

In Hilchos Shabbos

You have heard the shaylos . . .
Now learn the issues & the opinions

Relying on a
Citywide
Eiruv
Part I: The halachos of
Mechitzos

A summary of the weekly Wednesday night shiur by Rabbi Shmuel Stein at the Miami Beach Community Kollel / To receive a copy send an email to InHilchosShabbos@gmail.com

The *Aruch haShulchan*¹ writes that “for hundreds of years the custom amongst most of the cities of *Klal Yisroel* has been to build city-wide *Eiruv*.” Indeed, many communities nowadays build a city-wide *Eiruv* to permit carrying on Shabbos. Yet, there are individuals who do not rely on the use of citywide *Eiruv* to permit carrying on Shabbos, as the *Mishna Berura*² writes, “*A yarei shamayim* (a G-d fearing individual) should not rely on a citywide *Eiruv* to permit carrying on Shabbos.” In this chapter we will discuss the *melacha* of *Hotza* and the controversy over using a citywide *eiruv* to carry on Shabbos.

The Melacha of Hotza

One of the thirty-nine *melachos* of Shabbos is the *melacha* of *Hotza*.³ The *melacha* of *Hotza* can be defined as transferring an object from one domain to another. For example, one may not carry a *sefer* from his home into the street, because transferring the object from his home (a private domain) to the street (a public domain) violates the *melacha* of *Hotza*.

The Melacha of Hotza in the Mishkan

The walls of the Mishkan consisted of wooden planks, called *kerashim*. The *Gemara*⁴ writes that the *kerashim* were taken from wagons and placed on the desert floor to be assembled. The wagons were considered a private domain, and therefore transferring the *kerashim* from the wagon to the desert floor (which was a public domain) constituted an act of *Hotza*. Therefore, any act which transfers an object from one domain to another violates the *melacha* of *Hotza* and is prohibited on Shabbos.

The Severity of the melacha of Hotza

We find a level of severity associated with the *melacha* of *Hotza* which is not found by other *melachos*.⁵ The *Navi Yermiah*⁶ states, “So says Hashem: If the Jewish people will not listen to me, and they disgrace the day of Shabbos day by carrying a load, I will kindle a fire which will consume the palaces of Yerushalayim that will never be extinguished.” We also find that *Chazal* took drastic measures to ensure that the *melacha* of *Hotza* was not inadvertently violated. For example, *Chazal* decreed that when Rosh Hashana falls out on Shabbos the *mitzva* of *Shofar* is not performed due to the concern that someone may inadvertently carry the *Shofar* on Shabbos, violating the *melacha* of *Hotza*.⁷ It is worthwhile to exempt the entire Jewish people from performing the *mitzva d'Oraisa* of *Shofar* on Rosh HaShana to prevent an individual from inadvertently transgressing of the *melacha* of *Hotza*.

Is there a mitzva to make a citywide eiruv?

As we mentioned, the custom amongst *Klal Yisroel* is to make a citywide *eiruv*. The *Chasam Sofer*⁸ was asked where in *Chazal* is the source for this custom? The *Chasam Sofer* answered: “This does not need a source since it is something which is obvious. As we know, violating the *melacha* of *Hotza* is severe, and it is almost impossible for a community to ensure that all their family members will not violate the *melacha* of *Hotza*. There are also many conveniences which an *eiruv* provides, such as the ability for one to carry a *Siddur* or *tallis* to shul. Therefore, it is obvious that it is appropriate and obligated for a community to make a citywide *eiruv*.” However, *Reb Moshe Feinstein*⁹ writes that “there was only a *mitzva* to make a citywide *eiruv* in the earlier generations when it was difficult to prepare one’s Shabbos needs without an *eiruv*. However, nowadays when one can prepare all his Shabbos needs before Shabbos, perhaps there is no *mitzva* to make a citywide *eiruv*. Furthermore, if every city would make a citywide *eiruv*, people would forget the halachos of *Hotza* entirely, as not all people realize that it is only permitted to carry because of the *Tzurat Hapesach* which was erected. Therefore, there is room to argue that one should only make a citywide *eiruv* when there is a pressing need.”

