

Fundamentals of a Tzuras Hapesach

Last week, we discussed the definitions and necessary *tikkunim* of a *chatzer* and a *mavoi*. We concluded with the *minhag* brought by the **Rema (363:26)** that nowadays we are stringent to only use a *tzuras hapesach*, a doorframe-like structure, to “fix” all of our streets. This week we will focus on the details of a *tzuras hapesach*. *Be”H* we will discuss its *halachos* in greater detail later in the *perek*.

Rashi (2a), based on the **Gemara (11b)**, tells us that a *tzuras hapesach* is comprised of two side posts (at least ten *tefachim* tall) and a beam (usually a string or rope) placed horizontally above them. With this in mind, it would seem difficult to understand the Mishnah’s statement that while a *tzuras hapesach* can enclose even a *mavoi* wider than ten *amos*, a *korah* cannot. Seemingly, a *korah*, which rests on the two *mavoi* walls, should automatically be considered a *tzuras hapesach* and work to “fix” an opening of any width!

The **Mogen Avraham (363:28)** proves from here that one cannot use the walls of the *mavoi* as the side posts for his *tzuras hapesach*; that is why a *korah* does not have the leniencies of a *tzuras hapesach* [see also **Darkei Moshe (363:13)**]. The **Chazon Ish (70:15-17, 79:11)** understood the *Mogen Avraham* to mean that the problem with considering the walls of the *mavoi* to be the side posts of the *tzuras hapesach* is because when there are no side posts that take up some space of the width of the entrance, it lacks the appearance of a “doorway” [see also **Maharsham 1:206**]. The **Steipler (Kehillos Yaakov, siman 6)**, as well, writes that the *Chazon Ish* told him this, and he (the *Steipler*) later noticed that it is explicit in the words of **Rabbeinu Yehonason (11b s.v. va’afilu)**.

However, other **Acharonim** [See **Machatzis Hashekel to Mogen Avraham** *ibid.*, **Mishkenos Yaakov (OC 123)**, and **Chasam Sofer (OC 96 s.v. amnam)**] understood the *Mogen Avraham* to mean that the problem of using the wall of the *mavoi* for a *tzuras hapesach* is simply because a *tzuras hapesach* requires independent side posts. The wall of the *mavoi* cannot have a dual identity as both a “wall” of the *mavoi* and “side posts” of the *tzuras hapesach*. In contrast to the conclusion of the *Chazon Ish*, these **Acharonim** explain that according to the *Mogen Avraham*, one **would** be allowed to erect a *tzuras hapesach* with side posts which continue along the length of the walls of the *mavoi* (see Figure 1), despite the fact that these posts are not easily discernible and that they don’t take up space at the entrance of the

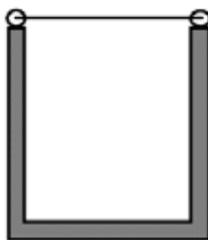


Figure 1

mavoi. This seems to also be the *psak* of the **Mishnah Berurah (Shaar Hatziyun 363:37)**.

This *shaylah* – whether the side posts of a *tzuras hapesach* need to be within the entrance of the *mavoi* – is actually not uncommon at all. It is, in fact, very common to attach the side posts of a *tzuras hapesach* to the walls of a house or building. If one isn’t careful, he can accidentally attach the posts in a way that they are not within the entrance of the *mavoi*. This is especially common when dealing with a municipality or neighbors who don’t allow one to put the posts in the ideal location. At times, because of the opposition, one will relocate the posts – either without realizing or because no other location is feasible – to a place which is “*mei’achorei hakosel*.” The *sefer HaEruv Lemaaseh (pp. 2-3)* describes how a certain restaurant owner wanted to create more privacy for his customers, so he built a wall to block off the view from the street. What he didn’t realize was that he built this wall directly under a *tzuras hapesach* and created a situation where one post was now “behind” this added wall.

