha*, *kedusha atzma*. These retain their holiness, regardless of when they are used. They may be used for nothing but their intended use. The sanctity never leaves them. They are not discarded but are buried near the head of the grave of a Torah scholar. Examples of these are *Sifrei Torah*.

A sub-level of this type is items that serve this level, known as *tashmishei kedusha*. Items serving them less directly are classed as *tashmish detashmish kedusha*. The sub-levels have less *kedusha*. The hierarchy affects the permissibility of changing their use.

A *shul*'s stones and bricks are *tashmishei kedusha*. The ground and its space have some *kedusha*. This restricts behavior in the *shul*. It applies after the *shul* is removed, based on a verse in the Torah. However, the poskim debate its type. Some maintain that it

is on the level of *tashmishei mitzvah*, but with the additional provision that after the *shul* is destroyed, the *kedusha* is retained. Some consider it a form of *tashmishei kedusha*. Some consider it a Rabbinically ordained *kedusha*, while others consider it Scriptural. Some consider the sanctity Rabbinical, but disrespect is Scripturally forbidden. It is possible to stipulate a provision at the time the building is built or dedicated, that when it is demolished or ruined the *kedusha* shall be removed. When and where this provision can be applied is discussed by the poskim. Many maintain that anywhere outside *Eretz Yisroel*, a *shul* building has an automatic in-built provision.

All of this really refers to the site of a ruined *shul*. Since nothing was arranged to transfer the *kedusha*, it is still present in some form. If the *shul* is sold, the *kedusha* could be transferred to the money. Accordingly, the site could be used for any purpose. The Talmud debates using it for mundane uses, and concludes that one may do so. However, it may not be used for certain demeaning uses, unless it was sold by the community council of seven, that will be discussed shortly.

Authority to sell: There are two types of *shul*, a publicly owned *shul* and a privately owned *shul*. A private *shul* has less *kedusha*. There are two types of communal *shul*. In small communities the *shul* is generally frequented by the local members. In large cities the *shul* serves the needs of guests from far and wide. Therefore, the members are not considered the only 'owners' of the *shul* and they are not allowed to sell it. In a small community, the *shul* may be sold by the membership as a whole. If they had elected 'seven trustees' the trustees may sell it even without consulting the membership. The poskim debate various cases in which a big city *shul* may be sold. If it will continue to serve as a *shul* for the purchasers, if it was built with the condition that it may be sold, if the people building it placed all decision-making in the hands of one individual, if the *shul* is no longer attended for *tefilos*, and certain other situations are all possible cases that permit selling a big city *shul*. Some add that if the community elects leaders to do as they see fit, it is as though all decision-making was invested in one person at the time of building it. If the *shul* was sold by the membership and the seven trustees, the transfer of *kedusha* is considered complete. The entire space may be used for the most mundane uses.

Maalin bakodesh velo moridin: Once an item has *kedusha*, it may not be lowered, only raised to another level of *kedusha*. The poskim debate whether keeping it on the same level is permitted. Thus, if an item is no longer useful for its *kedusha* use, it may not be disposed of or used for a more mundane use. If the *kedusha* is transferred to money, the money may not be spent on less holy items. The Talmud says that a *shul* may be sold to furnish the *Sefer Torah*, that is, to build the *aron hakodesh* or the *bimah*. In our case, the money is being used to purchase or to build a new *shul*. Since this is an equivalent *kedusha*, some allow this sale. Ordinarily the new *shul* should already be in place, either built or ready to be purchased immediately [see below]. It is possible in certain cases, that the money from the sale may be used for mundane communal purposes.

The fourth issue will be discussed in the next section.

The issue of loss depends on many of the other issues discussed. Usually, a trustee selling other people's property must announce it. This public notice ensures that anyone can bid, and a fair price will result. In circumstances where the seven trustees may sell it with consent of the community, they may also give it away as a gift. Some say that it

may be given away in other circumstances as well, because the recipient will consider himself indebted to give something in return. Based on this, the poskim do not require notice when trustees sell it. If a loss is suffered it is absorbed. However, in cases where one would be forbidden to remove the *kedusha*, one may not allow a loss. If there is a loss, the sale can be invalidated. It seems that our case might be such that the proceeds of the sale may be spent on other mundane communal needs, removing the *kedusha*. Accordingly, selling it at a loss would be valid. Accordingly, the possibility of losing money while waiting might not mitigate the ban on selling it before a new *shul* is in place.

However, this sale must meet with the approval of either the seven trustees or the community or both. It may be assumed that the general feeling will be to avoid loss. The new *shul* will require funding, including the money saved by selling the old *shul*. The balance will be levied on the members, who may compel each other to contribute. The community members will want to avoid unnecessary outlay. Therefore, the validity of the entire sale will depend on this issue. If this can not be accomplished, the matter of the new *shul* might indeed be dragged out and neglected. In this light, the issue of loss must be taken into account. [See Megila 25b-28b, Poskim. Tur Sh. Ar. OC 150 151. 153:6 7 154, commentaries. Tzedaka Umishpat 12-14. Sdei Chemed, Klalim, Bais 42-44.]