In this chapter we will attempt to clarify the controversy over making a citywide *eiruv* from a halachic perspective. We will discuss:

- ❖ The Basics of the *melacha* of *Hotza*
- ❖ Citywide *Eiruv*

The Basics of the Melacha of Hotza

The halachos of *Hotza* are very extensive, as *Rav Yisroel Belsky*¹⁰ writes “there are over 200 pages of *Gemara* which deal with the halachos of *Hotza* and making an *eiruv* on Shabbos.” In the following paragraphs we will discuss the basic *halachos* of *Hotza* which are relevant to making a citywide *eiruv*.

The Two Forms of Transferring

Included in the *melacha* of *Hotza* are two forms of transferring:

- 1) Transferring an object from a *Reshus ha'yachid* to a *Reshus ha'rabim*
- 2) Carrying four *amos* in a *Reshus ha'rabim*

1) Transferring an object from a Reshus ha'yachid to a Reshus ha'rabim

It is prohibited to transfer an object from a *Reshus ha'yachid* (a private domain) to a *Reshus ha'rabim* (a public domain).¹¹ For example:

- One may not carry a chair from inside his house (a private domain) to the street (a public domain).
- One may not kick a ball from the street (a public domain) into his gated backyard (a private domain).¹²
- One may not carry tissues in his pocket when leaving his home (a private domain) to the street (a public domain).¹³

2) Carrying four amos in a Reshus ha'rabim

One may not carry an object four *amos* (approx. 7 feet¹⁴) in *Reshus ha'rabim*.¹⁵ For example:

- One may not take off his jacket on a hot summer day and carry it in the street. Since the street is a public domain, carrying the jacket four *amos* is considered an act of *Hotza*.
- One may not push a baby stroller in the street on Shabbos since the stroller is carried four *amos* in *Reshus ha'rabim*.

Defining a Reshus ha'Yachid and a Reshus ha'rabim

To properly understand the *melacha* of *Hotza* and how to make a proper *eiruv*, it is important to clearly define the properties of a *Reshus ha'yachid* and a *Reshus ha'rabim*:

Reshus ha'yachid – A Private Domain

A *Reshus ha'yachid* is defined as an area which is fully enclosed by *mechitzos* (partitions).¹⁶ A backyard which is enclosed by a fence is considered a *Reshus ha'yachid*, since it is completely enclosed by *mechitzos* (partitions). So long as the area is enclosed by *mechitzos* it is considered a *Reshus ha'yachid*, regardless of whether it is owned privately or publicly.¹⁷ For example:

- A public library is considered a *Reshus ha'yachid* since it is enclosed by *mechitzos*. The fact that it is a “public” area does not affect its status as a *Reshus ha'yachid d'Oraisa*.
- A shul is considered a *Reshus ha'yachid* since it is enclosed by *mechitzos*, irrespective of the fact that it is a public place where many people gather.

What is considered a halachic mechitza?

The *Gemara* provides several methods in which a *mechitza* can be built. We will discuss the two most common ways:

1. Walls

The most effective way to create a *mechitza* is to enclose an area with walls. For example, an area which is enclosed with walls that are ten *tefachim* high (38.3 inches¹⁸), is considered a *Reshus ha'yachid*.¹⁹ The *Gemara*²⁰ explains that the wall does not need to be completely solid, as there may be gaps or holes in the wall. If the gaps or holes are smaller than three *tefachim* (10.6 inches²¹) they do not invalidate the *mechitza*. This is based on the principle of *Lavud*, which teaches us that any gap in a wall which is less than three *tefachim* is viewed as if it is filled up. For example, a chain link fence which is ten *tefachim* high is a valid *mechitza* even though there are small gaps in the fence.²²



