

The Chumra of the Tevuot Shor and the Yale/New Haven Eruv

Background Information – Yale New Haven Hospital

When reviewing the Yale/New Haven Eruv in the summer of 2019, I was quite concerned at the setup of the Eruv in the area of the Yale/New Haven hospital. There was only a narrow corridor in which one could enter the hospital and remain inside the Eruv. It was very easy for a well-meaning individual to mistakenly stray outside the Eruv since there was little margin of error. I urged the two local Rabbanim, Rav Alex Ozar and Rav Schneur Roth to find an alternative arrangement to allow for easier and much broader Eruv access to the hospital.

After a few weeks Rav Ozar and Rav Roth developed an alternative route. The problem, though, is that it relies on a less than 10 Amot gap (the gap is approximately 12 feet wide) between a Tzurat HaPetach and a wall of a building. Connecting the Tzurat HaPetach to the wall would involve great expense. Obtaining permission to attach the wire and pole to the wall is also highly unlikely¹. This brings us to the extensive and rich debate surrounding the Chumra of the Tevu'ot Shor².

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 a Petach/opening in the wall and not a Pirtzah/breach (provided that that side of the Eruv has wall at least equivalent to the open areas). The Tevu'ot Shor (to Eruvin 11b, cited by the Shaarei Teshuva to Orach Chaim 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 Eruvin) and between Tzurot HaPetach and walls.

¹ Rav Heinemann (in the Star-K Eruv webinar) states that building an Eruv without permission violates Halacha and creates a terrible Chillul Hashem. I heard (in 1985) Rav Yosef Dov Soloveitchik similarly instruct community Rabbanim to refrain from building an Eruv without permission.

² Rav Baurch Simon's in his Imrei Baruch Eruvin UReshuyot (pages 128-131) presents a magnificent summary of this captivating debate.

The Shulchan Aruch and its most authoritative commentaries, the Magen Avraham, Taz and Vilna Gaon, make no mention of this Chumra. Indeed, there has been vigorous debate as to whether the Halacha accepts the Chumra of the Tevu'ot Shor altogether.

Three Reasons offered for the Tevuot Shor's Chumra

The Tevu'ot Shor believes that just as a single lone Lechi may not be positioned more than three Tephachim from a wall (Eruvin 14b) so too a vertical pole of a Tzurat haPetach may not be positioned more than three Tephachim from a wall. The Tevu'ot Shor tries to demonstrate that Tosafot (Eruvin 11a s.v. Ipcha) supports his opinion³. The Netziv (Meromei Sadeh to Eruvin 2a s.v. Tzurat HaPetach) argues that one may infer this position from Rashi (Eruvin 2a s.v. Tzurat HaPetach) as well.

Teshuvot Avnei Neizer (Orach Chaim 287) offers a second explanation arguing that while a Tzurat HaPetach encloses an area but does not create an "Omeid Merubah Al HaParutz" (the walled area is greater size than the non-walled area) situation in which a gap of less than ten Amot may be tolerated. He argues that Amud Merubah Al HaParutz is required and not merely Petach Merubah Al HaParutz.

Finally, the Chazon Ish (Orach Chaim 6:14) supports the Tevu'ot arguing that since a Tzurat HaPetach should be made in manner in which a normal doorframe is made. Thus, since when making a doorway one does not distance its frame from the door so too one should not place a Tzurat HaPetach at a significant distance from the wall⁴.

Argument Number #1 Supporting the New Yale Eruv Route

³ However, Rav Chaim Shaul Greinemann in his Chidushim U'Burim to Eruvin (2:10) disputes this inference. He argues, with support from Teshuvot Rabi Akiva Eiger (number 18) and the Beit Meir (to 363) that one may not draw conclusions from the fact that Tosafot does not offer a specific answer to a question that he raises.

⁴ However, one may counter that one does not even distance a doorframe three Tephachim or less (Lavud) from a doorway and yet all agree that the Tzurat HaPetach may be positioned within three or less Tephachim from a wall. One could argue that just as Lavud is permitted to be followed regarding the positioning of a Tzurat HaPetach, so too may a gap of ten Amot or less be relied upon when positioning the Tzurat HaPetach.