Rav Moshe Englard (*Tikkunei Eruvin*, gilyon 77) points out that this can also be very relevant when putting up a *tzuras hapesach* to fully enclose an already-gated area. According to the *Chazon Ish*, one must be careful not to put the side post of the *tzuras hapesach* adjacent to a section of the gate that always remains closed (see Figure 2), since that is not part of the opening of this *mavoi*. Nonetheless, Rav Englard adds (*Tikkunei Eruvin*, gilyon 52) that if this part of the gate can open, even if it generally doesn’t, then it can be considered part of the entrance of the *mavoi*, and the *tzuras hapesach* would thus be considered within the *mavoi*’s entrance.

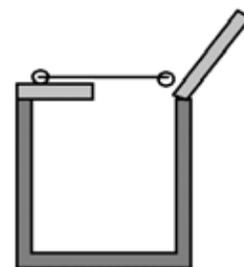


Figure 2

Practically speaking, Rav Englard (*Pesach HaEruv*, *Eruvin* 2a) writes that he instructs people to fix it in a way that will satisfy the *Chazon Ish*’s opinion [see also *Tikkunei Eruvin* (gilyonos 1, 16, and 33) where he suggests a way to circumvent this issue]. It is common among smaller, community-wide *eruvim* to take this *Chazon Ish* into account, especially in Eretz Yisrael. Nonetheless, Rav Moshe Berlin (*The Laws of an Eruv* ch. 6 note 27) holds that one can be lenient if there is a great need. Rav Dovid Feinstein (*The Laws of an Eruv* ch. 5 note 18) held that one does not need to be concerned about this. The idea of a *tzuras hapesach* is that it creates the *tzurah* (form) of a *pesach* (doorway). When placed at the entrance of a *mavoi*, the *mavoi* is now considered closed off entirely. See **Shu”t Maharsham (1:162)** who points out that a

tzuras hapesach only needs to represent the **form** of a doorway, but it doesn't need to emulate an actual doorway. For this reason, a *tzuras hapesach* can be constructed by stringing a rope from post to post, like the **Rema (363:26)** writes, even though no one would ever make such a doorway.

Nonetheless, it is clear from the **Gemara (6a, 11a)** that at the very least, a *tzuras hapesach* needs to represent the **form** of a doorway. For this reason, the **Tosefes Shabbos (363:64)** writes that one may not rely on *lavud* for the side posts of a *tzuras hapesach* by placing multiple pieces of material within three *tefachim* of one another, as this does not have the appearance of a doorway. However, the **Taz (363:19)** clearly holds that one **can** use *lavud* to form these side posts. Although the **Mishnah Berurah (363:113)** brings both opinions, in **Shaar Hatziyun (363:19)** he cites only that of the **Tosefes Shabbos**. The **Chazon Ish (79:11)**, as well, maintains that one may not rely on *lavud*. See also **The Laws of an Eruv (ch. 12 note 22)**.

Rav Yaakov Blau (The Laws of an Eruv ibid.) concurred with the **Tosefes Shabbos**, **Mishnah Berurah**, and **Chazon Ish**. However, he did allow one to use a chain-link fence for this purpose, even though it requires *lavud* to be effective. The reason *lavud* cannot be used for a *tzuras hapesach* is because it doesn't have the appearance of a doorway; a chain-link fence, though, while requiring *lavud* to work, does have the appearance of a doorway. See also **Tikkunei Eruvin (gilyon 77)**. See **The Laws of an Eruv (p. 207)** who extends this *chiddush* to a case where two smaller *lechayayim* are placed one on top of the other in a way that only a very small gap exists between the two (necessitating *lavud*). He rules that this is okay since it is clear that the two pieces are connected and being used as the doorframe. However, **Rabbi Ribiat (The 39 Melochos, hotza'ah note 119)** cites **Rav Yaakov Kamenetsky** as having maintained that *lavud* may not be relied upon at all to form the side posts of a *tzuras hapesach*.