¹ The *Aruch Ha'shulchan* (345:18) writes “Although we can discuss whether it is permissible to make a city-wide *eiruv* (in a small city), what would be the purpose of this discussion since the custom to make a city-wide *eiruv* has spread to most of the cities in *Klal Yisroel* and this has been the custom already for hundreds of years. It is as if a heavenly voice has declared that the halacha follows the lenient opinion who permits making a city-wide *eiruv*.” ² *Bur Halacha* 345:7 d”h sh’ain; *Mishna Berura* 345:23; *Bur Halacha* 364:2 d”h v’achar ³ *Mishna Shabbos* 73a ⁴ *Mishna Shabbos* 96a; *Gemara Shabbos* 49b ⁵ *Rav Yisroel Belsky (Shulchan Ha'Levi* pp. 109-110) elaborates on the severity of the *melacha* of *Hotza*. ⁶ *Yermiyah* 17:27 ⁷ *Rosh Hashana* 29b ⁸ O.C. 99 ⁹ *Igros Moshe* O.C. 5:28:21, 29 ¹⁰ *Shulchan HaLevi* p. 108 ¹¹ *Mishna Shabbos* 2a; *Rambam* 12:8; *Aruch Ha'shulchan* 301:1 ¹² *Rosh Shabbos* 1:16 writes that transferring an object by kicking it is also a form of *Hotza*. ¹³ *Rambam* 13:8 writes that when one carries an object while walking it is also considered a form of *Hotza*. ¹⁴ Based on the measurement of *Rav Moshe Feinstein* (Quoted in *The laws of an Eiruv* p. 262) ¹⁵ *Gemara Shabbos* 96b. The *Ba'al Ha'meor* (*Shabbos*, 96b on 36b in *Rif*) explains that carrying an object four *amos* in *Reshus ha'rabim* is also a form of transferring and object from one domain to another. This is because *Chazal* teach us that the four-*amos* area which surrounds a person is an extension of his personal domain. Accordingly, The *Ba'al Ha'meor* explains, that when one carries an object four *amos* in *Reshus ha'rabim* it is also a form of transferring an object from one domain to another, because he is transferring the object from his personal domain (i.e., his four *amos*) to the public domain (i.e., the *reshus ha'rabim* which is outside of his four *amos*). Therefore, carrying an object four *amos* in *Reshus ha'rabim* is also considered a form of transferring an object, and thus violates the *melacha* of *Hotza*. The *Rambam* (*Shabbos* 12:8) writes that “carrying four *amos* in *Reshus ha'rabim* is like transferring from one domain to another.” See *sefer To'zoas Chaim* (9:4) where he also proves this concept from the *Talmud Yerushalmi*. ¹⁶ *Rambam* 14:1-2. The *Aruch Ha'shulchan* (345:1-5) and *Bur Halacha* (363:1 d”h asru) discuss how many *mechitzos* one needs to enclose a *Reshus ha'yachid*. ¹⁷ The *Rambam* (14:1) writes that “even an area which is many *millim*, can be considered a *Reshus ha'yachid*, so long as it is enclosed for the purpose of living there, such as a walled city.” ¹⁸ Based on the measurement of *Rav Moshe Feinstein* (ibid) ¹⁹ *Shulchan Aruch* 345:2-3 ²⁰ *Mishna, Eiruv* 16b. The *Gemara Eiruv* 4b rules that ‘*Lavud*’ is a *halacha l'moshe mi'sinai* ²¹ Based on the measurement of *Rav Moshe Feinstein* (ibid)

2. Tzurah ha'Pesach - The form of a doorway

The Gemara²³ writes that if one builds a *tzurah ha'pesach* (the form of a doorway), it is considered a valid *mechitza*. A *tzurah ha'pesach* is commonly made by tying a string across the top of two poles, to form the shape of a doorway. By creating the form of a doorway, we can view the *tzurah ha'pesach* as a doorway which encloses the area (rather than viewing it as a breach) and is therefore considered with a valid *mechitza*.²⁴ For example, to permit carrying in one's open backyard, one may enclose the yard by surrounding it with *tzurah ha'pesach*, which will create a *Reshus ha'yachid*. Nevertheless, although a *tzurah ha'pesach* is a valid *mechitza*, its ability to create a *Reshus ha'yachid* does have some limitations, as we will later discuss.

Reshus ha'Rabim – A Public Domain

A *Reshus ha'rabim* is a public area which is not enclosed by *mechitzos* (partitions). For an area to be a true *Reshus ha'rabim* there are two conditions which must be fulfilled:

- The area is not enclosed by *mechitzos*
- The area is a public area

This means that an area which is not enclosed can only be considered a *Reshus ha'rabim d'Oraisa* if it is occupied by the public. For example, the Gemara²⁵ writes that when the Jewish people traveled in the desert, the desert was considered of a *Reshus ha'rabim* since it was occupied by the public. However, nowadays, the Gemara²⁶ explains, when deserts are not traveled it is not considered a *Reshus ha'rabim d'Oraisa*.

