



Kuntres

A HALACHIC OVERVIEW
AND REBUTTAL

to

The Laws of an Eruv



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PREFACE

The fact that *hilchos eruvin* is among the most complex and demanding *sugyos* in the halachic corpus presents a significant challenge for the many laypeople involved in establishing *eruv*, whether between neighboring properties or on a broader communal scale. There is therefore a clear and pressing need for a reliable English language *sefer* that presents the relevant halachos of *eruv* accurately, practically, and accessibly. With its numerous diagrams and concrete examples, *The Laws of an Eruv* by Rabbi Shlomo Francis and Rabbi Yonason Glenner initially appeared well positioned to address this need. Regrettably, however, the work does not fulfill this objective and suffers from serious shortcomings, including errors and flawed interpretations of fundamental halachic principles.

The authors rely heavily on hearsay and exhibit a limited grasp of the underlying *sugyos*. As a result, their presentation reflects insufficient familiarity with the halachic process as it has been developed and applied by the great decisors of previous generations. Most notably, the *sefer* fails to meaningfully engage with well-established arguments advanced by leading Gedolei HaPoskim who explicitly permit citywide *eruv*. In order to dismiss accepted and time-honored criteria, such as the validity of certain forms of *mechitzos*, the authors advance alternative theories that lack any clear precedent in the classical halachic literature.

We, the Vaad HaEruv of Brooklyn, are actively engaged both in publishing on *hilchos eruvin* and in assisting with the practical establishment of *eruv*. Accordingly, we take seriously any claim that additional stringencies are required and insist that such assertions be supported by careful and principled halachic justification. While *chumros* certainly have their place, there is real concern when they are introduced without sufficient grounding, as they can create unnecessary obstacles that complicate, or even prevent, the establishment of *eruv*. In this respect, the authors' decision to publicize their arguments enables careful scrutiny. Indeed, some of the positions they advance inadvertently result in unwarranted *kulos*.

This *kuntres* focuses primarily on the authors' treatment of *reshus harabbim*, the central issue upon which the validity of a citywide *eruv* often depends. A careful analysis of this topic alone raises serious doubts about the suitability of the authors' approach as guidance for the establishment of city *eruv*, especially given their stated opposition to such *eruv* from the outset.

It should also be noted that the authors' presentation of the *Chazon Ish's* position has already been addressed and refuted in a separate *kuntres* authored by a leading contemporary authority on *hilchos eruvin*, Harav Yoel Rosner,

published in *HaOtzar*, 44, pages 246-74. Both of these *kuntresim* were published several years ago, and to date no response has been offered in the spirit of *k'darko shel Torah*.

In light of the growing popularity of this *sefer*, and the concern that it may mislead many readers, we feel compelled to publicize this *kuntres* in order to inform and educate the public. This concern is particularly acute because the *sefer* presents itself as *l'halacha l'maaseh*. We therefore believe it is essential to raise awareness of the issues discussed herein. If necessary, we intend, with Hashem's help, to publish additional analyses addressing additional sections of the *sefer*, including those related to the halachos of *tzuras hapesach*.

We also plan, with Hashem's help, to publish further critical reviews of similar works, with the goal of clarifying and strengthening public understanding of the great mitzvah of *eruv*. Those who wish to assist in supporting this effort are invited to participate in sponsoring this work.

This *kuntres* is divided into three sections. Section One, pages 3-48, presents a detailed analysis and response to the discussion of *reshus harabbim* in *The Laws of an Eruv*, specifically Chapter Three, Section III (pages 54-60), and Chapter Nine (page 150). Section Two, pages 49-61, examines and critiques the Chicago Community Kollel's *Encounters* dated December 21, 2018, authored by the same writers. Section Three, pages 62-83, provides an overview of the relevant halachos and demonstrates that there are more than sufficient halachic grounds to permit citywide *eruv*. We apologize in advance for any repetition, as some redundancy is unavoidable in a systematic critique that responds directly to the arguments presented.

Of course, it is always possible to cite *shitos yachidos* to invalidate an *eruv*; however, ruling according to *shitos yachidos* is not the correct approach in halachah. [The *Chasam Sofer* writes (*Yoreh De'ah* 37) that if we were to collect all the *shitos ha'ossrim* we would not be able to eat bread or drink water.] Even more so in *hilchos eruvin*, since all criteria have to be met for the area to be classified as a *reshus harabbim*, even if we were to employ a *shitas yachid* regarding *reshus harabbim* that would then disqualify the *eruv* based on only one criterion, the other conditions would not be met, and an *eruv* would be permissible *l'chatchilah*. Consequently, to invalidate an *eruv*, one would have to selectively choose from disparate *shitos yachidos*, which in many cases are contradictory, and that is an unjustifiable approach to halachah. The reality is that if someone learns *hilchos eruvin* with an open mind, he will realize that since it is almost impossible to meet all the criteria of a *reshus harabbim*, creating an *eruv l'chatchilah* is a real possibility.

SECTION ONE

What Follows is an Analysis and a Refutation in a Linear Fashion of Chapter Three (Section III, pp. 54-60) and Chapter Nine (p. 150) in the Laws of an Eruv

The Sefer – Page 54:

III. Contemporary Domains / A. Reshus harabim: Public thoroughfares / Shishim ribo

As mentioned earlier, a conventional eruv comprised of *tzuras hapesach* cannot be constructed to enclose and allow carrying in *reshus harabim*.⁽³⁶⁾ Therefore, it is essential to determine what constitutes a *reshus harabim*.

Rebuttal: This is a case in point of why it is only fitting to write the footnotes in the same language as the text. Footnote 36 expounds on how we classify the proscription of carrying when a *tzuras hapesach* is being utilized. As I will enumerate below in my analysis of the references cited in footnote 36, many *poskim* maintain that *me'd'Oraysa* a *tzuras hapesach* would reclassify a *reshus harabbim* as a *reshus hayachid* (see below regarding the requirement of *delasos me'd'rabbani*; see also Section One, 2:1). This point cannot be stressed enough; according to many *poskim*, once a *tzuras hapesach* is erected, the enclosed area is never classified as a *reshus harabbim me'd'Oraysa*.

The Sefer – Footnote 36:

אם מהני צוה"פ ברה"ר להתייר טלטול מדאורייתא, ע' במחבר סי' שמ"ה סעיף ז' דברה"ר צריך דלתות נעולות (דאל"ה אתי רבים ומבטלי מחיצות) ולכאורה אי סברת כמ"ד דאתי רבים, פשוט ל"מ צוה"פ שהרי אתי רבים ומבטלו להו. וע' בבה"ל סי' שס"ד סעיף ב' ד"ה ואחר, דלהרמב"ן דס"ל דלא אתי רבים מהני צוה"פ ברה"ר להתייר האיסור דאורייתא....

Rebuttal: As it is the opinion of many *poskim* that [even according to the *Mechaber*] *me'd'Oraysa* a *tzuras hapesach* would reclassify a *reshus harabbim* as a *reshus hayachid*, why was this only relegated to the footnotes? [Correction, the *Biur Halachah* states that it is the *Rambam* who maintains *lo asu rabbim* of a *tzuras hapesach* and not the *Ramban*.]

The Sefer – Footnote 36 (continued):

...וכן כתב האבני נזר בס' רע"ט אות ב', דאי סברת לא אתי רבים (ולדידיה באמת ק"ל כן) מהני צורה מדאורייתא. אבל ע' בשו"ע הרב ס' שמ"ה בקונטרס אחרון ס"ק ב' דק"ל כרבנן דלא אתי רבים, ועי' בס' שס"ד סעיף ד' שכתב דצורה מהני מדאורייתא אף למ"ד דצ' דלתות נעולות אבל בס' שס"ד פסק דצ' דלתות נעולות והיינו כמ"ד דס"ל דאתי רבים. ...

Rebuttal: The above statement suggesting that there is a contradiction in the *Shulchan Aruch HaRav* demonstrates that the authors are not cognizant of what they wrote. The authors established from the *Kuntres Achron* in *siman* 345 that the *Rav* maintains *lo asu rabbim u'mevatlei mechitzta* (the authors failed to note here that in 363:42 the *Rav* reiterates this as well). Hence, it follows that if the *Rav* affirms in *siman* 364:4 that according to the *man d'amar* that requires *delasos neulos a tzuras hapesach* is sufficient on a *d'Oraysa* level, the *Rav* upholds, as well, that even according to the *man d'amar* that maintains *lo asu rabbim u'mevatlei mechitzta*, we would necessitate *delasos neulos me'd'rabbanan* in a situation of *tzuras hapesachim*. [In other words, these *sugyas* – if the *rabbim* is *mevatel* the *mechitzos* and if we require *delasos neulos* – do not have to be dependent on each other. Hence, even if one maintains *lo asu rabbim*, he can uphold, as well, in a situation of *tzuras hapesachim*, that there is a requirement of *delasos neulos me'd'rabbanan*.]

