

SHULCHAN HALEVI

Halachic Responsa
From the Desk of

HAGAON HARAV
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samim – Who has created fragrant woods. If the scent derives from a grass or similar plant that withers away in the winter, then the blessing is ‘*borei isvei besamim* – Who has created fragrant grasses’. ‘*Borei minei besamim*’ is made on a scent derived from animals, such as musk, or a mix of spices ground into a powder that cannot be separated, or during havdalah, as mentioned above.

These halachos are treated in the Shulchan Aruch,¹⁰⁴ and carry a special importance. Chazal¹⁰⁵ tell us: “*Let all souls praise God, Halleluyah.*’ What thing does the soul benefit from [in this world, that it should praise Hashem]? I would say, this refers to fragrance.” Fragrance is something the soul itself enjoys. It is certainly worthwhile to know the precise blessing to recite on a pleasure that even the soul enjoys. As we have often indicated, the halachos presented here are only a basic outline. A proper understanding of these halachos can only be reached by studying and reviewing them thoroughly.

ERUV IN BUNGALOW COLONY AND CITY¹⁰⁶

Is it preferable to be stringent (*machmir*) and avoid carrying within the eruv of a city, bungalow colony, or camp?

ANSWER

If the *eruv* in question is known to be kosher, and under reliable supervision, then there is no problem making use of it. There are some who wish to follow the opinion of the Rambam,¹⁰⁷ who holds that the distance of the enclosure covered by actual *mechitzos* (halachic ‘barriers’) should be greater than that covered by *tzuross ha’pesach* (halachic ‘doorways’). This principle is called “*omed merubah al haparutz,*” that is, the real barriers must be greater than the open

104. או"ח סי' רט"ז סע' ב'

105. ברכות מג:

106. או"ח סי' שמ"ה

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areas in which doorways are used to complete the enclosure. Most eruvim do not adhere to this restriction, and those who wish to be *machmir* should consult with the Rav in charge of the particular eruv they wish to use.

Bungalow colonies: In a bungalow colony, as long as the eruv was installed correctly (*al pi din*), there is almost never a question as to its kashrus. This is because these small collections of summer cabins are usually not considered to be a proper public domain (*reshus ha'rabbim*), even considering the country road that might bisect it. Even in the view of the Mishkenos Yaakov,¹⁰⁸ such an area is not a public domain, and the eruv is kosher. Some bungalow colonies may nevertheless have public domains running through the area enclosed by the eruv, so it is always advisable to consult with the Rav in that colony for specific information regarding each eruv.

City eruv: Determining the halachah regarding a city eruv is far more complex. It is clearly established in halachah, that a series of *tzuross* *ha'pesach*, or open doorways, in a public domain (*reshus ha'rabbim*) cannot be used for an eruv. What remains as a matter of dispute is precisely what the Torah considers to be a public domain.

The early Rishonim disagree on whether a domain must contain six-hundred thousand people to be considered 'public'. Rashi¹⁰⁹ and Tosafos¹¹⁰ hold that it must, while most other Rishonim disagree, and maintain that even if there are not six-hundred thousand people in a particular area, it may still be a full-fledged public domain.

About one hundred and seventy-five years ago, two major responsa were written regarding eruvim. The Mishkenos Yaakov¹¹¹ wrote against the practice of building eruvim in large cities, even if their population did not reach six-hundred thousand, while the Beis Ephraim¹¹²

108. ע"י להלן

109. עירובין ו. ד"ה ר"ה, ו. ד"ה ירושלים, נט. ד"ה עיר

110. שבת ו. ד"ה כאן

111. שו"ת חלק או"ח סימנים קכ-קכב

112. שו"ת חלק או"ח סימנים כז-כז

justified the construction of such eruvin, as long as the population did not exceed six-hundred thousand people, based on Rashi and Tosafos. The custom in Europe in most communities was to rely on the Beis Ephraim, Rashi, and Tosafos, that a Torah-sanctioned reshus ha'rabbim must be populated by six-hundred thousand people. Since most European towns did not meet that criterion, eruvin were permitted during that period.

With the passing of time cities became larger until it became common for Jews to live in cities with populations in the hundreds of thousands and even millions. This means that even Rashi and Tosafos would consider these cities full-fledged 'public domains,' and the main *heter* of the Beis Ephraim no longer applies.

