

HALOCHOSCOPE

This week's question:

Two camps or bungalow colonies are within walking distance. Residents would like to walk from one to the other on *Shabbos*. The distance between some of the actual residences is longer than a *techum Shabbos*. Each area is enclosed with fences and *tzuras hapesach*, the customary strings used with an *eruv chatzair*. The distance between the enclosures is less than a *techum*. Do they, or some of them, need to make an *eruv techumin*? If this is necessary, may they use their *eruv* indiscriminately?

The issues:

- A) *Techum Shabbos*
 - B) *Tzuras Hapesach*
 - C) Differences between individual residences and cities or settlements
 - D) *Eruv Techumin*
- A) *Techum Shabbos*

The Torah says "one may not leave 'his place' on *Shabbos*". This implies that one must remain within certain boundaries on *Shabbos*. The Talmud debates whether this is a Scriptural or a Rabbinical matter. We follow the opinion that considers it Rabbinical. [Some maintain that there is also a Scriptural *techum*, twelve times the distance of the Rabbinical *techum*.] Therefore, on *Shabbos*, one may walk the four cubits he was within at the onset of *Shabbos*, no matter where this is. He also has a square of four thousand cubits outside this space, with his initial four in the center. One's home is considered his original four cubit "place", as is his entire city, if that is where he began *Shabbos*. This is called his *mekom shevisa*, place of spending *Shabbos*. Thus, one may walk the entire built up area. Once he ventures into open country, he may not walk more than the *techum*. The exact measurements of an *amah*, a cubit, are debated. For the purposes of this discussion, let us assume the *techum* is three quarters of a mile. One who crosses the line may not move more than four cubits for the rest of *Shabbos*. I.e., when leaving the *techum* one loses his extra space. The four cubits are considered a stationary spot.

If one enters and exits a second built up area before leaving his original *techum*, the entire new area is considered four cubits. This is deducted from his *techum*. He may continue for the remainder of his *techum*. If his *techum* ends in the middle of the new 'city', he may go no further. This is learned from the details of *eruv techumin*. [See Eruvin 49b 52b 55a-57b 60a-61b, Poskim. Tur Sh Ar OC 396 398 399 405 408, commentaries.]

B) *Tzuras Hapesach*

For many *halachic* applications, a nominal separation is required. These include enclosing an area as a private domain on *Shabbos*. Scripturally, it is forbidden to carry in a public domain. In a private domain, one may carry. Rabbinically, a private domain that is not enclosed is also restricted. To consider it enclosed, one may rely on a nominal fence.

One method used is *tzuras hapesach*, the form of a doorway. One erects two poles and a pole or string over the top of them. It must comply with many details, beyond the scope of this discussion. The logic behind this is given by some as follows: A house needs a doorway. The doorway could be anywhere along a wall. The doorway could be any size. Therefore, as long as one has the side and top walls, the doorway could fill the rest of the space. Most poskim consider *tzuras hapesach* a partition for Scriptural purposes as well. However, to enclose a Scriptural public domain, *tzuras hapesach* is insufficient. [See Eruvin 10b, etc. Tur Sh Ar OC 362:10 etc.]

C) Residences and settlements

If a group of homes meets the requirements of a settlement, the area is squared off to include the empty spaces at the edges. The outermost houses are used as boundaries of the city. The *ibur*, empty outer space of seventy and two thirds cubits, is considered an extension of the built up area. The outermost houses must be within this distance of the next inner house, or they themselves are considered outside the settlement. Once the outermost houses are found, the city is 'squared' in a rectangle of any orientation. The two thousand cubits are measured from the edges of this square. Any kind of dwelling considered by the Talmud fit for human residence within the *ibur* extends the settlement. If two settlements' *iburim* overlap, they are considered one continuous settlement. The *techum* is measured from the outer points of the combined towns.