Following this, when the *Rav* posits that we require *delasos neulos* for a *reshus harabbim*, he is clearly referring to a situation of an area encompassed on at least two sides by *tzuras hapesachim*, and *me'd'rabbanan*, the *Rav* requires *delasos neulos* at the *pirtzos*. However, there is no doubt that since the *Rav* upholds *lo asu rabbim u'mevatlei mechitzta* in a situation of three *mechitzos*, *delasos* would not be required at the *pirtzos* even *me'd'rabbanan*; *tzuras hapesachim* would suffice (see also Section One, note 2 regarding the *Mishnah Berurah*).

The Sefer – Footnote 36 (continued):

...וכן מבואר בערוך השולחן בס' שס"ד סעיף א'. והאגרו"מ או"ח ח"א ס' קל"ט ענף ג', דאפילו למ"ד דלתות נעולות מ"מ מהני צורה מדאורייתא. אבל ע' בחזו"א עירובין ס' י' ס"ק י' ובית אפרים ס' כ"ו שכתבו דאף למ"ד לא אתי רבים צורה גרעו אתי רבים ומבטלי להו לצורה גרע מפסי ביראות. ...

Rebuttal: It is [just about] irrelevant that the *Chazon Ish* [in conclusion] maintains that a *tzuras hapesach* is not sufficient on a *d'Oraysa* level since [he upholds that a *tzuras hapesach* is a *mechitza me'd'Oraysa* and] he follows the *Magen Avraham* which states that in order to negate a *tzuras hapesach*, we would require *shishim ribo* to traverse through it (*Chazon Ish*, O.C. 108:12).

Consequentially, if an area is enclosed by *tzuras hapesachim* pending *shishim ribo* traversing through it, the area would be classified as a *reshus hayachid* [the *Bais Ephraim* would also agree to the above].

Additionally, while the *Bais Ephraim* throughout much of his *teshuvah* (*siman* 36) upholds that a *rabbim* does negate a *tzuras hapesach me'd'Oraysa*, at the conclusion of this *teshuvah* he asserts that since according to the *Rashba* (and *Hagahos Ashri*) a *tzuras hapesach* would suffice in a *reshus harabbim*, the establishment of *tzuras hapesachim* should not be abolished.

The Sefer – Footnote 36 (continued):

...ואף דלדעת המקילים מ"מ יש חיוב מדרבנן להצריך דלתות מ"מ יש לסמוך על הנ"ל כסניף...
להתיר.

Rebuttal: Besides the above mentioned *poskim* who uphold that a *tzuras hapesach* is sufficient on a *d'Oraysa* level: **1)** *Shulchan Aruch HaRav*. **2)** *Avnei Nezer*. **3)** *Aruch HaShulchan*, the following *poskim* also maintain as such: **4)** *Pri Megadim*, *Rosh Yosef*, *Shabbos* 6b. **5)** *Rav Chaim Volozhiner*, *Shu"t Nishmas Chaim*, p. 1. **6)** *Tzemach Tzedek*, *Eruvin* the end of *Perek* 5. **7)** *Aishel Avraham*, *siman* 345. **8)** *Gaon Yaakov*, *Eruvin* 11a. **9)** *Yeshuos Malko*, O.C. 21. **10)** *Kanah V'Kanamon*, 5:56. **11)** *Levush Mordechai*, 4:4. **12)** *Kaf HaChaim*, O.C. 364:12. **13)** *Bais Av*, 2:9:3. Certainly, if the authors would have done their research, they would have realized that many *poskim* maintain that a *tzuras hapesach* would be sufficient on a *d'Oraysa* level.

Consequentially, even in an area classified as a *reshus harabbim*, it is more than just a *snifl'heter* to make use of *tzuras hapesachim* to remove the issue of a *d'Oraysa* since we are following the majority of *poskim*. {In regards to *delasos* — once a *tzuras hapesach* is established for an area classified as a *reshus harabbim*, we can be lenient [*safek d'rabbanan l'kulla*] and apply any additional *heter* to remove the requirement of *delasos* since the requirement of *delasos* is only *me'd'rabbanan* — *Yeshuos Malko*, O.C. *siman* 21; *Avnei Nezer*, O.C. 273:16, 279:2; *Kanah V'Kanamon*, 5:56; *Levush Mordechai*, 4:4, and *Bais Av*, 2:9:3.}

The Sefer – Page 54 (continued):

In Chapter One, Section II, A, we discussed that a public domain must be sixteen amos wide and unroofed to qualify as a reshush harabim. (37)

Rebuttal: The omission of the criterion of *mefulash u'mechavanim* in the above (main) text is perplexing. There are other English *seforim* that were

published regarding *eruvin*, and they had no compunctions to write about the criterion of *mefulash*. In any case, how can one omit a criterion that was the basis of some large city *eruv* (see below)? It is simply egregious that the authors omitted the criterion of *mefulash u'mechuvanim m'shaar l'shaar*.

The Sefer – Footnote 37:

ע' רש"י דף נ"ט: ד"ה ואין לה ז"ל: ולא מפולשת היא ולא דמי לדגלי מדבר, עכ"ל. ושם בדף ו': כתב ז"ל: שערי העיר מכוונים זה כנגד זה, וזהו קולא גדולה שלכאורה יוצא דאפילו רחוב שישלו התנאים של רה"ר מכל מקום אם הוא מתעקם קצת ואין שערי מכוונים ממש לא הוה רה"ר. ועי' בבית אפרים ס" כ"ו שכתב ז"ל: וע"כ לא בעינן שירה מפולש משער לשער אלא בסרטיא שהוא דרך העובר בתוך העיר ואין ב"א מתקבצים שם, אלא שעוברים דרך שם, ולכן אם אינו מפולש ומכוון משער לשער לא הוה רה"ר דהא לא מסתגי להו להדי, עכ"ל. משמע דצריך מכוון כדישירה נוח לילך שם, ואם אינו מפולש לא הוה רה"ר אפילו אם אין לו מחיצות. ...

Rebuttal: Is *mefulash u'mechuvanim* something to hide from the English speaking public that it had to be relegated to a Hebrew footnote? Is the criterion so esoteric that it does not deserve mention in the main text?

In any case, this entire argument is simply absurd. If a street meets all the other criteria of a *reshus harabbim*, why is it a major leniency to also require that the street be *mefulash u'mechuvanim m'shaar l'shaar* [run straight from gateway to gateway] in order to classify the street as a *reshus harabbim*? If *mefulash u'mechuvanim m'shaar l'shaar* is a criterion of a *reshus harabbim* and the street does not meet this requirement, then it would not be classified as a *reshus harabbim*, period. *Mefulash u'mechuvanim* is a criterion just like the requirements that the street needs to be 16 *amos* wide and not be roofed.

Moreover, how could the authors have failed to mention the following Gedolei HaPoskim, the *Mahari Asad* (*siman* 54); *Divrei Malkiel* (4:3), and Rav Shlomo Dovid Kahane zt"l (*Divrei Menachem*, O.C. vol. 2, pp. 42-43) who maintain that *mefulash u'mechuvanim m'shaar l'shaar* is the criterion that allows us to establish *eruv* even in the largest of cities?

The *Divrei Malkiel* states that to find a street in a large city which is *mefulash*, open from one end of the city to the other, is unheard of, and that is why the *minhag* is to erect *eruv* even in the largest of cities. [He wrote this *teshuvah* regarding Odessa, a city that was not walled.]

Rav Shlomo Dovid Kahane zt"l, one of the main *rabbanim* of Warsaw before World War II, posited that the *heter* to erect an *eruv* in a large city such as Warsaw, [which was not walled from the year 1877, see *Encyklopedia Warszawy*, 1994 p. 187] was universally accepted as the streets were not *mefulashim u'mechuvanim m'shaar l'shaar*. More so, he claimed, a small city

would have a greater problem establishing an *eruv* since its streets would be *mefulash*. In a small city, there is usually one main street running straight through the center of the town, as opposed to a large city where the streets are generally not straight from city gate to city gate.

