

D) Gates

Assuming that the cemetery is sealed off, the existing fence may be used. Since the *eruv* area is *hukaf ledirah*, the fence can be used on both sides. A breach of ten *amos* or more disqualifies the fence, and thereby, the entire *hekef mechtzos*. A gate is considered a valid form of boundary by the Talmud, in a real *reshus harabim*. If *rabim bokim*, a swarm of people pass through a *tzuras hapesach*, it cannot be reasonably considered a wall. If there are *dlasos*, gates, across the *reshus harabim*, they count to enclose it. Similarly, a side street with *dlasos* at least at one end can be considered *reshus hayachid*. The Talmud debates whether the gates must actually be closed at night, or whether they need only be available to be closed if needed. Though the poskim debate the conclusion, we tend to stringency if possible. Many poskim maintain that actual closing is not necessary every single night, but at intervals. There are varying views on the length of the intervals.

The poskim debate whether a gate also requires a *tzuras hapesach* when sealing a *reshus harabim*. Some contend that for a *reshus harabim* the *dlasos* only remove the *bekias rabim* that disqualify the *tzuras hapesach*. Therefore, the main *mechtza* is the *tzuras hapesach*. Nonetheless, many maintain that even according to this view, the gates are a *mechtza*, albeit somewhat weak. Others maintain that *dlasos* work as a true *mechtza*. The only issue is whether they need to be closed, at least part of the time.

Of those who require a *tzuras hapesach*, some maintain that this only applies when the gates are used to close the ends of a *reshus harabim* and they were never built to be used as gates. Thus, in our case, where the gates are built to be used as a way to close an entrance, they would work with or without a *tzuras hapesach*.

Accordingly, when gates are used to seal an opening in a *karpaf* or a giant *reshus hayachid* such as a community *eruv*, they might serve as a *mechtza* without the addition of a *tzuras hapesach*. [See Eruvin 6a-b, Poskim. Tur Sh Ar OC 364:1-2, commentaries. Chazon Ish OC 78:1. Panim Meiros II:142. Chasam Sofer OC 88. Teshuva M'ahavah II:245. Bris Avraham 15 18. Minchas Yitzchok VI:34. Nesivos Shabbos 23:1 3.]

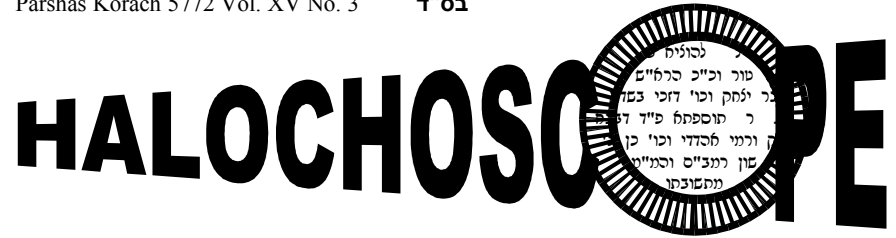
In conclusion, there is a slight possibility that some poskim would require a *tzuras hapesach* in addition to the gates. However, the majority would not require it.

On the Parsha ... Moshe sent for Dasan and Aviram .. but they said "We will not come .." [16:12] Moshe arose and went to Dasan and Aviram .. [16:25] Dasan and Aviram 'went out and stopped still' at the entrance of their tents .. [16:27] Why did Dasan and Aviram come to the entrance of their tents? If they refused to acknowledge Moshe and Aharon before, why did they even bother coming out to greet them now? One would expect them to shut the door in Moshe's face! Perhaps they were actually doing the opposite of greeting Moshe. Although the door was open, the entrance still served as a separation. It was as though they had not left their tents. They only came to the entranceway to show Moshe that they would not give him the basic courtesy of coming out of their tents to greet him. Had they stayed inside, behind closed doors, without acknowledging Moshe's presence, they would not be able to make this point.

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This week's question:

In making an *eruv* for a community, a *hekef mechtzos*, physical boundary, is made around the area to be enclosed. Usually, this takes the form of a *tzuras hapesach*, shape of a doorway. Uninhabited plots of land are excluded by enclosing them or otherwise fencing them off. One such area is a cemetery. It has a fence, with large gated openings that are closed at night-time. Do these openings also need to be fenced off, such as with a *tzuras hapesach* over the top of the gateway?

