

The Aruch HaShulchan Eruv – A Standard Suitable for Many Communities

It is a favorite topic among many Yeshiva students – the Aruch HaShulchan vs. the Mishna Berura. When these two great late nineteenth century to early twentieth century authorities clash, who should one follow? More often than not, the Aruch HaShulchan tends to reflect the common practice among Ashkenazic Jews, at least of his time. The Mishna Berura is more focused on setting a high standard of observance for Bnei Torah. Thus, many Rabbanim will recommend that Aruch HaShulchan is suitable for the broader community and the Mishna Brura for the Bnei Torah community.

However, there is more to this conversation than this simple resolution. Regarding communal matters, the Aruch HaShulchan has a distinct edge over the Mishna Berura in that its author Rav Yechiel Michel Epstein served as the Rav of a significant community (Navaradok, Lithuania) whereas the Chafetz Chaim served as a Rosh Yeshiva. Thus, regarding communal issues, such as Dinei Torah and Siddur Kiddushin, Rav Epstein's approach and rulings enjoy a greater authority. How ironic it is that the Aruch HaShulchan, while reputed to be the guide for the laymen, in so many areas of Halacha serves as the guide par excellence for rabbinic leaders in their various rabbinic capacities.

I believe that the same may be said about the Aruch HaShulchan's approach to creating a community Eruv. His Eruv standards are far more feasible and sustainable in the long term than the standards set forth in the Mishna Berura.

Rav Gedalia Schwartz, the highly respected Av Beit Din of the Beth Din of America and Chicago Rabbinical Council once observed that when he learns the Aruch HaShulchan he feels he is sitting at the feet of one of the great classic European Rabbanim, guiding him in the proper manner to guide a community. I believe that this is especially true regarding the Aruch HaShulchan's guidance to Rabbanim regarding their communities' Eruvin.

His rulings constitute the cornerstone for an Eruv that avoids both excessive stringency and questionable leniency. Incredibly, his rulings recorded

more than a century ago, remain a tour de force for Eruvin in contemporary North America. We outline ten rulings that facilitate the creation of many community Eruvin in North America today.

Critical and Very Practical Ruling #1 – Tachuv

While the Eruv wire should pass directly over the Lechi/support beam and may not rest on the side of the Lechi, Acharonim debate the acceptability of an Eruv where the wire passes through the pole. The Aruch HaShulchan (Orach Chaim 362:32) insists that it is obviously acceptable since we ignore the portion of the Lechi that runs above the wire.

Absent this lenient ruling, it would be very difficult impossible for many community Eruvin to function properly. The Tachuv scenario is exceedingly common on utility poles in North America where wires are often bolted through the poles. Relying on Tachuv in the Teaneck Eruv for example, reduces by approximately twenty percent the number of installations necessary to complete the Eruv.

In one Canadian city, the local power authority refused to permit the creation of an Eruv. I submitted a plan that relied, amongst other approaches, on the Aruch HaShulchan's ruling on Tachuv and the permission was subsequently granted by the power authority. My proposal involved the addition of approximately sixty Lechis to the poles in the area unlike the more than six hundred proposed by rabbis who were not willing to rely on the Aruch HaShulchan's ruling regarding Tachuv¹.

Following the Aruch Hashulchan's lenient approach in addition to reducing the Eruv's communal "footprint" also makes inspections and proper upkeep within reason. The more installations that are made, the more there is to monitor and maintain. For many communities, a less ambitious and more modest Eruv makes it possible to maintain the installations in the best condition possible.

¹ I believe that many of the unfortunate clashes between local neighbors and those creating a Eruv could be avoided if we reduce the "footprint" made by the Eruv. Relying on Tachuv and other existing infrastructure instead of adopting a new of Chumrot, may make Eruvin a more long term viable opportunity for our community.

It is important to note that the Aruch HaShulchan is hardly the only major authority to permit Tachuv. Those who are lenient include the Netivot (in his Tikkun Eruvin; though see Sha'ar HaTziyun 362:52 for a discussion of the Netivot's position regarding Tachuv), Rav Shlomo Kluger (HaElef Lecha Shlomo, Orach Chaim 164), Teshuvot Maharsham (1:162: and 2:149), the Chazon Ish (O.C. 71:9), Teshuvot Divrei Malkiel (3:16, who is inclined to permit), Nefesh Chaya (number 34), Rav Tzvi Pesach Frank (Teshuvot Har Tzvi, O.C. 2:18:3), Teshuvot Chessed L'Avraham (number 21), Teshuvot Zekan Aharon (1:19), Teshuvot Chelkat Yaakov (Orach Chaim 1:180) and Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 2:35:25).