All of these additional spaces and squaring off only applies to a qualifying settlement. To qualify, the Talmud requires at least three courtyards, four by four cubits, each of which has two residences opening into it. In most large cities, three such qualifying courtyards can be found. In smaller settlements, these can often not be assured. The Talmud disqualifies a tent city, or *yoshvei tzrifin*. A *tzrif* is a temporary, unstable stick lean-to. The poskim maintain that a permanent tent would qualify as a house. What about a city of regular houses, but without the qualifying courtyards? This is debated by the poskim. Some say that if a critical mass of one hundred residents is present, it may be considered a settlement. Others maintain that unless the requisite courtyards are present, the houses must be treated as individual residences.

A private residence is considered one spot. Its *techum* is measured from its outer walls. This includes any yard space around it, if it is walled or fenced in. In general, the qualifications for this fence are the same as those that permit carrying inside their enclosure. The fence must be the requisite height and must be sufficiently closed in, with few and short empty spaces. The fence must have been erected or completed after the residence was built, or after the resident camped there, and before *Shabbos* began. If a settlement was fenced in after the residences were built, the measurements are made from the fence. Based on this, a city without the requisite courtyards but with a fence is considered a settlement. It may be squared off from the outermost points, and an *ibbur* can be added.

What about a 'fence' that works for carrying, but is not a true enclosure? It does not keep animals or intruders away, nor does it keep inadvertent wanderers off the property. This would be a *tzuras hapesach*. What about a 'fence' that marks the boundaries, but does not even qualify to allow carrying? For a private residence, this would not suffice. For a city, we consider a fence sufficient even if there is no accompanying *eruv chatzairos*. If the fence would not even be sufficient for an *eruv chatzairos*, such as a low

wall, some poskim say it does not work to expand the boundary. It must be a wall that protects the city. According to this view, *tzuras hapesach* might also be insufficient.

If one was taken outside his *techum*, he may only move within his four cubits. If he is placed inside an enclosure, he may walk about within the enclosure. A settlement enclosed by *tzuras hapesach* counts as one spot for this. This seems to indicate that the enclosure counts as a settlement for our purposes as well. However, the guidelines might differ slightly. In our case, the issue is whether the settlement counts as one *makom techum*. In the case of one who was moved out of his *techum*, the issue is whether he is in one *reshus*. Since the poskim define a *mekom techum* by similar guidelines as a *reshus hayachid*, the rule should be the same here. However, it is possible that the definition of a walled city is stricter. The object is to unite the dwellings into an entity. Perhaps it is necessary to have a proper wall, rather than a nominal 'partition'.

Kinyan shvisha acquires the area for the person as though it is his private home, and it gives him the *techum* of that area. The poskim distinguish between the two. If one leaves the *techum* knowingly, he loses his *techum*. If he is then returned there, some say he may not leave his four cubits. Others permit him to move around inside an enclosure, but not to leave the enclosure. Others permit him to move around a city, if he began *Shabbos* in a city, even if it is not enclosed. All agree that he has lost the additional *techum*. According to the middle view, the enclosure still works for one kind of *shvisha*, but not for the other. Thus, though *shvisha* for the private domain is accomplished with *tzuras hapesach*, the same might not be true of *shvisha* for the *techum*.

Accordingly, some suggest a difference between a protective wall, that is required for certain other applications of the *halachic* city, and a nominal partition. Others apply the same rules of private domain that permit moving around an area of *shvisha*, to the boundaries of a city, including *tzuras hapesach*. Since the first opinion is not absolutely conclusive, but a suggestion, we may rely on a rule often invoked for *techumin*. We follow the opinion that *techumin* are Rabbinically ordained, and one may follow the lenient view. [See Eruvin 41b, Poskim. Tur Sh Ar OC 398:1 10 11 (Kaf Hachayim), 401:MA 1, TZ 2, 405:8, commentaries. Chazon Ish OC 109:10, 110:20. Nesivos Shabbos 42 n1.]