A Karmelis. An area which is not enclosed by *mechitzos* but is not occupied by the public is considered *karmelis* which is prohibited *mid'Rabbanan*.²⁷ For example, nowadays, a desert is considered a *karmelis* which is prohibited *mid'Rabbanan* to carry in. Although it cannot be considered a *Reshus ha'rabim* since it is not occupied by the public, it can also not be considered a *Reshus ha'yachid* since it is not enclosed by *mechitzos*.

How do we define a “public area”?

The *Shulchan Aruch*²⁸ cites two opinions regarding how to define a public place:

- Opinion #1:** An area which is sixteen amos wide
Opinion #2: An area which contains 600,000 people

Opinion #1: An area which is wider than 16 amos

This opinion rules that a street or thoroughfare which is wider than sixteen amos (approx. 28 feet) is considered a “public area.” The *Mishna Berura*²⁹ explains that this opinion holds that we derive this from the Mishkan, which had an area of sixteen amos between the wagons where the people could travel. This public area was considered a *Reshus ha'rabim* and accordingly, this opinion rules that any public area which is wider than sixteen amos is considered a true *Reshus ha'rabim d'Oraisa*.

According to this opinion most cities are a true *Reshus ha'rabim d'Oraisa* since they contain streets and public areas which are wider than sixteen amos.

Opinion #2: An area which consists of 600,000 people

This opinion rules that only an area which consists of 600,000 people can be considered a “public area.” The *Mishna Berura*³⁰ explains that this opinion holds that since the Torah³¹ states that in the times of Mishkan there were 600,000 people in *Klal Yisroel*,³² this opinion rules that an area cannot be considered a true *Reshus ha'rabim d'Oraisa* until it consists of 600,000 people.

According to this opinion smaller-sized cities are not considered a true *Reshus ha'rabim*, since they do not consist of 600,000 people. [These cities are still considered a *karmelis* since they are not enclosed and thus it is prohibited *mid'Rabbanan* to carry there.] Nonetheless, even according to this opinion there are many large cities nowadays which contain 600,000 people and are still considered a *Reshus ha'rabim*. For example, Rav Moshe Feinstein³³ ruled that New York (i.e., Manhattan, Brooklyn) is so densely populated and consist of 600,000 people that it is considered a *Reshus ha'rabim d'Oraisa* even according to this opinion.

To Summarize: A *Reshus ha'yachid* can be created by enclosing an area which is with *mechitzos*, which can be accomplished by either walls or by a *tzurah ha'pesach*. A *Reshus ha'rabim* must be a “public” area and the *Shulchan Aruch* cites two opinions regarding the requirements needed to be considered a “public” area: The first opinion rules that the area must be sixteen amos wide to be considered a *Reshus Ha'Rabim*, while the

second opinion rules that it must also contain 600,000 people to be considered a *Reshus Ha'Rabim*.

Citywide Eiruv: Using a Tzurah ha'Pesach to enclose a city

As we mentioned, the prevalent custom has been to build citywide *eiruv*. Typically, this is accomplished by using a *tzurah ha'pesach* to enclose the entire city. Once the city is enclosed by a *tzurah ha'pesach*, it becomes a *Reshus ha'yachid* where it is permitted to carry. However, since a *tzurah ha'pesach* is a lower level *mechitza*, it is controversial whether it is permitted to use a *tzurah ha'pesach* to enclose a city. This is due to the principle of *asi rabim u'mivatel mechitzos*.

Asi rabim u'mivatel mechitzos - a public thoroughfare invalidates mechitzos

The Gemara³⁴ introduces the principle of *asi rabim u'mivatel mechitzos* - a public thoroughfare has the power to invalidate *mechitzos*. Which means, that although a *tzurah ha'pesach* generally can enclose an area and transform it into a *Reshus ha'yachid*, it is not powerful enough to contain a true *Reshus ha'rabim d'Oraisa* and transform it into a *Reshus ha'yachid*, because the public thoroughfare invalidates the *mechitza*.³⁵