The issues [Based largely on Halochoscope XI:28]:

- A) **The *reshuyos*, domains, for carrying on *Shabbos***
- B) ***Hekef mechtzos*, the correct way to enclose a private domain**
- C) ***Karpaf*, a minimally inhabited space that is not used regularly**
- D) ***Dalsos*, gates**

A) *Reshuyos on Shabbos*

On *Shabbos* it is forbidden to move something from one *reshus*, domain, to another, or to move something within a public domain for the distance of four *amos*, cubits, or more. [A cubit is 19 to 24 inches, depending on whose view is followed.] This would violate the Scriptural *melacha* of *hotza'ah*, or of a Rabbinical precautionary extension of it.

There are four *reshuyos* with regard to carrying on *Shabbos*. Three are Scriptural and one is Rabbinical. The Scriptural ones are a private and public domain, and one that does not meet the criteria of either. The rabbis added some of the 'non-domains' to the list. In addition, according to many poskim, the Rabbis forbid moving things from one totally private domain to another. Others maintain that this is never forbidden. Rather they give the characteristics of a public domain to a domain that serves as a common area for two other private domains is until modified by an *Eruv Chatzeros*.

The four *reshuyos* are: [a] **the *Reshus Hayachid*, private domain.** This is an enclosed area, with a minimum surface area, ideally, with fences on all sides of a minimum height. The fence or partition must be ten *tefachim*, fists (32 to 40 inches) high. It could be a mound, ditch, or thick post, separated from the surrounding area by a drop of the same height. The surface must be a minimum of 4 by 4 *tefachim*. Inside this *reshus* one may carry. There is no maximum size for a *reshus hayachid*, though the Talmud discusses whether entire continents could qualify. However, certain spaces within the *reshus* could be excluded. These could disqualify the entire enclosure. This will be discussed in the next section. The air space above and the depths below a *reshus hayachid* are treated as part of the *reshus*. Rabbinically, a *reshus hayachid* must also belong to one owner.

[b] ***Reshus Harabim*, public domain.** This is defined as an open unrestricted publicly owned area, that is, bounded by two parallel walls or less. The typical example

would be a street or public square. The Talmud debates the definition of *Rabim*, based on the source for the *melacha*. Most of the laws of *Shabbos* are learned from the process of the construction of the tabernacle in the wilderness. The quintessential *reshus harabim* in the center of the encampment was accessed by six hundred thousand people. *Hotza'ah* was done when the entire nation brought donations for the construction to the *Machane Leviya*, the Levites' section of the encampment, to Moshe.

The view generally followed is that a *reshus* with less people frequenting it daily is not considered a Scriptural *reshus harabim*. The stringent view maintains that if an unenclosed *reshus* is sixteen *amos* wide it qualifies. When the tabernacle was dismantled and reassembled its parts were moved on and off wagons that were considered *reshuyos hayachid*. The 'road' where they were parked was sixteen *amos* wide to accommodate the load of the beams. This view is recommended for those who feel able to follow it

[c] Karmelis. This area is neither *reshus harabim* nor *reshus hayachid*, because it fits the guidelines of neither, but could be confused with both. It is unbounded and passage is generally not restricted, but it is not frequented by *rabim*. An example is the sea. Rabbinically, one may not move things within it (four *amos*), into it or from it to one of the true *reshuyos*, as though it is the opposite type of *reshus*. If unenclosed, it is really not a *reshus* at all. Therefore, scripturally one could never violate *hotza'ah* through it. [This usually only applies when looking for a dispensation.] If enclosed on three sides, it is Scripturally considered a *reshus hayachid* with regard to a true *reshus harabim*. An expansive enclosed area with no dwellings inside is also considered a *karmelis* (see section C), relative to other *reshuyos*. However, carrying within it is permitted.

[d] Mekom Petur. This area is so insignificant, due to its uselessness under normal circumstances, that it is not considered a *reshus*, even Rabbinically. It is inside the space of a *reshus harabim*, separated from it by height, and with less than four *tefachim* surface area. It could be a post standing between three and nine *tefachim* off the ground or above ten *tefachim*. The air space above ten *tefachim* over a *reshus harabim* is also a *mekom petur*. Moving things between it and a *reshus harabim* or a *reshus hayachid* is permitted. Rabbinically, the same person may not move something from a *reshus* of one type to a *reshus* of the other type by way of a *mekom petur*. [See *Shabbos* 2a-6a-9a 96b-101a, *Eruvin* 6a 59a 97b-101a, *Poskim. Tur, Sh Ar OC* 345-347 349:1 5, commentaries.]