In the interest of maintaining the viability of eruvin in large cities, some modern-day Rabbanim began to search for various rationales to avoid classifying large cities as bona-fide public domains.

Sidewalks: One suggestion that has been made is that sidewalks are not public domains, but simply "edges of the public domain" (*tzidei reshus ha'rabbim*). If this were indeed the case, it would be permissible to set up an eruv on the sidewalk. Presumably, the rationale is that cars and other vehicles do not generally drive on the sidewalk; they usually drive on the paved road, which contains no obstacles and upon which it is easier to travel. On the other hand, the Gemara¹¹³ defines *tzidei reshus ha'rabbim* as a market place where peddlers sell their wares and pedestrians cannot pass through with ease. With this in mind, it becomes very difficult to classify our sidewalks, which were made for the express purpose of permitting the free flow of pedestrian traffic (*hiluch ha'rabbim*), as *tzidei reshus ha'rabbim*, where pedestrian traffic is limited.

Individual streets: Another mistaken idea is that individual streets which cannot accommodate six-hundred thousand people at a time are not considered reshus ha'rabbim, even if they are part of a city

whose population exceeds that number. This innovative distinction fails when subjected to halachic scrutiny. The undisputed halachah is that an alley-way open on both ends (*mavui mefulash*) to a public domain is also classified as a public domain. Side streets are no better than alley-ways, and open-ended side-streets must also be classified as a part of the public domain. Thus, the argument for constructing an eruv on side-streets becomes completely baseless. More fundamentally, the fact that open-ended alley-ways are considered part of the public domain negates the notion that for any particular street to be deemed a public domain, it would need to have six-hundred thousand residents. It is unthinkable that an alley-way could accommodate such a number, yet it certainly forms part of the public domain.

Number of passersby: Others set on finding a loophole for erubin in large cities looked to the wording of the Shulchan Aruch,¹¹⁴ who writes that a *reshus ha'rabbim* is one that is traversed by six-hundred thousand people each day. This, they suggested, means that even if an area or thoroughfare was potentially capable of handling the traffic of six-hundred thousand people, if the number of actual passersby each day was fewer, it could not be classified as a public domain. This would allow the construction of halachic 'doorways' in and along such thoroughfares. The Mishnah Berurah¹¹⁵ takes issue with this interpretation, saying, "I have looked through all the Rishonim who discuss this view, and this precondition is not mentioned by them. [The Rishonim] only say that a city must be populated by six-hundred thousand." Given this, all of a large city's roads and thoroughfares are to be considered a *reshus harabbim*, even if no existing street carries six-hundred thousand people daily.

As an aside, the idea that there are streets through which 600,000 people traverse daily gives credence to a fantasy. No such street ever existed and imagining this to be a requirement for a *reshus ha'rabbim* is essentially an attempt to institute a halachic reform for

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115. שם ס"ק כ"ד

the sake of modern convenience. The danger of such an approach is self-evident.

The law of the land: In one city, a certain Rav justified the building of an eruv based on the halachah of *dinna d'malchusa dinna*, that the law of the land is halachically binding. It is the law of the land that all people, pedestrians and vehicles alike, are required to come to a full stop at a red light. Therefore, this Rabbi opined that the barrier of the traffic signal should be considered a halachic 'wall' separating one city block from the next, breaking up the city into hundreds of separate blocks. On the basis of this idea, one which was never previously mentioned in halachic literature, he permitted the construction of an eruv in an area where the Torah prohibition to carry remained.

The severity of hotza'as Shabbos: It is one thing if a person relies on an established leniency among the Rishonim, such as Rashi and Tosafos. No one will be taken to task by the Ribbono Shel Olam after one hundred and twenty years for carrying in an eruv that was built in consideration of the *minhag ha'kehillos*, the custom of the European communities, and founded on the opinions of Rashi and Tosafos.

Even so, when it comes to relying on the city-wide, European eruv, the Mishnah Berurah often repeats the telling phrase, "*uba'al nefesh yachmir* – and a sensitive soul should be stringent." In our times, it is no longer a question of stringency. With city populations easily exceeding six-hundred thousand, it is a genuine matter of a Torah prohibition. Creative rationales have no place anywhere in halachah, especially when we are dealing with a serious *issur* like *hotza'as Shabbos*.