Based on this Gemara, a *tzurah ha'pesach* is not sufficient to enclose a city. Since there is a *Reshus ha'rabim* in the city, the public thoroughfare cannot be contained by the *tzurah ha'pesach*, because the public thoroughfare has the power to invalidate *mechitzos*. This would create a problem with many citywide *Eiruv*, which typically use *tzurah ha'pesach* to enclose the entire city, as the *Mishna Berura* wonders “It is difficult to understand the prevalent custom of making a citywide *eiruv* by using a *Tzurah Hapesach*.” The *poskim* explain that the extent of this problem depends on the size of the city, as we will explain:

Small Cities

The *Mishna Berura*³⁶ explains that “the custom to make a citywide *eiruv* is based on the second opinion cited in the *Shulchan Aruch* earlier, who rules that our small cities are not considered a true *Reshus ha'rabim* since they do not contain 600,000.”³⁷ Therefore, one may use *tzurah ha'pesach* to enclose the small city since we do not apply the principle of *asi rabim u'mivatel mechitzos* - that the public invalidates the *mechitzos*, because these cities do not have a true public thoroughfare.³⁸ Similarly, the *Aruch haShulchan*³⁹ writes that “The custom to make a citywide *eiruv* is based on the opinion who holds that to be considered a *Reshus ha'Rabim* the area must contain 600,000 people, and our cities do not contain 600,000 people. We may rely on this lenient opinion because all the cities have relied on it for hundreds of years. It is as if a heavenly voice has come out and declared that the halacha is in accordance with this lenient opinion. Therefore, nowadays we do not have a true *Reshus ha'rabim*, other than in a few large cities which contain 600,000 people.”⁴⁰

Nevertheless, the *Mishna Berura*⁴¹ writes that “although the upstanding custom has been to rely on this lenient opinion, in truth, it is not so clear that one may rely on this opinion since the *Shulchan Aruch* [and the majority of opinions who] rule in accordance with the first opinion that holds that a public area which is sixteen amos wide is considered a *Reshus ha'rabim*.” Accordingly, most of our cities have streets which are sixteen amos wide and are indeed a true *Reshus ha'rabim* and may not be enclosed with a *tzurah ha'pesach*, because the public will invalidate these *mechitzos*. Therefore, the *Mishna Berura*⁴² concludes, “although one may not protest against those who follow the general custom to rely on a citywide *eiruv* which enclose a small city with a *Tzurah Hapesach*, a *yarei shamayim* (G-d fearing individual) should be stringent upon himself and not rely on a citywide *eiruv* to carry on Shabbos.”

Large Cities

A city which has a population of 600,000 people has a more serious issue regarding building a citywide *eiruv*. Since these cities contain 600,000 people, they are considered a true *Reshus ha'rabim* according to all opinions. Accordingly, using a *tzurah ha'pesach* to enclose these cities would not be effective since “a public thoroughfare invalidates the *mechitzos*.” The *Aruch HaShulchan*⁴³ writes that “the custom to make a city-wide *eiruv* [applies only to small] cities which according to one opinion is not a *Reshus ha'rabim*, but this custom does not apply to large cities which contain 600,000 people and is a *Reshus Ha'Rabim* according to all opinions.” Indeed, Rav Moshe Feinstein⁴⁴ and other leading *poskim*⁴⁵ of last generation ruled that Brooklyn and other cities which are populated with more than 600,000 people may not be enclosed with a *Tzurah ha'pesach* to create an *eiruv*.