B) Hekef Mechtzos

To be considered a *reshus hayachid*, the area must be enclosed and owned by one person. An area bounded on three sides is a Scriptural *reshus hayachid*. Rabbinically the fourth side must be walled in. If a part is invalid, the area is no longer enclosed.

To qualify as a wall, the material used must be stationary for the duration of *Shabbos*. It must have the minimum height mentioned. Breaches more than ten *amos* invalidate the enclosure. A break of up to ten *amos* is considered an opening, and is permitted. However, there should be no more breaks than there are standing partition pieces. If the breaks are more than the walls, in most cases nowadays, the enclosure is invalid. Walls need not be built as partitions. A ditch, moat, side of a mound or embankment and the like also qualify. However, we shall see in the next section that natural walls do not always help. A fence need not be solid, but may have small spaces, up to three *tefachim*.

The Talmud debates whether an entire enclosure based on these sparse 'walls' would qualify in every situation. Certainly a partial enclosure with these is fine.

For specific types of streets, the open end or ends may be 'enclosed' with a post at the side or a beam across the top. Nowadays, streets do not generally meet these requirements. An enclosure may be made with a *tzuras hapesach*, shape of a doorway. A walled in area needs a door. Since every wall could have a doorway, and there is no maximum size of a doorway, any 'wall' with such a 'doorway' could still be considered a wall. Thus, if one makes the shape of a doorway, he has a 'wall' with its 'doorway' in the middle. This is constructed by erecting two upright side-posts, with a horizontal top post laying over the tops of the side posts. The upright posts must be strong enough to remain standing and the top post must be strong enough that it does not blow around too far in regular wind. [See *Eruvin* 2a-23a etc., *Poskim. Tur Sh Ar* 360-365, commentaries.]

C) Karpaf

Certain areas are truly *reshus hayachid*, but due to various considerations are Rabbinically disqualified from the category. The common term for these is *karpaf yosair mibais sasayim shelo hukaf ledirah*. *Karpaf* is a large general purpose area that has no regular use. As a small enclosed area it would be considered a *reshus hayachid* automatically. Due to its size, *karpaf* can be confused with an open space, and it is treated as a *karmelis*. *Yosair mibais sasayim* means larger than an area of fifty by one hundred *amos*. If it had dwellings inside it, it could still qualify as a *reshus hayachid*, with a large yard. *Hukaf ledirah* means that the enclosure was made with the intent of attaching this *karpaf* to a dwelling, or place for regular use by dwellers. Such enclosures could not all be natural. Some must be man-made with this intent. Installing dwellings after the fence is built would not help. If the unusable area is less than a *bais sasayim*, but covers the majority of the yard, it makes the surrounding yard a *karpaf*. Due to a technicality, this forbids carrying between the yard and the house, but does not forbid carrying within the yard.

It is possible for an enclosed area to lose its *reshus hayachid* status if part of it is disqualified. If a *bais sasayim* of the enclosure is unusable due to its condition, it is deemed a *karpaf shelo hukaf ledirah*. Unless it is itself sealed off from the rest of the area, it invalidates the entire enclosure. The typical example of this would be a farm with a field that was sown. Nobody would walk through it regularly.

The *poskim* discuss a cemetery in this context. If the cemetery has no livable housing inside its enclosure, it is considered uninhabited. However, the Talmud considers the building that sometimes houses a grave as a crude dwelling in other contexts. Specifically, the *techum*, boundary of open space outside a settlement past which one may not walk on *Shabbos*, is measured from the furthest outlying dwelling. If a grave-house can be counted as a home in that *halachic* context, can it be counted in this *halachic* context as well? On the one hand, the Talmud recognizes it as part of the town. On the other hand, the standard for that type of dwelling is set lower than the standard for *hukaf ledirah*. Some maintain that the type of building in cemeteries in Talmudic times was built to house a watchman. The type of building found in modern cemeteries is often very crude. Sometimes, there is a more substantial office, or the home of a caretaker. [See *Eruvin* 12a-b 15a 23a-25b 53a 87a, *Poskim. Tur Sh Ar OC* 356 358 398:5 6, commentaries. Ne-