Rav Bloi in his Netivot Shabbat (19:31) essentially rules in accordance with the lenient view², though, he notes that there are those who are strict about this matter. Rav Hershel Schachter and Rav Mordechai Willig both permit relying on Tachuv in a community Eruv. How spot on is Rav Baruch Simon's remark (in his Imrei Baruch Eruvin U'Reshuyot page 114) "it emerges that many Acharonim rule leniently in regards to Tachuv".

Critical and Very Practical Ruling #2 – Rejecting the Chumra of the Tevu'ot Shor

The Mishna (Eruvin 1:8) sets forth the basic rule that openings that are ten Amot (15 to 18 feet) wide or less constitute an opening in the wall and not a breach (provided that that side of the Eruv has wall at least equivalent to the open areas). The Tevu'ot Shor (cited by the Shaarei Teshuva to Orach Haim 363:26) argues that this leniency does not apply to gaps between Tzurot Hapetach (Halachic door frames, which form the core of almost all urban eruvs).

² The Posekim who rule strictly in addition to the Mishna Brura are Teshuvot Beit Shlomo (2:167), Zechor L'Avraham (Orach Chaim 70) and Teshuvot Minchat Yehuda (number 25). In light of the many Poskim who endorse reliance on Tachuv (including contemporary Posekim Rav Hershel Schachter, Rav Mordechai Willig, Rav Zecharia Ben Shlomo and Rav Eliezer Melamed) as compared to those who rule strictly, Rav Moshe Heinemann's assertion (made during a Shiur he delivered at a convention of Young Israel rabbis during the 1990's) that "most Poskim" reject the idea of Tachuv, is highly debatable. In fact, Rav David Feinstein told me (in 1989) that while his father Rav Moshe zt"l felt that Tachuv should not be relied upon in a community Eruv, he felt that Mei'Ikar HaDin (according to baseline Halacha) it is acceptable. Indeed, Rav Bloi presents the Posekim who accept Tachuv as the mainstream view and the stricter view as the minority view. The Eruv that Rav Bloi's student Rav Tzvi Fischer made for the wider community of Portland, Oregon relies on Tachuv (but the smaller Eruv he made for Portland's Kollel community does not).

There has been a vigorous debate as to whether the Halacha accepts the Chumra of the Tevu'ot Shor. The Aruch HaShulchan (Orach Chaim 362:36) is a staunch opponent of this stringency, dismissing it as Tamu'ah, bewildering and not compelling. He thus wholeheartedly permits a gap up to 10 Amot even between Tzurot HaPetach and Mechitzot.

Part of reducing the communal footprint of an Eruv involves "jumping" from utility poles to walls or fences that are less than ten Amot apart. Following the Aruch HaShulchan, such gaps are acceptable without having to make installations on the walls or fences which are often private property (unless it is a situation where Rabbaim Bokim Bo as we discuss elsewhere). Relying on the Aruch HaShulchan's view often allows us to jump to fences and follow them for long distances, once again reducing the urban footprint of the Eruv and making long term maintenance feasible.

Critical and Very Practical Ruling #3 – Permitting Obstructions between Lechis and their Wires

The Acharonim debate whether a Hefsek/obstruction (and not simply an open space) between a vertical pole and a horizontal pole invalidates a Tzurat HaPetach. The Mishnah Berurah (363:112) cites the Taz 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. The Aruch HaShulchan (Orach Chaim 363:46) cites (and seems to endorse) the Tosefet Shabbat who disagrees with the Taz and sees no problem with a tangible separation between the poles.

Although common practice is to run the Lechis to the wire in part to avoid this issue, at times it is not possible to do this. In addition, sometimes a Lechi extends to the lowest wire and there is also a need that it virtually extend, using the Halachic concept of Gud Asik, to the higher wires that are directly above it. While there are those who are strict about this matter due to the wires themselves creating a Hefsek between the Lechi and the wire, there is ample room to be lenient in case of need based on the Aruch HaShulchan.

Critical and Very Practical Ruling #4 – Karpeif

Rav Yechiel Michel Epstein (Kitvei HaAruch HaShulchan number 64) permits relying on the lenient view regarding Karpeif in case of pressing need (Sha'at HeDechak). In my experience adopting a strict view regarding Karpeif often makes Eruvin near impossible to maintain. Excluding Karpeifs from Eruvin often involves maintaining Tzurot HaPetach in very difficult terrain, which can be extraordinarily difficult especially during times of inclement weather. When necessary, following the Aruch HaShulchan's more flexible approach to Karpeif often makes the difference as to whether a community is able to maintain its Eruv.

Critical and Very Practical Ruling #5 – Omission of the Chumra of the Netivot

The Netivot in his Tikun Eruvin introduces the idea that a Tzurat HaPetach not pass through a Reshut HaYachid (enclosed area). This assertion has generated much discussion and debate. Teshuvot Chatam Sofer (O.C. 91 and 96) and Teshuvot Maharsham (1:207) rule leniently regarding this issue when the Tzurat HaPetach is quite high and stands higher than the area's surrounding walls.