²² Additionally, even if the gap in the wall is larger than three *tefachim*, if the solid sections of the wall make up the majority (i.e., 51%) of the wall, it is still a valid *mechitza*. This is based on the principle of *omed meruba al ha'parutz* (the solid sections of the *mechitza* are greater than the breaches of the *mechitza*) *Shulchan Aruch* 362:9. The *Shulchan Aruch* (ibid) rules that even if the solid part (*omed*) is equal to the gaps (*parutz*), it is still a valid *mechitza*. The principle of *omed meruba* allows us to view the gaps as “doors” to the fence, and not as a breach to the fence. However, if there is a gap which is wider than ten amos wide (17 feet 8.5 inches according to the measurement of Rav Moshe Feinstein, quoted in *The laws of an Eiruv* p. 262), we can no longer consider the gap to be a “door,” because doorways are typically less than ten amos wide. Thus, if any of the gaps are wider than ten amos it invalidates the *mechitza*. (*Shulchan Aruch*, ibid) ²³ *Mishna Eiruv* 2a; *Shulchan Aruch* 362:10. *Shulchan Aruch* 362:12 discusses the guidelines for making a *Tzurah ha'pesach*. ²⁴ We do not consider a doorway to be a breach in the *mechitza*, but we consider it part of the *mechitza*. For example, when the door of a house is open, we do not consider it to be a breach in the wall, but a mere opening. Similarly, when an area is enclosed by a *Tzurah ha'pesach* (the form of a doorway) we consider the area to be surrounded by doorways and not breaches, and therefore becomes a *Reshus ha'yachid*. See *Chidushei Rav Chaim haLevi*, on the Rambam Shabbos 16:16 ²⁵ Shabbos 6b; Rambam (Shabbos 14:1) and *Kesef Mishna* (there) ²⁶ Shabbos 6b ²⁷ *Shulchan Aruch* 345:1 ²⁸ *Shulchan Aruch* 345:7 ²⁹ *Mishna Berura* 345:18 ³⁰ *Mishna Berura* 345:23. ³¹ *Shemos* 12:37 ³² The *Mishna Berura* (345:23) explains that although there were also *eiruv* rav, women and children, who were part of *Klal Yisroel* who were not included in the 600,000, and therefore there were considerably more than 600,000 people who populated the Midbar at that time, the number 600,000 is used to define a *Reshus ha'rabim* because this is the number which is explicitly stated in the Torah. ³³ *Igros Moshe* (O.C. Vol. 1, 109 and 139) regarding making an *Eiruv* in Manhattan, and Vol. 4, 87 and 88 regarding making an *Eiruv* in Flatbush. ³⁴ *Eiruv* 22a (Rashi *d'h chayavim*); *Shulchan Aruch* 364:2, *Mishna Berura* 364:8, *Biur Halacha* 364:2 *d'h v'achar* and *Aruch ha'Shulchan* 364:1. ³⁵ The *Shulchan Aruch* (364:2) seems to rule in accordance with the opinions that the city must be fully surrounded with walls and a door which is closed at night, to prevent the public thoroughfare from ruining the citywide *eiruv* (*Mishna Berura* 364:8). However, according to the second opinion cited in the *Shulchan Aruch* (ibid) it would be permitted (*mid'Oraisa*) to enclose a city with *Tzurah Hapesach* and the public thoroughfare cannot ruin the citywide *eiruv* (*Biur Halacha* 364:2 *d'h v'achar*). ³⁶ *Mishna Berura* 364:8 ³⁷ Rav Moshe Feinstein (O.C. 1:139) writes this way as well. ³⁸ From the fact that the *Shulchan Aruch* cites this opinion as a *yeish omrim* after citing the other opinion as a *'stam'* ³⁹ 445:17-18 ⁴⁰ The *Biur Halacha* (364:2 *d'h v'achar*) gives an additional consideration which adds to the legitimacy of relying on this opinion, since the *Shulchan Aruch* also cites an opinion (cited in footnote 35) who rules that a *Tzurah Hapesach* can indeed enclose even a true *Reshus Ha'rabim*. ⁴¹ *Mishna Berura* 345:23; *Biur Halacha* 345:7, *d'h sh'ain sshim* ⁴² *Biur Halacha* 345:7, *d'h sh'ain*; *Mishna Berura* 345:23; *Biur Halacha* 364:2, *d'h v'achar* ⁴³ 345:18 ⁴⁴ *Igros Moshe* O.C. Vol. 1, 109 and 139 regarding making an *Eiruv* in Manhattan, and Vol. 4, 87 and 88 regarding making an *Eiruv* in Flatbush. ⁴⁵ In the year 1958 the Satmar Rebbe gathered many of the *gedolim* of previous generation to discuss building an *Eiruv* in Brooklyn. The Satmar Rebbe and the majority of the *Rabbanim* who attended the meeting were opposed to creating an *Eiruv* in Brooklyn. Rav Yisroel Belsky (*Shulchan Ha'Levi*, pp. 108-109) elaborates on numerous conversations which he had with the leading *gedolim* of the previous generation regarding prohibiting use of a city-wide *Eiruv* in Brooklyn.