



A Defense of the “Top Side Wire”

A very common issue that arises in Eruv construction in North America is what Rav Gavriel Bechhofer terms “the “top side wire”. In this case, as seen in the photo, the top wire does not run directly above the utility pole. Instead it runs atop the insulator which is attached to the top of the pole. Thus, on the one hand it is on the side of the pole yet on the other hand it is to the side of the pole.

Let us review some Eruv basics. A wire must run over the pole and not its side in order for a pole to serve as a Kosher Lechi. Rav Bechofer argues that the “top side wire” is considered to run on the side of the pole and thus the pole is not a Kosher Lechi. We seek to explain why so many Poskim regard the top side wire as, conceptually speaking, as running above the pole and therefore a kosher Lechi.

Quite a number of Poskim from the previous and current generation view such a situation as the equivalent of the wire running on top of the pole and thus acceptable as a component of an Eruv without the pole needing further modification. The Poskim include Rav Aharon Kotler zt”l and Yibadeil Lchayim Aruchim, Rav Hershel Schachter, Rav Moshe Heinemann, Rav Yisroel Miller and Rav Mendel Senderovic. The classic Poskim who permit this are the Teshuvot Machaze Avraham¹ (2:13) and Teshuvot Chelkat Yaakov (Orach Chaim 180).

Teshuvot Machaze Avraham

Rav Bechoffer’s primary criticism of the lenient view is that the wire does not run over the pole. However, the core of the lenient ruling is that the insulator constitutes a valid extension of the pole. Since it runs over a valid extension of the pole the wire is considered to be running over the pole itself.

The primary evidence for the lenient view presented by the Machaze Avraham is the Gemara (Yoma 44b) and Tosafot (ad. loc. s.v. B’chol Yom) which

¹ Rav Avraham Steinberg, the author of Teshuvot Mechaze Avraham, served as the highly regarded Rav of Brod, Poland. His grandson Rav Moshe Steinberg served as the respected founding Av Beit Din of the Rabbinical Council of America for many years.

discuss the special addition made to the Machtah (firepan) for use in the special Avoda (service in the Beit HaMikdash) of Yom Kippur. A special addition is added to the Machtah and is viewed as a valid extension of the Machtah since it is nailed onto the original Machtah.

The Machaze Avraham argues that just as the addition to the Machtah is considered a valid extension of the Machtah because it is nailed in and permanently affixed, so too does a pole that is permanently affixed to the original pole constitute a legitimate extension of the original pole. Thus, if the wire runs above the added pole (and not the original pole) it is considered as if the wire runs above the original pole, since the extension of the pole is considered to be part of the pole itself.

Clarification of the Teshuvot Machaze Avraham

It is important to note that just because a pole is permanently affixed to the original pole, it does not necessarily constitute a Halachically valid extension of the pole. Both Rav Schachter and Rav Heinemann point out that the added pole must be longer than it is wider (just like the original pole) in order to constitute a valid extension of the original pole.

This has an enormously important implication. In the frequent case where the top side wire runs above the mushroom cap of the insulator but not above the insulator stick (or utility pole itself), the pole does not serve as a Kosher Lechi. This is because the mushroom couple is often wider than longer and thus does not constitute a valid extension of the utility pole below. In order to serve as a Kosher Lechi, the wire must run either above the pole itself or above the stick portion of the insulator. If it does not run above these but does run over only the mushroom cap, the pole does not constitute a valid Lechi.

Rav Willig adds that in order to be designated as a legitimate extension of a pole the original pole and added pole must be perceived to create one unit. The insulator and utility pole are considered one unit and thus the insulator constitutes a valid extension of the pole. However, Rav Willig rules that a Lechi and the utility pole itself do not meld into one unit, since they are not perceived

as creating one unit. Thus, even though two items are permanently attached they do not necessarily constitute a valid extension of the other (even if they are both longer than wider).

The View of Rav Moshe Feinstein

However, Rav Shlomo Francis and Rav Yonasan Glenner in their work "The Laws of an Eruv" (page 101) cite both Rav Moshe and Rav David Feinstein who are unsure about this issue. However, the authors note that Rav Moshe in this regard follows his opinion that entire Lechi must run under the wire in order to be kosher. The authors also note that Rav Aharon Kotler disagrees, ruling that only the top of the Lechi must run below the wire.

In practice in North America, the opinion of Rav Kotler is accepted. In fact, many utility poles stand at a considerable slant making it virtually impossible to create an Eruv where the Lechis run under the wire from their bottoms to tops. Thus, although Rav Moshe does not endorse the top side wire, his possible objection is based on an opinion which is not followed in North American Eruvin.

The Barrier Concern

Despite his approval of the top side wire, Rav Heinemann (in the Star-K Eruv webinar) raises serious concern with the top side wire if a mushroom cap that is wider than longer rests (as it often does) about the stick portion of the insulator. Even if the wire runs above the stick and not just the mushroom cap, Rav Heinemann views the mushroom cap as an invalidating barrier (Hefsek) between the stick and the wire.

Indeed, the Mishnah Berurah (363:112) cites the Taz (Orach Chaim 363:19) as ruling that a Tzurat HaPetach is invalid if a roof interrupts between one of its vertical poles and the horizontal pole or wire. His reasoning seems to be that Gud Asik (the theoretical "stretching" of the vertical pole to reach the horizontal one) applies only when nothing obstructs between the poles.

However, the Chazon Ish (Orach Chaim 104:6) rules that an obstruction narrower than three Tephachim (approximately nine to twelve inches) and

perhaps even less than four Tephachim does not constitute a Hefsek between the Lechi and wire (and the mushroom cap is certainly less than nine inches wide).

Moreover, both the Tosefet Shabbat (Orach Chaim 363:64; cited by the Pri Megadim 363: Mishbetzot Zahav 19) and the Shulchan Aruch HaRav (Orach Chaim 363:32) reject the Taz. They note that the Gemara (Eruvin 11b) approves of an archway as a valid Tzurat HaPetach as long as a minimum of the first ten Tephachim of the archways walls are straight. These authorities note that the rounded portions of the archway create a barrier between the straight portion of the wall and the archway's lintel. This seems to indicate that there is no concern for a barrier between the Lechi and wire above it. The Aruch HaShulchan (Orach Chaim 363:46) rules in accordance with this rejection of the Taz.

Thus, the mushroom caps do not create a problem both according to the Chazon Ish and the Aruch HaShulchan. Moreover, the mushroom caps should not create a problem even according to the Taz and Mishna Berura. This is because the defense of the Taz from the Gemara's case of the archway is that the straight portion of the arch and rounded portions of the archway constitute one unit and thus the rounded portion does not create a Hefsek.

Similarly, one may argue that the mushroom cap and the insulator constitute one piece and thus the mushroom cap does not create a Hefsek between the insulator stick and the wire that runs above it. Indeed, Rav Schachter accepts the use of a top side wire even if the mushroom cap that is wider than longer runs above the insulator stick, as long as the wire runs above the insulator stick. Moreover, this would create a problem according to Rav Heinemann even if the wire runs over the pole itself if a mushroom cap wider than longer separate between the pole and the wire. Common practice in North American Eruvin is to accept such poles as valid Lechis.

Conclusion

The arguments supporting the acceptability of the top side wire are quite compelling. Moreover, there is more than ample room to argue against Rav

Heinemann's barrier concern. It is wonder why some many North American community Eruvin rely on the top side wire even when the mushroom cap that runs over the insulator stick is wider than longer.