Following this, the omission of the criterion of *mefulash* in the text must be because the authors of this *sefer* have an agenda; the criterion of *mefulash* would allow *eruv* even in the largest cities.

The Sefer – Footnote 37 (continued):

... אבל ע' באגרו"מ שהביא דעת כמה ראשונים דלא בעינן שהשערים מכוונים ואפילו לאותם דבעינן מפולש כתב דה"מ בעיר שיש לו חומה, ודלא כהבית אפרים הנ"ל. וע"ש שהביא ראיה לדבריו מדברי הראב"ה ח"א הלכות עירובין סימן שצ"א וז"ל: משמע דעיריות שלנו שהם מוקפים חומה ואין מכוונים שעריהם משער לשער שהם כרמלית, עכ"ל. משמע דהצורך במפולש הוא רק אם יש לו חומה. וע' במשנת רב אהרן סי' ו'. ...

Rebuttal: First of all, the authors are incorrect. Rav Moshe never mentioned this particular *Ravyah* (the *Ravyah* cited by Rav Moshe was *siman* 379, which does not mention anything about a walled city).

Now, let us examine the meaning of the word *mefulash* so we can clarify why some *Rishonim* only mention *mechuvanim m'shaar l'shaar* in conjunction with a walled city.

Tosfos (*Eruvin* 6a) states:

רב אמר תורתו כמפולש: ואפי' גרסינן דלתות איכא למימר "דמפולש גמור" הוא וכו' ואין לתמוה למה יהיה מבוי עקום חמור "ממפולש גמור"

The *Rashba* (*Eruvin* 6a) posits:

והוא דמבוי העשוי כנדל: אבל כשהוא פתוח לשתי רשיות הוא צריך לסבב וע"כ נראה כמפולש מפני שעוברים בתוכו משער לשער

The *Rosh* (first *Perek Eruvin siman* 6) submits:

ולישנא דתורתו כמפולש לא משמע כפירוש דמשמע דתורת מבוי שהוא עקום תורתו כאילו היה מפולש ביושר בלי עקמומיות

The *Ran* (*Eruvin* 6a) advances:

מבוי עקום: אבל אחרים פירשו דתורתו כמפולש היינו כאילו היה מבוי אחד ישר ומפולש
From the above *Rishonim*, we can discern that a *mavoi akum* [crooked ally/street] is never called a *mavoi hamefulash* [open ended alley/street] — only that its laws are similar to a *mavoi hamefulash*. Thus, we see from the terminology of the *Rishonim* (in reference to *hilchos Eruvin*; see *Teshuvos HaRashba*, vol. 2 *siman* 95) that a *mavoi hamefulash* denotes an alleyway/street that runs straight from end to end and does not indicate a curved ally/street

at all. This is the reason why the *Olas Shabbos* (345:6); *Magen Avraham* (345:6); *Tosfos Shabbos* (345:13); *Elya Rabbah* (345:13); *Pri Megadim* (*Aishel Avraham*, 345:6); *Shulchan Aruch Harav* (345:11); *Mishnah Berurah* (345:20), and *Aruch Hashulchan* (345:15) define *mefulash* as being *mechuvanim m'shaar l'shaar* because they are following the *Rishonim* who describe a *mavoi hamefulash* as running straight from end to end and not curved at all. Only a street running straight from end to end is identified as being *mefulash*.

Now we can clarify why the *Ravyah* (*siman* 391, and other *Rishonim*) only mention the requirement of *mefulash* in reference to an open city, but the *Ravyah* adds the condition of *mechuvanim m'shaar l'shaar* for a walled city. In an open city, the *Ravyah* only needs to cite the requirement of *mefulash* since, as detailed above, it denotes *mechuvanim* [straight] as well; however, in a walled city, there is a possibility that the street, even if it is *mefulash u'mechuvanim*, ends at the city wall [in which case the street would be encompassed by three *mechitzos*]. Hence, the *Ravyah* adds the condition of *mechuvanim m'shaar l'shaar* that the street needs to be open and straight from gateway to gateway in order to be classified as a *reshus harabbim*.

Furthermore, it is important to note that Rav Aharon Kotler zt"l posited that any street would need to be *mefulash* [open] to be classified as a *reshus harabbim*, and only the requirement of *mechuvanim m'shaar l'shaar* [running straight from gateway to gateway] is conditional of a walled city. However, this is clearly in opposition to the *Magen Avraham*, *Tosfos Shabbos*, *Elya Rabbah*, *Pri Megadim*, *Shulchan Aruch Harav*, *Mishnah Berurah*, and *Aruch Hashulchan* who maintain that the definition of *mefulash* [open] is *mechuvanim m'shaar l'shaar*. Since these *poskim* posit that *mefulash* and *mechuvanim m'shaar l'shaar* are one and the same, and all agree that *mefulash* is a criterion of all streets, these *poskim* would uphold that the streets would need to be *mefulash u'mechuvanim m'shaar l'shaar* even in an unwalled city. Therefore, since it is the *Gedolei HaPoskim* who maintain that even in an unwalled city *mefulash u'mechuvanim* is a criterion of a *reshus harabbim*, the failure to mention it in the text of the *sefer* proper is a major omission and is indefensible.

The Sefer – Footnote 37 (continued):

...וע' במשכנות יעקב סי' ו' דאף לדעת רש"י לא בעינן מכוון ממש. ...

Rebuttal: On the contrary, the *Mishkenos Yaakov* stated exactly otherwise; *Rashi* requires precisely straight. This is what the *Mishkenos Yaakov* writes (*siman* 122 p. 142):

"רק רש"י ז"ל כתב כמה פעמים מכוון משער לשער בפ"ק דעירובין גבי כיצד מערבין רה"ר כו' ושם ע"ב גבי ירושלים כ' שהיה רה"ר שלה מכוון משער לשער ומפולש כו' משמע דבעי מכוון ביושר ממש והדבר צ"ע לדינא."

The Sefer – Page 54 (continued):

Additionally, there is a disagreement among Rishonim whether there is an additional requirement of shishim ribo, the presence of 600,000 individuals, similar to the encampment in the desert,(38) which was populated by 600,000 individuals (the concept of shishim ribo will be explained below).

Rebuttal: It is fascinating that so many *piskei halachah seforim* today feel a need to mention that there is a *machlokes Rishonim* regarding *shishim ribo*. Why do these authors deem it important to cite a *machlokes Rishonim* when, in fact, it is the *Achronim* whom we follow? If the authors feel a need to mention that this issue is mired in a disagreement, then they should have stated in the text that there is a *machlokes Achronim* regarding the criterion of *shishim ribo*, and then only mention that this disagreement is based on the *Rishonim* in the footnote. [Evidently, the reason why this disagreement is always mentioned is because of the fact that the *Mishnah Berurah* spends a considerable amount of time on this *machlokes* in the *Bi'ur Halachah*, 345:7. However, since it is well known that the *Mishnah Berurah's* list has been superseded, there really is no reason to mention this disagreement anymore.]

The Sefer – Footnote 38:

ע' בית יוסף ס' שמ"ה סעיף ז' שהביא מחלוקת ראשונים, וע' במחבר שם שהביא ב' דעות...

Rebuttal: It should be noted from the get go that many if not most *poskim* maintain that the *Shulchan Aruch* upholds the criterion of *shishim ribo* (see Section One, note 25). Furthermore, all *poskim* (besides for the *Bais Meir*) argue that the *Rema* (O.C. 346:3, and 357:3), on whom we Bnei Ashkenaz rely on, maintains that we accept the criterion of *shishim ribo*.

The Sefer – Footnote 38 (continued):

...וע' בבה"ל שם ד"ה שאין שם ששים רבוא שחשב דעת המקילים ודעת המחמירים, המקילים הרי הם: הבה"ג, ורש"י בעירובין [דף ו' ודף נ"ס], וסמ"ג (לאוין ס' ס"ה), וסמ"ק, וספר התרומה, וריבנו מאיר, ורוקח, ודעה א' בתוספות פרק במה אשה, והרא"ש פ"א דעירובין, והא"ז, והטור

ור"ו. והמחמירים הרי הם: הרמב"ם, והר"ת, והרמב"ן, והרשב"א, והריטב"א, והר"ן בפרק במה
אשה, והגהת מרדכי במסכת שבת, והרשב"ם, והר"א ממין בספר יראים שלו, והריב"ש,
והמאירי (שבת נז.) ...