Despite the considerable support enjoyed by the Tevuot Shor, nonetheless there is considerable reason to permit the new Yale Eruv configuration. The first argument is that the Netivot in his Tikkun Eruvin rules in accordance with the Tevuot Shor but presents a modified version. The Netivot follows the Tevu'ot Shor only if both ends of a Tzurat HaPetach are located ten Amot or less from a wall. Many Acharonim, including the Chazon Ish (op. cit.), Teshuvot Tzemach Tzedek (Orach Chaim number eight), Teshuvot Avnei Neizer (op. cit.), Teshuvot Beit Ephraim (Orach Chaim 28) and Teshuvot Maharam Schick (Orach Chaim number 168) subscribe to this more lenient version of the Chumra of the Tevu'ot Shor. Indeed, the situation in Yale/New Haven is one in which only one side of the Tzurat HaPetach relies on a gap that is less than ten Amot away from a wall.

Argument #2 Supporting the New Yale Eruv Route

The second argument is that Rishonim are marshaled in support of the many Acharonim (including the Tosefet Shabbat 363:10, Chayei Adam 48:11 and the Aruch HaShulchan Orach Chaim 362:36) who reject the Tevu'ot Shor's Chumra. Tosafot Rabbeinu Peretz (Eruvin 11a s.v. Mavui) explicitly runs counter to the Tevu'ot Shor. Inferences are made that the Rashba (Eruvin 14b s.v. Shamat), Ritva (Eruvin 10b s.v. Shamat) and Rabbeinu Yehonatan (4a in the pages of the Rif) do not accept the ruling of the Tevu'ot Shor.

Argument #3 Supporting the New Yale Eruv Route

Finally, the Ba'al HaTanya in his Teshuvot HaRav (number 24) writes that the widespread Minhag runs counter to the Tevu'ot Shor. He records that in practice no one is concerned for this stringent view. The fact that the Minhag Yisrael sensitive Aruch HaShulchan rejects the Tevu'ot Shor might also be understood as reflecting the fact that the widespread custom in pre-war Europe was not to follow the ruling of the Tevu'ot Shor.

A Break of Four Tephachim When Rabbim Bokim Bo

Even if one does not require a full Tzurat HaPetach a Halachic adjustment still might be needed at this location. The Shulchan Aruch (Orach Chaim 365:2) requires that a Mavui (alleyway leading from courtyards to the street) be

corrected in a place where Rabbim Bokim Bo (many people trod) even if it is only a break of four Tephachim. By contrast, the Shulchan Aruch (Orach Chaim 365:3) rules that a Chatzer (courtyard) does not need a correction if a break is not greater than ten Amot, even in a place where Rabbim Bokim Bo. The break between the light post and the building in New Haven is larger than four Tephachim and it certainly qualifies as a situation of Rabbim Bokim Bo.

The question is whether we regard contemporary communities as a Mavui or Chatzer. The Rama (Orach Chaim 363:26) rules that we regard contemporary streets as a Chatzer. If so, breaks of ten Amot or less in our communities do not require a Halachic correction. However, the Magen Avraham (365:4) rules that we regard our communities as a Chatzer only when it results in a Chumra (stringency). However, when it will result in a leniency, we are concerned that the area is a Mavui and an opening of at least four Tephachim where Rabbim Bokim Bo must be corrected.

The Even HaOzer (Orach Chaim 365) disagrees and understands the Rama to define our communities as a Chatzer even when it results in a leniency such as a four Tephachim break where Rabbim Bokim Bo. Rav Bloi (Netivot Shabbat 20:15 footnote 34) cites Teshuvot Avnei Neizer and “many Achronim” who rule in accordance with the Even HaOzer.