Teshuvot Chavatzelet HaSharon (1:20) writes that the custom is to be lenient in this issue. Rav Hershel Schachter (in a lecture at Yeshiva University) relates that Rav Mendel Zaks told him that the custom in Europe was indeed to be lenient (although Rav Schachter himself adopts a strict stand regarding this issue).

It is most interesting that the Aruch HaShulchan does not even mention the Netivot's stringency. This would seem to accord with what is reported to have been the custom in Europe to adopt the lenient approach to this issue.

Although it is best to satisfy the Netivot's stringency, in some instances it is impossible to avoid. Thus, it is good to know that in case of need we may rely on the European tradition to be lenient about this matter when the Tzurat HaPetach extends high over its surrounding walls.

Critical and Very Practical Ruling – Lavud Acceptable to Create a Tzurat HaPetach #6

Most interestingly, the Aruch HaShulchan twice (O.C. 362:36 and 363:46) permits the principle of Lavud (a break in a wall of less than three Tephachim which is viewed as solid wall) to create a Tzurat HaPetach. This stands in sharp contrast with Rav Hershel Schachter's view that Lavud may not be used to create a Tzurat HaPetach³. Although it is usually feasible to satisfy this stringency in a small Eruv it is most often very difficult or even impossible to sustain in a large communal Eruv. Soil erosion and work on the utility poles create often create dozens of situations of Lavud on the Lechi in large communal Eruvin, making it a necessity to rely on the Aruch HaShulchan's view⁴.

One clarification is needed. The Aruch HaShulchan explicitly permits the usage of Lavud for the bottom three Tephachim of a Lechi (which is a most common scenario) but does not address either explicitly or implicitly the issue of relying on Lavud in the middle of a Lechi⁵.

Critical and Very Practical Ruling #7 – Tzurat HaPetach Acceptable to Close a Gap the Size of More than Three Tephachim and Less than Four Tephachim

Rav Moshe Heinemann (as recorded in the Star-K's Eruv webinar) rules in accordance with those Acharonim (such as the Tosefet Shabbat 362:25 and Kaf HaHaim Orach Chaim 362:94) forbidding a break in a Mechitza from three to four Tephachim. Three Tephachim or less are acceptable due to its being Lavud. However, some Acharonim argue that a break from three to four Tephachim is not acceptable since we find in Hilchot Mezuzah that an area is not defined as a Petach (opening) if the opening is less than four Tephachim. Thus, since the opening between three and four Tephachim are not defined as a Petach, this opening cannot be corrected by a Tzurat HaPetach.

However, we should note that the Aruch HaShulchan explicitly permits a break between three and four Tephachim to be corrected by a Tzurat HaPetach.

³ Rav Schachter told me (in May 2017) that a very thin break in a Lechi is acceptable even by his standards.

⁴ Interestingly, Rav Bloi permits relying on Lavud on the bottom three Tephachim of a Lechi without citing a dissenting opinion (Netivot Shabbat 19:26).

⁵ The Mishna Berura (363:113) does explicitly permit relying on Lavud even in the middle of a Lechi. For a discussion of the Chazon Ish's position regarding this matter see Rav Gavriel Bechhoffer's "The Contemporary Eruv" pp.127-131. Rav Heinemann permits relying on Lavud for the bottom three Tephachim but not in the middle of a Lechi.

Interestingly, the Mishna Berura does not address this issue. His silence might be interpreted as agreement with the Aruch HaShulchan, since had he disagreed he would have clarified that a Tzurat HaPetach cannot correct such a gap.

Critical and Very Practical Ruling #8 – Omission of a Great Leniency of the Tiferet Yisrael/Mishna Berura

The Mishna Berura (362:64) cites the Tiferet Yisrael (at the beginning of his commentary to Masechet Eruvin) who permits wrapping an Eruv wire around the Lechi and then wrapping around the top of the Lechi. Rav Moshe Heinemann (in his Eruvin webinar that is posted on the Star-K website) understands this to mean that while the Eruv wire is in general supposed to run in a straight trajectory, it is permitted to greatly deviate immediately before it reaches the Lechi, since for almost its entire route it runs straight.

While Rav Heinemann notes the obvious difficulty with this surprising leniency⁶, he rules in practice in accordance with this approach! One may counter with the fact that the Aruch HaShulchan does not cite this questionable leniency and thus every effort should be made to avoid following it. Indeed, Rav Hershel Schachter objects to relying on this leniency in practice.

Critical and Very Practical Ruling #9 – Equivalent Shiurim to that of Rav Moshe Feinstein

In creating the community Eruv in Eugene Oregon there was a need to rely on a gap that was seventeen feet wide. The Haalcha permits a gap of ten Amot and thus the question is how to define an Amah in contemporary terms.