Rebuttal: The *Mishnah Berurah* (Bi'ur Halachah 345:7) is actually citing the *Mishkenos Yaakov's* count of *Rishonim*, but he did not see that the *Bais Ephraim* disagreed with some of the *Rishonim* on the list and added the names of many more *Rishonim* to those who uphold that *shishim ribo* is a criterion of a *reshus harabbim*. The *Aruch HaShulchan* (O.C. 345:17) adds that some of the *Rishonim* whom the *Mishkenos Yaakov* cited were not yet published in the times of the *Taz* and *Magen Avraham*, and, therefore, they did not have the actual count of *Rishonim* who *pasken* against the criterion of *shishim ribo*.

Therefore, many *poskim* set out to count the actual number of *Gaonim* and *Rishonim*, including those published recently from manuscript, who clearly *pasken shishim ribo* is a criterion of a *reshus harabbim* and those who explicitly maintain otherwise. As I demonstrate (see Section One, note 21), the overwhelming majority of *Geonim* and *Rishonim* maintain that *shishim ribo* is a criterion of a *reshus harabbim* (over 70 *Geonim* and *Rishonim* uphold the criterion and only 13 do not).

Consequently, since the overwhelming majority of *Rishonim* maintain that *shishim ribo* is a criterion of *reshus harabbim*, this matter is not up for debate anymore, and perhaps the *Mishnah Berurah* would agree that *shishim ribo* is an accepted fundament that all can rely on.

The Sefer – Footnote 38 (continued):

...וגם דעת הריטב"א פרק כיצד מעברין כתב שם שרוב הגאונים סוברין כן. ...

Rebuttal: It should be noted that, in all probability, when the *Ritva* mentions *Gaonim*, he is referring to the *Ramban* and, in this case, possibly the *Rashba* as well (see Mosad Rav Kook edition of the *Ritva*, *Eruvin* 59a, n286; 67b, n411, and *Torah Sheleimah*, vol. 15, p. 174). The fact is that we do not know of even one *Gaon* who clearly stated that he was opposed to the criterion of *shishim ribo*. Moreover, it is doubtful that the *Ritva* was referring to the period that we refer to today as *Gaonim* since this demarcation was established at a later date (*ibid.*). The term *Gaonim* at that time included the period that we now refer to as the early *Rishonim*.

The Sefer – Footnote 38 (continued):

...ומסיק [בבה"ל] שם וז"ל: וע"כ בודאי יש להחמיר כסברא הראשונה וכמו שכתב הרש"ל והמשאת בנימין וכו' ומ"מ אין בנו כח למחות ביד המקילין שהם סומכין על הפוסקים העומדים בשיטת בה"ג ורש"י הנ"ל אבל כל ירא שמים בודאי יש להחמיר לעצמו דבזמנינו יש ג"כ ר"ה מן התורה וממילא אין לסמוך על עירוב של צוה"פ דבעינן דוקא דלתות וכו' עכ"ל. ...

Rebuttal: The *Bais Ephraim* already noted that we do not follow the *Masas Binyamin* and *Yam Shel Shlomo* regarding *shishim ribo*. Furthermore, the *Elya Rabah* (345:14), writes that the *Masas Binyamin* and *Yam Shel Shlomo* would agree that one could be lenient with an additional *tzad l'heter* and rely on the criterion of *shishim ribo* (the *Bi'ur Halachah*, 345:7, also mentions this *Elya Rabah*).

The *poskim* have already called attention to the fact that the *Mishnah Berurah* had obviously not seen the *Bais Ephraim's* list of *Rishonim* (*Toldos Shmuel*, 3:81:7, 3:86:8; *Bais Av*, 2:5:2; *Divrei Yatziv* 2:173:1, and *Even Yisroel*, 8:36). We can add that this is evident from the *Mishnah Berurah* himself since he utilized the *Bais Ephraim's* other *sefarim*, *Sharei Ephraim* and *Mateh Ephraim*, extensively, and he states that he did not possess the *sefer Teshuvos Bais Ephraim* (*Bi'ur Halachah*, 208:9, s.v. *Eino M'Vorech*). The *poskim* postulate that had the *Mishnah Berurah* seen the *Bais Ephraim*, he would have accepted that *shishim ribo* is a fundament of a *reshus harabbim*, and he would have agreed that even a *Baal Nefesh* could be lenient and rely on the fact that the streets are lacking *shishim ribo*.

The Sefer – Footnote 38 (continued):

...אבל ע' בספר הלכות שבת בשבת מהגרמ"מ קארף במלאכת הוצאה סעיף מ"ג שמישב מנהג העולם ותמה על הבה"ל הנ"ל שהשמיט כמה גאונים הרי הם הרב שר שלום גאון ורב האי גאון ובשערי תשובה להגאונים סי' כ"ט ובספר העיתים (סי' ר"ח) בשם גאון, והאשכול בשם גאון בב' מקומות, וגם יש להוסיף דעת הרב"ה ושבולי הלקט והראה והמרדכי פ"א דשבת והנמ"י סוף הלכות ציצית. ועי"ש שישב התם מנהג העולם שסומכים להקל. ...

Rebuttal: If the authors would have plumbed the depth of the *inyan*, they would have indicated that even the *Bais Ephraim's* list is much larger than the *Bi'ur Halachah's*. As a matter of fact, Rav Karp's *shlita's* list is far from complete, and as can be discerned from what I wrote above (see Section One, note 21), there are many more *Rishonim* that can be added.

The Sefer – Footnote 38 (continued):

...אבל מ"מ שמענו בשם גדול א' שמ"מ ק' להקל בשיעור ששים רבוא שהרי יש לזרף דעת הראשונים שבכלל אינם מצייכים ששים רבוא.

Rebuttal: This is nonsense. No halachic decisor would make this claim, only some *yungerleit* who have no inkling of the halachic process. The authors simply lifted this from the “*Chevrah Hilchos Issurei Eruvin*” who are not interested in the *emes* but only in fabricating reasons to negate *eruv*in.

The reason why this is so inane is because if we were to accept the opinion of any *posek* regarding how the fundament of *shishim ribo* is fulfilled, one could not then advance the uncertainty that there are *Rishonim* who do not allow for this criterion at all since the principle of *shishim ribo* has been accepted by that *posek* (and the overwhelming majority of *poskim*) as *halachah p’suka*, and to them it is not anymore a matter of debate, either because it is the *minhag* or because we now know that the majority of *Rishonim* accepted the criterion (this was argued emphatically by Rav Fishel Hershkowitz zt”l who stated that this is elementary).

The Sefer – Page 55:

The accepted practice for many generations follows the opinion that shishim ribo is a requirement for a reshus harabim.(39) Nevertheless, it was also accepted for ba’alei nefesh (scrupulous individuals) to be stringent, and an individual who wishes to be stringent should not be viewed as one who is questioning a long-standing minhag. Those who follow the stringent view should not rely on an eruv that includes a city street that is wider than sixteen amos, even if there is no presence of shishim ribo. The discussion in the following paragraphs applies to individuals who do not follow this stringency.

Rebuttal: While the first part of this paragraph is correct, the second part is incorrect. There has never been an accepted practice to be stringent regarding the criterion of *shishim ribo*. Most cities in Europe prior to WWII had streets that were sixteen *amos* wide; therefore, they needed to rely on the criterion of *shishim ribo*. The fact is that most people made use of their town *eruv*in, and for those few who did not, it was because many times there were issues with the *tzuras hapesachim* in pre-war Europe.

In any case, since we now know that the overwhelming majority of *Rishonim* maintain that *shishim ribo* is a criterion of a *reshus harabbim*, there is no reason to be stringent. Furthermore, even if one would not want to rely on the criterion of *shishim ribo* on its own, even a *Baal Nefesh* would not need to be stringent in conjunction with a *tzuras hapesach*. Additionally, the fundament of *mefulash* and the *Chazon Ish*’s *shita* in *mechitzos* would allow a *Baal Nefesh* to carry in most city *eruv*in.

The Sefer – Footnote 39:

ע' ברמ"א סי' שמ"ו סעיף ג' שכל הרשויות שלנו כרמלית הן, במג"א סי' שמ"ה ס"ק ז' וט"ז שם ס"ק ו', ובפרמ"ג שם, ובתוספת שבת שם ס"ק ט"ו. אבל הגר"ז שמ"ה סעיף א' כתב וז"ל: ויש אומרים שכל שאין ששים רבוא עוברים בו בכל יום כדגלי מדבר אינו רשות הרבים אלא כרמלית, ועל פי דבריהם נתפשט המנהג במדינות אלו להקל ולומר שאין לנו עכשיו רשות הרבים גמורה ואין למחות בידם שיש להם על מי שיסמכו (וכל ירא שמים יחמיר לעצמו). ...