D) Eruv Techumin

One must consciously, or at least automatically, be *koneh shvisha* in order to acquire his domain and his *techum*. If he does not do this, he is confined to his four cubits. One need not be in the location of his *shvisha* at the beginning of *Shabbos*. However, if he is not there personally, he must consciously locate the spot. If one consciously decided on a *shvisha* that is more than a *techum* from his location at the onset of *Shabbos*, he is, by definition outside his *techum*. He may, however, locate a *shvisha* within his present *techum*. Then, the *shvisha* he decided on becomes his real 'place' and he has two thousand *amos* in each direction from there. In the extreme, he can arrange to walk four thousand *amos* in one direction from his location at the onset of *Shabbos*. He decides on a *shvisha* two thousand *amos* from his current location. He can do this three ways. He could go there, wait for *Shabbos* to begin, and return to the spot he was at before. He can fix it by sight from a distance, if he has accurate landmarks. He can make an *eruv techumin*. He leaves two meals of food at the site, marking it as his nominal home. The poskim debate whether the new *techum* excludes his home town in the opposite direction. In our case, where the

home town could be considered an enclosed settlement, this might not be an issue. It might all be considered four cubits.

An *eruv techumin* is Rabbinically sanctioned, only to facilitate a *mitzvah*. Typical examples include attending a *simcha* or Torah class, comforting mourners [right after *Shabbos*, in the other location], greeting a Torah scholar or a close friend who has been away on a long trip, to *daven* with a *minyan*, and even to take a leisurely walk in the orchards as one's *oneg Shabbos*. Visiting friends does not usually fall into one of these categories. However, if one feels that he is fulfilling *oneg Shabbos* this way, or that he is providing such *oneg* for the friend, an argument could be made to include it. [See Eruvin 31a 82a Psachim 49a, Poskim. Tur Sh Ar OC 415:1, commentaries.]

In our case, if the space between the enclosures is within the *techum*, the issue would be how far one may walk inside the other enclosure. If the entire second enclosure is inside the *techum* of the first, one may rely on the view that the *tzuras hapesach* works for our purposes. To satisfy the stringent view, one could make a conditional *eruv techumin* from his own home to the second home. If and when he decides to use it, he must realize that there is no changing his mind. He utilizes the principle of *brairah*, a form of retroactive predetermination, to say that this would have been his determination at the onset of *Shabbos*. Before he takes this walk, he may only stay within the area overlapped by both his old *techum* and the new *techum* covered by his *eruv*. If he walks out of his new *techum*, into the area of his old *techum* not covered by his *eruv*, he has determined to use the old *techum* and to forgo his *eruv*. He could make a second stipulation, that he does not wish to be bound by the conditions of his *eruv* if he does not really need it. In addition, we have mentioned that the home enclosure might be considered four cubits no matter what. Assuming he chooses to use the *eruv*, is his visit for a *mitzvah* purpose? In light of the lenient views, and the likelihood that his visit is some form of *oneg Shabbos*, he may rely on the *eruv* for this. However, given the complications, he might be better off relying on the view that he is always inside his original *techum* due to the *tzuras hapesach* enclosures, and not make an *eruv techumin*.

On the Parsha ... Hashem said to Moshe 'Tell the congregation 'Rise up [and leave] from the *mishkan* of Korach, Dasan and Aviram' ... Moshe said 'Please get away from near the tents of these evil ones, and do not touch anything of theirs!' ... And they rose up [and left] from by the *mishkan* of Korach Dasan and Aviram ... [16:24 26-27] Moshe was allowed to use similar language to that in which he was instructed [Or *Hachayim*], but why did he change the terms? If Moshe said *ohel*, why did the people leave the *mishkan*? And why did Moshe add 'do not touch anything of theirs'? *Ohel* means a tent. *Mishkan* might mean the enclosure around a tent, the living space. Hashem told Moshe that everyone should leave the entire enclosed area. Perhaps the enclosure was not clearly defined. Moshe wanted to make it clear that they had to stay far away, so he mentioned the tents and anything of theirs. This way, regardless of how unclear the boundaries were, people would keep a safe distance. In actuality, everyone understood where the *mishkan* ended, and left the enclosure.

♫ Sponsored in memory of my mother, Yitele bas R. Shimon a"h, Henriette Silver, who passed away on Shavu-
os. I'd like to express thanks to all who offered condolences. ♣

© Rabbi Shimon Silver, June 2008.

Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com