The three major opinions are as follows: According to Rav Moshe Feinstein⁷ (Teshuvot Igrot Moshe Orach Chaim 1:136), the Amah is 21.25 inches (53.98 centimeters) and the Tefach is 3.54 inches (9.00 centimeters). According to Rav Avraham Haim Na'eh (in his famous work on the topic of Shiurim, Shiurei Torah 3:25), the Amah is 18.90 inches (48 centimeters) and the Tefach is 3.15

⁶ A Tzurat HaPetach is supposed to mimic a true doorway. An actual doorway's lintel typically runs straight.

⁷ The Aruch HaShulchan's (Yoreh De'ah 201:3 and 286:21) measure for an Amah is almost identical to that of Rav Moshe. Mishna Berura (358:7; as explained at <https://asif.co.il/download/kitvey-et/kol/kol-30/1-29.pdf>) agrees.

inches (8 centimeters). According to the Chazon Ish (Orah Chaim number 39), the Amah is 24 inches (60.96 centimeters), the Tefach is 4 inches (10.16 centimeters).

When I presented the situation to the regional Poseik, Rav Tzvi Fischer of Portland, Oregon, he was quite hesitant to support an Eruv that did not satisfy the opinion of Rav Avraham Chaim Na'eh. However, when I pointed out to him that the Aruch HaShulchan's (Orach Chaim 363:45, Yoreh De'ah 201:3 and 286:21) measure for an Amah is almost identical to that of Rav Moshe and that the Mishna Brura (358:7 citing the Kitzur Shulchan Aruch ; as explained at <https://asif.co.il/download/kitvey-et/kol/kol-30/1-29.pdf>) agrees, he considered otherwise. If the Aruch HaShulchan, Kitzur Shulchan Aruch, Mishna Berurah and Rav Moshe agree on the Shiur of an Amah it reflects more than their opinions, but rather a tradition among European Jews⁸.

Critical and Very Practical Ruling #10 – The Eruv wire is Permitted to Sag Somewhat

Finally, we note that Aruch HaShulchan's acceptance of an Eruv wire that sags slightly. Interestingly, he does not even quote the Teshuvot Mishkenot Yaakov (111, cited by Sha'ar Hatziyun 362:56) who disagrees, is most telling. This accords with Rav Schachter's reporting that he heard from Rabbanim of the prior generation that the practice of most communities in Europe was to follow the lenient opinion in this area.

In North America, it would be near impossible to rely on utility wires for our Eruvin if we were to follow the stringent opinion of the Mishkenot Yaakov. For this reasons, Eruvin in North America continue the pre-war European tradition to rely on slightly saggy wires.

Conclusion

⁸ While it is certainly of great importance for an Eruv to satisfy Rav Na'eh's smaller Shiur, especially since it represents the Sephardic tradition, Rav Zecharia Ben Shlomo permits relying on Rav Moshe's Shiur in case when it is very difficult to make the Eruv otherwise. This opinion is followed in regards to the Eruv servicing the Yeshiva University community in Washington Heights, New York.

In the realm of Hilchot Eruvin the Aruch HaShulchan does not merely represent the opinion of one Acharon. Rather, he may be seen as presenting accepted practices of classic East European Jewish communities in regards to how they created their community Eruvin. Thus, while those communities who create and maintain their Eruvin following stricter standards than set forth in the Aruch HaShulchan are certainly commended (if they are able to make the effort needed to properly sustain such an Eruv) those who follow the standards set forth in the Aruch HaShulchan may rest assured that they are following in the traditions of what is for many⁹ American Jews, the traditions of their ancestors.

For many communities creating an Eruv that follows the standards set forth in the Aruch HaShulchan is an excellent option. The Eruv avoids questionable leniency while at the same time not adopting excessive stringencies. In doing so, a quality Eruv is created that has a reduced communal footprint and for which proper maintenance at a high standard is an attainable goal.

Rabban Yochanan ben Zakai (Gittin 56) teaches that sometimes when we set our goals too high we wind up achieving nothing. The reasonable and attainable Eruv standards of the Aruch HaShulchan are most appropriate for many communities. Better to have fewer installations and maintain them well as opposed to making a huge number of installations and not maintain them properly¹⁰.

⁹ Rav Shmuel Khoshkerman told me that Sephardic Acharonim devote little space to discussing the intricacies of creating a communal Eruv, since communal Eruvin were not common in the classic Sephardic communities.

¹⁰ I once discovered a large amount of problems with one particular community Eruv with very high standards. When I raised this with the Eruv inspector he conceded that he found it impossible to each week properly inspect the approximately five hundred installations made to create the Eruv. When I adjusted the Eruv to conform with the Aruch HaShulchan's standards, only approximately one hundred twenty Lechis were needed. The Eruv subsequently was meticulously maintained since the task of the weekly inspection became a feasible one.