Rebuttal: Actually, Rav Avraham Chaim Noeh *zt"l* affirms that the words *v'chol yira shomayim yachmir* were not inked by the Rav (Kuntras HaShulchan, 69). Moreover, since the Rav maintains that once a *reshus harabbim* is encompassed by *tzuras hapesachim* the issue is no more a matter of a *d'Oraysa*, there is no doubt that he would agree that when a *tzuras hapesach* is being utilized even a *yirei shomayim* can rely on the criterion of *shishim ribo* (see *Kanah V'Kanamon*, 5:56).

The Sefer – Footnote 39 (continued):

...ובמ"ב סי' שס"ד ס"ק ח' כתב שכן נהגו העולם להקל דבעינן ששים רבוא, אבל בבה"ל בסימן שמ"ה לאחר שכתב דעת המחמירים ודעת המקילים סיים וז"ל: מ"מ אין בנו כח למחות ביד המקילין שהם סומכין על הפוסקים העומדים בשיטת בה"ג ורש"י הני"ל [דס"ל דדוקא בששים רבוא הו"ל רה"ר] אבל כל ירא שמים בודאי יש להחמיר לעצמו דבזמנינו יש ג"כ ר"ה מן התורה, וממילא אין לסמוך על עירוב של צוה"פ דבעינן דוקא דלתות, עכ"ל. ובשס"ד לאחר שישב קצת מנהג העולם גם שם סיים דיש לבעל נפש להחמיר. ...

Rebuttal: As mentioned above, the *Mishnah Berurah's* list of *Rishonim* has been superseded, so there is no doubt that a *Baal Nefesh/Yirei Shomayim* does not need to be *machmir*.

The Sefer – Footnote 39 (continued):

...וע' בערוך השולחן ש"ג סעיף כ"ב דמשמע דאינו היתר ברור, ...

Rebuttal: It should be noted that the *Aruch HaShulchan* declared (*Choshen Mishpat*, 162:1) that one can force his neighbor to pay for a *tzuras hapesach* even if he would want to be stringent since we follow the *Rema* that there is no *reshus harabbim* because we accept the criterion of *shishim ribo*. In any case, in *siman* 303, the *Aruch HaShulchan* is following the *Mishkenos Yaakov*, and his list of *Rishonim* has been superseded. [Furthermore, since the authors state that the *Aruch HaShulchan* maintained that one should not rely on the criterion of *shishim ribo*, they should have mentioned that the *Aruch HaShulchan* suggested an additional reason to allow city *eruvim* today.]

The Sefer – Footnote 39 (continued):

...ומ"מ גם לאחר מזה שכתבו הגאונים הנ"ל עדיין לא נעקרה המנהג, וכן נוהגים בין בא"י בין בחו"ל על פי הוראת הגדולים, וכן שמענו מהגר"ש מילר שיש לסמוך על מנהג העולם ולהקל.

Rebuttal: I thank the authors for mentioning that the *minhag* is to rely on the criterion of *shishim ribo*, but they neglect to mention the main point. The reason that we accept the criterion is because, as the *Bais Ephraim* declared, no one has a right to uproot a *minhag* that has been accepted by all the Ashkenazic *Rishonim* on whom we rely, even if they are in the minority; how much more so now since we know that they are the majority. Furthermore, the authors omitted that Rav Moshe Feinstein zt"l maintained that, without a doubt, we rely on the criterion of *shishim ribo* (*Igros Moshe*, O.C. 5:24:10, and also 3:94:3; 5:19; see also more about this later on and in Section Three).

The Sefer – Page 55 (continued):

It should be noted that private roads, such as roads that are designated for residents of a residential development, are similar to muvaos in the time of Chazal and are clearly not reshuyos harabim. One should also note that an eruv constructed using the principle of omed merubeah, where three sides of an eruv are constructed using the physical partitions that comprise a majority of their respective sides, is superior than the typical eruv of tzuros hapesach, and perhaps ba'alei nefesh may use it, as well.

Rebuttal: The statement that **perhaps** even a *Baal Nefesh* can rely on an *eruv* employing the principle of *omed merubah* demonstrates that the authors' ultimate goal is to sow doubt regarding all city *eruvim*. There is no doubt that even more than relying on the criterion of *shishim ribo*, just about all *poskim* would allow *eruvim* consisting of *mechitzos* that are *omed merubeh al haparutz* (there are even situations in which case the *Mishkenos Yaakov* would allow such *eruvim*). While there is no need to explicate what is given, I will just cite a few of the *poskim* who maintain that *mechitzos* are superior to the criterion of *shishim ribo*, *Bais Ephraim* (p. 49b); *Bais Shlomo* (*siman* 51); *Avnei Nezer* (O.C. 279:2), and *Chazon Ish* (*siman* 107:7). [See more about this issue in Section Three.]

The Sefer – Page 55 (continued):

Additionally, wherever there is even a slight chance of an actual reshuyos harabim, every effort should be made to attempt such an eruv as there are opinions that such an eruv may not be subject to the limitations of tzuros hapesach.(40)

Rebuttal: In fact, until sixty years ago, there never was a question if an *eruv* should be established, even in large cities containing *shishim ribo*, only *how* to establish an *eruv*. Today with the “*Chevrah Hilchos Issurei Eruvin*,” the question is how *not* to establish/allow a city *eruv*. It is not just “opinions” that an *eruv* consisting of *mechitzos* is superior to *tzuras hapesachim*; it is the overwhelming majority of *poskim* who maintain as such.

The Sefer – Footnote 40:

מהלך זה נבנה על כמה יסודות אבל אין כולם מוסכמים לדעת כל הפוסקים. ...

Rebuttal: Of course, it is always possible to cite *shitos yachidos* to invalidate an *eruv*; however, ruling according to *shitos yachidos* is not the correct approach in halachah. [The *Chasam Sofer* writes (Y.D. 37) that if we were to collect all the *shitos ha'ossrim* we would not be able to eat bread or drink water.] Even more so in *hilchos eruvin*, since all criteria have to be met for the area to be classified as a *reshus harabbim*, even if we were to employ a *shitas yachid* regarding *reshus harabbim* that would then disqualify the *eruv* based on only one criterion, the other conditions would not be met and an *eruv* would be permissible *l'chatchilah*. Consequently, to invalidate an *eruv*, one would have to selectively choose from disparate *shitos yachidos* — which in many cases are contradictory — and that is an unjustifiable approach to halachah. The reality is that if someone learns *hilchos eruvin* with an open mind, he would realize that since it is almost impossible to meet all the criteria of a *reshus harabbim*, creating an *eruv l'chatchilah* is a real possibility.

The Sefer – Footnote 40 (continued):

...הא' שק"ל לא אתי רבים ומבטלי מחיצות וא"כ בכה"ג כשיש שם ד' מחיצות אפשר להקל, כדאינא בעירובין כב. וכן הוא דעת כמה אחרונים דק"ל לא אתי רבים והרי הם החזו"א עירובין סי' מ"ג ס"ק ה' וסי' י' ס"ק י', והביט אפרים סי' כ"ו שהוכיח כן מהמג"א סי' שס"ג ס"ק ל', וכן דעת התוספת שבת שס"ג ס"ק פ"ב. וגר"ז סי' שמ"ה בקונטרס אחרון ס"ק ב', ובסי' שס"ג מ"ב, אבני נזר סי' רע"ט אות ב', וחת"ס סי' פ"ט, וערוך השולחן סי' שס"ד. ...

Rebuttal: The authors cite a number of *Achronim* who *pasken lo asu rabbim u'mevatlei mechitzta*; however, in addition to the above mentioned *Achronim*, the overwhelming majority of *poskim* maintain *lo asu rabbim u'mevatlei mechitzta* (see Section One, note 2).

While there may be a few *poskim* who posit otherwise, since it is the overwhelming majority of *Achronim* whom maintain *lo asu rabbim u'mevatlei mechitzta*, there is no doubt that this is the way we *pasken*.

The Sefer – Footnote 40 (continued):

...ומאיך דעת המ"ב ס' שס"ד בבר"ל סעיף ב' ס"ל דק"ל דאתי רבים וכן הוא דעת המשכנות
יעקב ס' קכ"א, ...