However, even the Even HaOzer does not permit a break of four Tephachim or more if Rabbim Bokim Bo if it is more than one such opening on one side of the Eruv or a second side of the Eruv. Nonetheless, Rav Meir Arik (Minchat Pitim 363 and 365) is inclined to be lenient. Rav Bloi (Netivot Shabbat 20:14 footnote 32) notes that “many Acharonim” agree with Rav Meir Arik’s more lenient approach.

Nonetheless, since the Ba’al HaTanya (Orach Chaim 365:2), Mishna Berura (363:11) and Aruch HaShulchan (Orach Chaim 363:45 and 365:6) all do not accept the approach which requires no Halachic correction in a case of Rabbim Bokim Bo, we prefer not to rely on this most lenient view. The problem is, as we noted at the beginning of our discussion, that the community does not have permission to affix a Halachic addition.

A viable option is to follow the compromise view of Rav Hershel Schachter (personal communication) that in a case of an opening four Tephachim or more wide but ten Amot or less wide (and there is Rabbim Bokim Bo) to install a solitary Lechi in accordance with the ruling of Rav Shlomo Kluger (Teshuvot HaElef Lecha Shlomo Orach Chaim 159).

Rav Kluger reasons as follows: if the area is regarded as a Chatzer than a break of ten Amot or less does not pose a problem. If the area is defined as a Mavui then it may be corrected with a single Lechi. This approach is followed in practice in the Teaneck community Eruv.

This is a very practical option as often there are existing Lechis on the pole and we rule in accordance with Abaye that Lechi HaOmeid Mei'Eilav constitutes a valid Lechi (a Lechi not erected to serve a Halachic purpose is nonetheless a valid Lechi; Shulchan Aruch Orach Chaim 363:11). In addition, some times the utility pole itself may serve as the Lechi.

In our case, a single Lechi needs to be added to the light post since the light post itself will serve already as the side post for the wire that be affixed to its top. This should not pose a problem since there is permission to add to the light pole which is public property. Following Rav Shlomo Kluger's ruling, no additional installations are need to the building itself which is private property regarding which we do not have permission to make a Halachic installation.

Conclusion

There is considerable and formidable support in favor of the new configuration of the Yale Eruv route. In fact, my Rebbeim Rav Hershel Schachter and Rav Mordechai Willig both told me that they rule in accordance with the Aruch HaShulchan's rejection of the Tevu'ot Shor. In fact, the Eruv that encompasses the Yeshiva University campus is made in accordance with the lenient opinion. Thus, I encourage and support the new route for the Yale/New Haven Eruv by simply adding a solitary Lechi, in conformity with the ruling of Rav Shlomo Kluger.

Nonetheless, I told Rav Ozar and Rav Roth to maintain the old Eruv route along with the new Eruv route. This is because the Mishna Brura (363:23) rules that one should Lechatchila conform to the opinion of the Tevu'ot Shor. Teshuvot Beit Shlomo (Orach Chaim 41) and Teshuvot Aryeh D'Vei Ilai (Orach Chaim 4) agree.

Rav Yaakov Yeshayah Bloi (Netivot Shabbat 19:16 note 37) writes that one should Lechatchilah be Machmir for the strict version of the stringency of the Tevu'ot Shor⁵. This means that Lechatchilah we should avoid relying on even just one side of the Tzurat HaPetach being located within ten Amot of a wall. Thus, those who wish to follow the strict view may continue to do so and use the old narrow portal that satisfies the Chumra of the Tevu'ot Shor. However, one has Halachic right to rely on the more lenient view if he chooses. In any event, it is a good idea to create a backup for those who would mistakenly stray out of the old Eruv path to the hospital.

Bottom line, both those who wish to follow the lenient and strict views can happily coexist regarding creating the new and maintaining the old Eruv routes to the hospital. This is most appropriate regarding the hospital where there is considerable need for the Eruv for the entire Jewish community⁶.

⁵ This seems to be the opinion of the Mishna Berura as well. In his Sha'ar HaTziyun (363:16) he cites the compromise position of the Netivot in brackets but does not seem to rule in accordance with this view.

⁶ I presented this approach to Rav Mendel Senderovic who found it reasonable and fair.