The prohibition of *hotza'ah*, of carrying on Shabbos, is one of the most serious prohibitions in the Torah. Family purity, which is dear to everyone (and no one would ever think to be lenient in this), carries a punishment of *kareis*, spiritual severance from HaKadosh Baruch Hu. *Hotza'ah* is far more serious, and carries the death penalty of *skilah* – stoning, in addition to *kareis*.

The *issur* of carrying is unique amongst all the thirty-nine *melachos*

of Shabbos. The discussion of hotza'ah in the Talmud is ten times longer than the next most extensive topic. Over two hundred pages of Gemara are dedicated to the intricacies of forbidden hotza'ah. No other *issur d'Oraisa* is protected by so many Rabbinical ordinances and stringencies. We refrain from performing two Torah mitzvos, and one ordinance of the Prophets – shofar, lulav, and megillah – in deference to the *issur* of hotza'ah on Shabbos. According to most Rishonim, the entire edifice of *muktzah*, the restriction of handling unnecessary items on Shabbos, is to guard against accidental hotza'ah. Shlomo HaMelech wisely developed the requirements of *erubin* even in non-public areas, and Hashem approved it, as a safeguard against violating the Torah prohibition of hotza'ah.

If anyone would ask why the first Beis HaMikdash was destroyed, the natural response would be to quote the Gemara in *Yoma* (9b): “Because of three things...idolatry, immorality, and murder.” But Yirmiyahu HaNavi gave another reason altogether:

Thus says Hashem, “Guard your lives and do not carry any object...do not take out from your homes any object on the Sabbath day... If you do not heed Me to sanctify the Sabbath day and not to carry objects, and you come to the gates of Jerusalem on the Sabbath day, I shall kindle fire in her gates, and I shall consume the palaces of Jerusalem, and it will not be extinguished” (Yirmiyahu 17:21–22,27).

Instead of seeking leniencies and finding rationales to permit what is *assur*, we should take *Chazal* as our guide and guard ourselves from the *issur* of hotza'ah, relying only on the solid views of the Rishonim. We should shun modern-day excuses for carrying on Shabbos Kodesh.

The Gemara (*Eruvin* 101a) states, that when Yerushalayim was completely surrounded by walls, it was rendered a *karmelis*. The question then arises, why indeed did they not make *eruvei chatzeiros* or *shitufei mevo'os* to permit carrying on Shabbos? Many *mefarshim* answer that it was an accepted *minhag* not to build *erubin* in large cities even where it was permissible.

It should be noted when making erubin in cities where the population is less than 600,000 one must be on guard for an increase in population which would render the existing erubin invalid. Furthermore, almost all of the creative reasons invented to permit erubin in large cities today would result in rules that would make it impossible for the existence of a *reshus ha'rabbim*, even those surrounded by walls, such as Yerushalayim, and the Babylonian city of Mechuza. It is self-evident that reasoning which leads to absurd conclusions is flawed by definition. It is surely the most ridiculous absurdity to imagine that there were never any public domains when so many of them are actually identified by Chazal and in light of the many decrees that were made by Chazal to prevent carrying on Shabbos. This alone is proof enough to invalidate this entire modernistic approach to halachah.

It is painful to observe how the groups who wish to construct these erubin insist that the Chassidic custom has always been to seek any justification to allow erubin any place, when in fact all historical evidence points to the contrary. As we mentioned above, it was the Beis Ephraim, a staunch *misnaged*, who permitted erubin in Europe.

In Warsaw, Poland, the Rav who permitted an eruv, even when the population of the city grew to exceed 600,000, was Rav Shlomo Dovid Kahane, a Lithuanian Jew who never identified with Chassidism. The Chassidic population of Warsaw never used the eruv, and considered carrying in Warsaw on Shabbos to be prohibited.

Those who today wish to permit erubin, who in every other respect are faithful to time-honored traditional custom have in this case availed themselves of an approach to halachah that has no precedent and has never before appeared in any reputable Torah work.

FISH ON PESACH

Should one be concerned about the rumor that large frozen fish vendors sprinkle starch, which might be chametz or kitniyos, on the fish to keep them from freezing together?