Rebuttal: There is a major misunderstanding regarding whom the *Mishnah Berurah* follows, the *Chachamim* and Rav Elazar [*lo asu rabbim u'mevatlei mechitzta*], or Rav Yehudah [*asu rabbim u'mevatlei mechitzta*] and Rav Yochanan [*delasos neulos*]. From the above cited *Biur Halachah*, the authors argue that the *Mishnah Berurah* follows Rav Yehudah, since he argues that most *poskim* do not accept the *Rambam* who follows Rav Elazar who allows a *tzuras hapesach* on a *d'Oraysa* level. This is incorrect. The fact is the *Mishnah Berurah* in *Shaar HaTziyun*, *siman* 363:94, maintains that we *pasken lo asu rabbim u'mevatlei mechitzta* even in a situation of *mechitzos b'y'dai shomayim* [natural walls] (see also *Biur Halachah*, *ibid.*, 36). It follows that the *Mishnah Berurah* in 363:156 argues that it is halachically sufficient if a *tel hamislaket* [a slope with an adequate halachic gradient] encompasses an entire city and does not mention that a *Baal Nefesh* should be stringent because there may be roads that are wider than 16 *amos*.

Why then does the *Mishnah Berurah* quoted by the authors (*Biur Halachah*, 364:2) accept Rav Yochanan who requires *delasos neulos*? Subsequent to what I argue above [that the *Mishnah Berurah* upholds *lo asu rabbim u'mevatlei mechitzta*], there is no doubt that the *Mishnah Berurah* is only following the majority of *poskim* who maintain that Rav Yochanan can also be in agreement with the *Chachamim*, and they would in certain situations require *delasos* [actually this is the *Bais Ephraim's* and *Chazon Ish's* (and as mentioned above in my rebuttal to note 36, the *Shulchan Aruch HaRav's*) argument, and in fact, both the *Ravyah* (p. 270, 276) and *Eshkol* (*siman* 64-65) quote Rav Yochanan yet *pasken* like the *Chachamim* which buttresses the *Bais Ephraim's* and *Chazon Ish's* assertion]. This is further evident from the fact that the *Mishnah Berurah* (*Biur Halachah*, 364:2) only affirms that the *Rif* and the *Rosh* follow Rav Yochanan regarding *delasos neulos* but does not articulate that they *pasken* like Rav Yehudah.

In short, the *Mishnah Berurah* maintains *lo asu rabbim* like the *Chachamim*, but in a situation of only two *mechitzos*, he requires *delasos* like Rav Yochanan. This follows why the *Mishnah Berurah* asserted that the *Rambam* [according to his understanding] who maintains *lo asu rabbim* of a *tzuras hapesach* on a *d'Oraysa* level is in disagreement with most *poskim* who follow the *Chachamim* as they would require *delasos* like Rav Yochanan in a

situation of only two *mechitzos*, and a *tzuras hapesach* on a *d'Oraysa* level would not be sufficient.

The Sefer – Footnote 40 (continued):

...וכן הוא דעת כמה ראשונים הרי הם הרשב"א והריטב"א דס"ל דאתי רבים, וכן דעת הרי"ף
...והרא"ש.

Rebuttal: It is interesting that the authors only mention those *Rishonim* who *psaken asu rabbim u'mevatlei mechitzta*, but they fail to mention any of the *Rishonim* who maintain *lo asu rabbim u'mevatlei mechitzta*. In fact, the overwhelming majority of *Rishonim pasken lo asu rabbim* (see Section One, note 2).

Furthermore, I am surprised that the authors failed to mention that the *Even HaOzer*, *Shulchan Aruch Harav*, *Bais Ephraim*, *Avnei Nezer*, and the *Chazon Ish* (among others) argue that even though the *Rif* and the *Rosh* quote Rav Yochanan, they could *pasken* like the *Chachamim* (as I mentioned above).

The Sefer – Footnote 40 (continued):

...ולמעשה שמענו מרב א' ששאל מהגרי"ש אלישיב והשיב דק"ל למעשה דלא אתי רבים. ...

Rebuttal: I appreciate this piece of information; however, it has been mentioned previously in the name of Rav Elyashiv *zt"l* regarding the Toronto *eruv* that he upholds *lo asu rabbim* (*The Toronto Community Eruv*, p. 15). In any case, where do you think that Rav Elyashiv came up with this *p'sak*? No doubt because this is the opinion of the overwhelming majority of *poskim*.

The Sefer – Footnote 40 (continued):

...והב' דלשם ד' מחיצות מספיק ג' מחיצות ול"צ ד' מחיצות (ודלא כהאבן העוזר דמצריך ד'
...מחיצות).

Rebuttal: Actually, the *Even HaOzer* is referring to *shem gammel mechitzos* and not *shem daled*. In fact, the *Even HaOzer* clearly maintains further on *lo asu rabbim* in a situation of *gimmel mechitzos*. In any case, even if there is a *posek* that requires *daled mechitzos*, we do not accept his opinion *l'halachah*. Therefore, it is not as if we are *mekil* if we do not follow this *shitah yachida'ah*.

The Sefer – Footnote 40 (continued):

...והג' ודלא כהבה"ל דס"ל דאפילו אם יש שם ד' מחיצות צריך דלתות מדרבנן. אבל ע' בס"י שס"ד סעיף ב' ד"ה והוא שננעלות בלילה, וד"ה ואחר, ואפשר דיש מעלה בעומד מרובה שהוא עדיף משם ד' מחיצות כדמבאר כחז"א עירובין ס"י מ"ג, וכן באחיעזר בחלק א' ס"י ח'. ...

Rebuttal: See above where I clarify that the *Biur Halachah* maintains *lo asu rabbim*; hence, there would be no benefit of *mechitzos* consisting of *omed merubeh* over *shem daled mechitzos*. Therefore, there is no doubt that the *Biur Halachah* maintains that we require *delasos* only when rectifying a *reshus harabbim* which is not encompassed at the minimum by *shem daled mechitzos*. However, in a situation of *shem daled mechitzos*, *tzuras hapesachim* to close the breaches in the *mechitzos* would be sufficient. In any case, the *Bais Ephraim* [and all the *Rishonim* who *pasken* like the *Chachamim*] would not agree that *omed merubeh* is superior to *shem daled mechitzos*. [It's important to note, that the *Chazon Ish* ultimately (see the end of 112:5 in the letters) cites Rabeinu Yonasan that *me'd'Oraysa* there is no *shiur pirtzah* in a situation of *shem daled mechitzos*, as well as *omed merubeh*. Furthermore, the authors are incorrect as the *Achiezer* does not mention *shem daled mechitzos* at all.]

The Sefer – Footnote 40 (continued):

...וכן יש משמעות בראשונים שעומ"ר עדיף ומהני אפילו לר"י דס"ל אתי רבים. ע' ברמב"ן מלחמות עירובין דף כב, ומאירי עירובין דף כ', ובגאון יעקב עירובין דף כב. ...

Rebuttal: It is fascinating that the authors would cite this opinion of these *Rishonim*. However, they are missing the main point. As I mentioned above, the overwhelming majority of *Rishonim* uphold *lo asu rabbim umevatlei mechitzta*, but there are six *Rishonim* who explicitly maintain otherwise: 1) *Ramban*, 2) *Rashba*, 3) *Ritva*, 4) *Meiri*, 5) *Ran*, 6) *Hashlamah*, (and maybe the *Rivash*).

The authors mention that in a situation of *mechitzos* that are *omed merubeh al ha'parutz* (as opposed to *shem daled mechitzos*), the *Ramban* and *Meiri* uphold that even Rav Yehudah would agree that we *pasken lo asu rabbim*. However, we can add that the other *Rishonim* who maintain *asu rabbim* would also agree with the *Ramban* and *Meiri*: see *Rashba* (22b, who quotes the *Raved*), and *Ran* (22b), [see also Rabeinu Yonasan (6a in the *Rif's* pagination)].

Following this, besides the *Ritva* who clearly upholds *asu rabbim* even in a situation of *mechitzos*, there are no other *Rishonim* who clearly maintain

asu rabbim when utilizing *mechitzos*. Therefore, it is undoubtable that we are not *mekil* if we sanction *lo asu rabbim umevatlei mechitzta, l'chatchilah*.

The Sefer – Footnote 40 (continued):

...וזהו' אפשר דתלוי אם פרצת ' הוא מדרבנן, וכן הוא משמעות החזו"א והאחיעזר הנ"ל. ...