This *shaylah* can be very relevant for a number of reasons. Firstly, sometimes a *tzuras hapesach* is very high and it isn't always easy to buy one long piece of wood (or other material) to serve as a side post. It is often much simpler to buy two pieces of wood and stack them one on top of the other. According to the above stringent opinion, one should ensure that no space remains between the two pieces. For this reason, some prefer to use a PVC conduit, which comes with a "bell end" to ensure that one piece connects with the other and that there are no gaps at all. While optimal for this reason, it can be more costly than using wood. [- Based on a conversation with **Rav Dovid Zomick**, rabbinic manager of the Five Towns/Far Rockaway eruv].

This *shaylah* can also be relevant when there is damage to part of the *lechi*. Replacing or repairing a *lechi* can be difficult and costly. If we could rely on *lavud* to use the remaining parts, things would

be much simpler. According to the above, though, one must make sure to close this gap.

Along these lines, that a *tzuras hapesach* must depict the form of a doorway, **Rav Yaakov Lorberbaum** (author of the *Nesivos Hamishpat*) writes (in a small *kuntres* titled *Tikkun Eruvin* and printed in the back of his *sefer Mekor Chaim*) that one may not place even one of the side posts of the *tzuras hapesach* inside an area that is surrounded by four walls. Although many *poskim* argued on this *Mekor Chaim* [see **Chasam Sofer (OC 91 and 96)**, **Avnei Nezer (OC 291)**, **Maharsham (1:207)**, and **The Laws of an Eruv (ch. 6 note 20)**], the **Mishnah Berurah (363:113)** brings it down as *halachah*. It seems that the main issue that the *Mekor Chaim* had with this is that when a post of a *tzuras hapesach* is surrounded by four walls, it is hard to view the *tzuras hapesach* as a single structure [see **Haelef Lecha Shlomo (161, 174)** and **Nesivos Shabbos (19 note 43)**]. However, the details of precisely what is needed to create this problem are unclear.

Rav Moshe Feinstein (The Laws of an Eruv ch. 6 note 21) and **Rav Yaakov Kamenetsky (Emes L'Yaakov OC 361 note 404)** held that the *Mekor Chaim* would invalidate a *tzuras hapesach* any time a post is surrounded by walls, even if these walls are only halachic in nature and not physical. Accordingly, if one side post of a *tzuras hapesach* (or both) is placed under an overhang of a house that meets the halachic requirements of *pi tikrah* (wherein the edge of a roof is halachically viewed as continuing downward), then even though there is no physical wall that divides the *tzuras hapesach*, **Rav Dovid Feinstein (The Laws of an Eruv ibid.)** ruled that it is *pasul*. However, **Rav Aharon Kotler (ibid., note 22)** disagreed. He held that the halachic status of the domain is irrelevant. A *tzuras hapesach* becomes *pasul* only when actual, physical partitions divide the two domains and the *tzuras hapesach* thus appears split. This was also the understanding of **Rav Yosef E. Henkin (Gevuros Eliyahu OC 113:5)**, as evidenced by the fact that he validated such a *tzuras hapesach*. This seems to also be the understanding of **Rav Tzvi Pesach Frank (Har Tzvi 2:23:1)**. **Rabbi Ribiat (The 39 Melochos p. 1315)** writes that preferably, one should avoid placing a post of a *tzuras hapesach* under a *pi tikrah* overhang.

It should be noted that although the **Avnei Nezer (291)** disagreed with the reasoning of the *Mekor Chaim*, he nevertheless invalidated a *tzuras hapesach* with an enclosed side post for a different reason. He maintained that such a *tzuras hapesach* does not meet the necessary requirements to apply the *halachah* of *gud asik*. Thus, he ruled that if the height of the *lechi* exceeds the height of the fence that surrounds it by ten *tefachim*, we can view the *lechi* as a distinct wall above the fence, whose significance cannot be nullified by an "imaginary halachic wall." This **Avnei Nezer** is relied upon in pressing circumstances [see **The Contemporary Eruv (p. 115)**].