B) Demolishing before rebuilding

A *shul* may not be demolished in order to rebuild it. One may not even take stones from the old building to build the new *shul*. The new *shul* must be built before demolishing the old *shul*. The Talmud debates the reason for this. It is not forbidden Scripturally, since the plan is to rebuild it, which is an improvement. It is a Rabbinical precaution. In one view, it is because the congregants will have nowhere to *daven*. In the other view, they might neglect to build the new *shul*. The difference between these views is seen when they have an alternative place to *daven*. The conclusion follows the second view.

The poskim debate whether if the alternative place to *daven* during construction is a proper *shul*, everyone would agree that one may demolish the old one before building the new one. In practice, since it is not a Scriptural issue, one may rely on the lenient view. All members of the old *shul* must be accommodated permanently in the alternative *shul*.

[Perhaps the reason to institute a precaution is based on the communal requirement to build a *shul*. This, in and of itself, might be a Scriptural requirement. Thus, while demolishing the actual building in order to rebuild is permitted, there is some concern about the basic communal obligation. The one view maintains that if there is an alternative place to *daven*, the obligation is less. The other view maintains that the obligation is to build a proper *shul*. If there is an alternative place that is not really a proper *shul*, there is concern that the community will be even more likely to neglect building a proper *shul*. If, however, a proper *shul* exists in the same community, some would say that the obligation has been satisfied by this. Others would say, if the other *shul* is proper, there could be even more concern that the community will not bother fulfilling their general obligation [see Tzedaka Umishpat 13:n22]. The new *shul* must still be built, unless arrangements will be made to properly transfer the *kedusha* and use the money appropriately.]

If the *shul* is in disrepair it may be demolished to rebuild it.

The poskim apply same rules to a community that wishes to sell one *shul* and purchase another, and to those who rent their present *shul* and wish to rent a new building.

The new site must be ready for use before the old site is abandoned.

In light of the discussion so far, the remaining issue is whether the community may make a rental arrangement for the interim. They will be able to sell the *shul* while they can get a good price. They will then be in a position to buy a new *shul* or property on which to construct one. This will meet with more approval of the members than the alternative. May they rely on renting premises for the interim? Must they make the rental such that it has the semblance of a proper *shul*?

There is a level of *kedusha* lower than that of a *shul* called *rechava*, the town square that was large enough for major gatherings. It was built with communal funds, but was not dedicated as a *shul*. Since its use for *tefilah* was infrequent, it had temporary sanctity. The poskim say that *shul* premises rented for a month or a year to be used as a *shul*, have the *kedusha* of *rechava*. It would appear that renting a *shul* can not be equated with a permanent alternative. However, some poskim suggest that this only applies where building a *shul* is illegal. The rented secret *shul* could be shut down any day. A normal rented *shul* has regular *kedusha*. Thus, some poskim permit renovations while an alternative rented *shul* is used. Maybe the lease could be extended indefinitely, with permission to make physical adjustments. In our case, the additional factor of poor attendance might help mitigate the problem. The *shul* is almost at the point that it has been abandoned. [See Baba Basra 3b Megilah 25b, Poskim, Tur Sh. Ar. 152, Taz 1, Kaf Hachayim 2, 154:2, commentaries.]

In summary, the community should first create a permanent rental *shul*. They may then sell this *shul* at an opportune time, and begin arranging for a new *shul* immediately.

On the Parsha ... And [Eisav] sold his bechorah to Yaakov. And Yaakov gave Eisav bread and lentil soup, and he ate and drank and arose, and Eisav insulted the bechorah ... [25:33-34] Some say that Eisav sold the *bechorah* for lentil soup. Others say that Yaakov paid in full, then gave Eisav the soup. [See Ramban, *Sforno* etc.] Perhaps both are true. *Ona'ah*, charging the wrong price, does not invalidate the sale of a *shul*. But intentionally charging a cheap price shows a lack of appreciation. By selling his holy *bechorah* for soup, Eisav insulted it. However, Yaakov made this deal! Why is Eisav singled out, by the repetition of his name, to show that it was only he who despised the birthright? Maybe Yaakov first offered Eisav full price for the holy *bechorah*. Eisav said he'd sell it for the lentil soup. Yaakov saw how Eisav despised the *bechorah*, and agreed to sell it this way to rescue it from Eisav. Indeed, from here we learn that if a *sefer torah* is in the hands of a *rasha*, one may trick him into giving it up. [See *Daas Zekeinim*.]



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a"n, whose Yahrzeit is on the 3rd of Kislev. 

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