Rebuttal: It is not just *mashmah* from the *Chazon Ish* and the *Acheizer* that *pirtzos esser* is a matter of a *d'rabbanan*, they say it clearly. Moreover, besides the *Chazon Ish* and the *Achiezer*, nearly all *poskim* maintain that *pirtzos esser* is *me'd'rabbanan* (see Section One, note 3).

The Sefer – Footnote 40 (continued):

...אבל אין זה מוכרח שהרי "ל דאפילו פרצת ' מדאורייתא מ"מ אם תקנו בצוה"פ, הוה כאילו העמידו על פחות מו'. וכן משמע מהריטב"א עירובין כב. שבירושלים היה עומ"ר אע"ג דהיה לו פרצת ' ולפי האחרונים שס"ל דפרצת ' מה"ת צ"ל דיש מעלה בעומ"ר. ...

Rebuttal: The justification that the authors are suggesting is incorrect. Those who maintain (*Mishkenos Yaakov* and Rav Aharon Kotler *zt"l*) that *pirtzos esser* is a matter of a *d'Oraysa* would argue that even though (according to their opinion) a *pirtzos esser* is regarded as minimized when sealed by a *tzuras hapesach*, nevertheless, it would be breached by the *rabbim* traversing therein (and they do not accept the definition of a *rabbim* as being *shishim ribo*). Therefore, the authors need to face the facts; there is no alternative to allow *pirtzos esser* according to those who propose that it is a matter of a *d'Oraysa* (only in select cases would they be lenient, such as at the Brooklyn waterfront where there is no *rabbim bokim* through the *pirtzos* at all). The authors should stop trying to excuse our reliance on *mechitzos* that are *omed merubeh*; it is simply because we do not accept the *Mishkenos Yaakov's* opinion regarding this *inyan*, and we follow the overwhelming majority of *poskim* who maintain *pirtzos esser* is only a matter of a *d'rabbanan*.

The Sefer – Footnote 40 (continued):

...וכן משמע בשו"ת רע"א חדשות סי' ו' וע' בספר האיר יוסף עירובין סי' ל"א בסוף הספר מש"כ בזה. ...

Rebuttal: The authors are incorrect and should relearn this Rav Akiva Eiger. Rav Akiva Eiger is arguing that [according to *Tosfos's* first rejoinder] a *tzuras hapesach* is effective, not because it minimizes the *pirtzos* (as understood by the *Mishkenos Yaakov*), but only because it negates the effect of the multitudes traversing [*rabbim bokim*] in a *shiur reshus harabbim*, a sixteen *amos*

wide road. Rav Akiva Eiger's understanding of *Tosfos's* first rejoinder is similar to the *Bais Ephraim's* understanding of *Tosfos* and is in opposition to the concept that *tzuras hapesachim* effectively minimize *pirtzos*.

The Sefer – Footnote 40 (continued):

...וכן שמענו מרב עקיבא שטיינמטץ שהגד"ש מילר סומך על מהלך כעין מה שכתבנו להתייר
הטלטול בעיר טורנטו.

Rebuttal: You see, dear reader, the need for these justifications is because Rav Shlomo Miller *shlita*, as a *talmid* of Rav Aharon Kotler *zt"l* (who followed the *Mishkenos Yaakov*) upholds *asu rabbim umevatlei mechitztah* and that *pirtzos esser* is a matter of a *d'Oraysa*. Therefore, the authors needed to propose a litany of reasons to allow *eruv* even according to this view. However, this is all extraneous, as we follow the *Bais Ephraim* and the overwhelming majority of the *poskim* who maintain *lo asu rabbim* and that *pirtzos esser* is only a matter of a *d'rabbanan*. It is about time that people accept the fact that those who maintain *asu rabbim umevatlei mechitztah* and that *pirtzos esser* is a matter of a *d'Oraysa* are a small minority of *poskim*, and the halachic process does not require us to accommodate their view.

The Sefer – Page 56:

How shishim ribo is determined

In addition to the question whether shishim ribo is in fact needed to create a reshus harabim, there is also much discussion on how shishim ribo is determined. Does this mean that there must be a total of 600,000 individuals living in the city? Does it mean that they must all use a single road? If so, do they have to use this road every day, or is it sufficient if they use it only occasionally?

Rebuttal: To begin with, it is important to note that the simple understanding of the *Shulchan Aruch* is that the criterion of *shishim ribo* is conditional of a street and on a daily basis. There really is not “much discussion” between the *poskim* regarding how to determine the criterion of *shishim ribo*. Most *poskim* follow the simple understanding of the *Shulchan Aruch*. Even Rav Moshe *zt"l* admitted that the simple understanding of the *Shulchan Aruch* is that the criterion of *shishim ribo* is conditional of a street and on a daily basis — as he posits that the *Shulchan Aruch* is referring to a *sratya* — and to say otherwise is a *chiddush* (*Igros Moshe*, O.C. 1:139:5).

The Sefer – Page 56 (continued):

The domains in the time of Chazal

In the time of Chazal, the alleyways of many cities would typically converge into a single artery. Since all the residents in the city would ultimately access the main road, the daily traffic on the main road would generally reflect the population of the city. Many Rishonim(41) clearly state that if a city has a population of 600,000, then the main street is considered a reshus harabim. However, there are various opinions regarding how this is to be applied to contemporary cities, where the entire city population does not necessarily converge on a single road.

Rebuttal: This is one of the most inimitable paragraphs in the entire *sefer*. Alas, when the authors have something insightful to say, they miss an opportunity to guide us and apply it to our cities nowadays.

Let us explore this issue further:

The main argument cited by those who claim that the criterion of *shishim ribo* is conditional on a city (as opposed to a street) is that *Rashi*, the foremost supporter of this fundament, employs the word *ir* [city] when mentioning *shishim ribo* (*Eruvin* 6a):

ר"ה: משמע רחב שש עשרה אמה ועיר שמצויין בה ששים רבוא

However, there is a simple explanation as to why *Rashi* makes use of the word "*ir*" in reference to the criterion of *shishim ribo*. *Rashi* expounds in *Eruvin* 59b:

דרך עיירות להיות פתחי פילושיהן לאורכם ורה"ר עוברת מפתח לפתח וחלוקה לאורכה ... והני דרסי בהך רה"ר ... ורה"ר זו מחברתם שכולם מעורבין בה

Likewise, we find in *Tosfos Rid* (*Eruvin* 59b):

דדמי מבוי האמצעי לכל מבואות העיר הפתוחין לעיר, כמו המבוי לחצרות ... כך כל מבואות העיר דורסין על המבוי האמצעי כשרוצין לצאת מן העיר ולהיכנס

Similarly the *Smag* states (beginning of *hilchos Eruvin*):

וכן בתוך העיר ימצא רה"ר, כגון שרחוב שלה רחב שש עשרה אמה וכו' ומפולש משער לשער ובוקעין בו ס' רבוא

Rashi, *Tosfos Rid*, and the *Smag* are informing us as to how cities were planned. As the authors mentioned, cities in the past had a main road that all residents used to enter and exit the city [because most cities were walled], and this thoroughfare was the *reshus harabim* of the city. Consequentially, when *Rashi* and the *Rishonim* who follow him use the word city in reference to *shishim ribo*, they are not signifying that the criterion is conditional on a city but only that the main thoroughfare in a walled city containing *shishim ribo* would be classified as a *reshus harabim* if it is actually traversed by its entire population.

This follows why *Tosfos* (*Eruvin*, 6a), *Rosh* (*Eruvin*, *siman* 8), *Ritva* (*Shabbos*, 6a), *Ran* (*Eruvin*, 6a) and *Meiri* (*Eruvin*, 6b), when citing *Rashi's shita* regarding *shishim ribo*, omit the word city because, as defined by *Rashi*, a city containing *shishim ribo* is only an example as to how a thoroughfare can support such a population.

Following this, the authors should have extrapolated that since the populace of today's cities — because they are not walled — make use of many thoroughfares, it is not a given that the main arteries are actually traversed by its entire population. Consequentially, even if a city contains a population of *shishim ribo*, it is almost certain that no street would be classified as a *reshus harabbim* since they are not traversed by the city's entire populace [it should be noted that this is similar to the approach of the *Aruch HaShulchan* (345:19-22)].

The Sefer – Footnote 41:

רש"י עירובין נט. והובא דבריו בתוס' ותוס' הרא"ש שם, וכן הוא בתוס' ר"ד פסחים סט. וז"ל:
כרמלית הם שאין דרים בהם ששים רבוא, וכן ברש"י עירובין ו. ד"ה רה"ר כתב "ועיר שמצויין
בה ששים ריבוא." ...

Rebuttal: Contrary to some *yungerleit*, the authors — following their account of the layout of cities in the time of *Chazal* — cite these *Rishonim* who associate *ir* [city] with the criterion of *shishim ribo* as evidence that if a city has a population of 600,000, then only the main street could be classified as a *reshus harabbim*. This is commendable. However, it would be even more admirable if the authors would have followed through (as I mentioned above) in the application of the criterion to today's large cities. As our cities are not walled, it is almost certain that no street would be classified as a *reshus harabbim* since they are not traversed by the cities' entire populace.

The Sefer – Footnote 41 (continued):

...וכן הוא בספר העיתים סי' צ"ב ד"ה ות"ר וז"ל: מדינות ועיירות שאין בהן ס' ריבוא ואפילו יש
בהן ס' ריבוא ודלתותיהן ננעלות בלילה אין נעשית רה"ר.

Rebuttal: The fact that the *Sefer Ha'itim* associates cities with countries is proof that the criterion of *shishim ribo* is conditional of the street and not the city, otherwise the *Itim* is contradictory. If the *Itim* maintains that a city is a qualifier of the criterion of *shishim ribo*, how can he state that an entire country would be a qualifier, as well? This would be in conflict with the *Mishnah* who refers to an *ir* [city] *shel rabbim*, which would seem to be

conditional of a city. Moreover, if the *Itim* upholds that a country is a qualifier of the criterion of *shishim ribo*, then there would never be a *reshus hayachid* ever. Most countries contain a population of *shishim ribo*. Therefore, the *Sefer Ha'itim*, by associating cities with countries, must only be referring to an example as to how a thoroughfare can support such a population. A city or country that includes a population of *shishim ribo* could include a central corridor that is traversed by the entire population of the city or country, which would then be classified as a *reshus harabbim*.

The Sefer – Page 56 (continued):

This is illustrated in the following applications:

Application A: City A has a population of 5 million people. There is one main road that passes through the entire city and is used by many of the residents to travel to and from downtown for work. It is estimated that of the 1.5 million residents who work downtown, at least half of them use this main road. This main road is considered a reshush harabim according to all opinions,(42) since it is used by at least 600,000 people on a daily basis.

Rebuttal: The authors are conflating the issues. According to those *poskim* who maintain that the criterion of *shishim ribo* is conditional of a street, the population of the city has no bearing on the street if it should be classified as a *reshus harabbim* because today the cities are not walled. The daily traffic of today's roads does not reflect the city's population since people do not converge on a particular main artery. People in various parts of the city make use of different streets. Hence, this is not a matter of estimation at all, but rather we would require an accurate tally of the people traversing the street in order to assess if the street is a *reshus harabbim*. Additionally, according to those *poskim* who maintain that the criterion of *shishim ribo* is conditional of a street, even those traversing the street who are not residents of the city would be included towards the tally of *shishim ribo*.

The Sefer – Footnote 42:

פשטות לשון השו"ע איזהו רה"ר וכו', וי"א שכל שאין ששים רבוא עוברים בו בכל יום אינו רה"ר, ...

Rebuttal: It is important to explicate what the authors state as a given. The simple understanding of the *Shulchan Aruch* is that the criterion of *shishim ribo* is conditional of the street and on a daily basis.

The Sefer – Footnote 42 (continued):

...וזהו לשון הספר העיתים בשם הבה"ג: רה"ר דוכתא דדשין ליה שית מאה אלפין גברא ביזמא
כדגלי מדבר (אלא דיש לדחות דדוכתא ר"ל בעיר) ...

Rebuttal: Nowadays we know of two manuscripts of the *Behag* that mention the criterion of a daily *shishim ribo*. (The simple meaning of the word *duchta* infers place, which more likely refers to an area such as a town square than a city.)

The Sefer – Footnote 42 (continued):

...וכן ברמב"ן שבת נז. בשם ספר התרומה כתב וז"ל: שעכשיו במקומות הללו אין בהם רה"ר
גמורה מפני שאין המבואות רחבים שש עשרה אמה ועוד שאין עוברים בהן ששים רבוא בכל
יום (אבל הספר התרומה עצמה הלכות שבת סי' רי"ד כתב וז"ל: והכרמלי' רחבה במקום שרבים
רגילין אלא אינה רחבה שש עשרה אמה או אין שולטין בה ששים רבוא דומיא דדגלי מדבר) ...

Rebuttal: In fact, what we can derive from the *Ramban* is that he understood from the *Sefer HaTrumah* that the word שולטין infers עוברים. This can be the underlying reason for the *Ran's* language, as well.

The Sefer – Footnote 42 (continued):

...וכיוצא בזה במאירי שם וכן הוא בחידושי הר"ן על הר"ף שם בשם ספר התרומה. ...

Rebuttal: Besides the above mentioned *Rishonim* (*Behag*, *Ramban*, *Ran*, and *Meiri*), the following *Rishonim* also maintain that the criterion of *shishim ribo* is a daily requirement: *HaManhig* (*Hilchos Shabbos HaTzarichos* ois 138); *Ritva* (*Shabbos* 57a); *Rabeinu Pertz* (*Eruvin* 6a); *Rabeinu Yerucham* (*Toldot Adom V'Chavah* 12:4, 12:17); *Shiltei Giborim* (*Shabbos* 2a, note 3), and *Sefer HaNeyar* (*Hilchos Eruvin* p. 51).

The Sefer – Footnote 42 (continued):

...ועי' במ"ב שמה"ס ק"ד שכתב וז"ל: חפשתי בכל הראשונים העומדים בשיטה זו ולא נזכר
בדבריהם תנאי זה [של ששים רבוא בכל יום] רק שיהיו מצויין שם ששים רבוא, ולכאורה כוונתו
דהראשונים הג"ל באמת חולקים הם על תנאי של ששים רבוא ורק דרך אגב הם מפרשים
לדעתו זו צריך שיהא בוקעים בכל יום. ...

Rebuttal: This is a nice explanation of how it is possible that the *Mishnah Berurah* did not recognize that there are many *Rishonim* who indicate that the criterion of *shishim ribo* is daily. However, it is inaccurate. How could the authors have missed the fact that *Rabeinu Yerucham* clearly states that the criterion is daily, and the *Mishnah Berurah* includes *Rabeinu Yerucham* in his list of *Rishonim* who uphold the fundament of *shishim ribo* [there are

other *Rishonim*, not mentioned in the *Mishnah Berurah*, that accept the fundament of *shishim ribo* and maintain that it is a daily obligation, such as *HaManhig* and *Sefer HaNeyar*]. Furthermore, it is absurd to argue that we consider an opinion regarding the criterion of *shishim ribo* as only an offhand comment because it was issued by those *Rishonim* who do not uphold the fundament to begin with. Statements by *Rishonim* are never regarded as casual comments. Consequentially, there is no explanation as to why the *Mishnah Beurah* missed the many *Rishonim* who maintain that *shishim ribo* is a daily requirement.

The Sefer – Footnote 42 (continued):

...ובאמת אף שכמה אחרונים שבזמננו נתקשו בדעה זו, דבאמת ק' במציאות שיהיו ששים רבוא בוקעים ברחוב א' של ט"ז אמה, אבל ק' לדחותו לגמרי ומידי ספיקא לא נפקא, ולכח"פ לחומרא צריך ליתן עליו חומרי כרמלית כגון לחושש מקום פטור שתחת "טפחים יהא כמקום פטור בכרמלית וכדומה. ...

Rebuttal: This is fiction. There are no *Achronim* who argue that it is nearly impossible for *shishim ribo* to traverse a 16 *amos* wide street, only the authors and some *yungerleit*.

[See Section Three where the authors advance their own argument and my rebuttal.] The *yungerleit* of the "*Chevrah Hilchos Issurei Eruvin*" argue that in order for 600,000 people to traverse a 16 *amos* wide section of a street, it would take a continuous stream of 16 people standing side by side approximately ten and half hours — 37,500 [seconds] times 16 people [the maximum number of people that could possibly stand side by side in a 16 *amos* wide street] equals 600,000 people. This amount of time they claim would make it an improbable occurrence. However, they are mistaken in the *metzius*. They are assuming that a person can only take one step per second, when actually a person can take at least two steps per second (see also *Pesachim*, 94a). Hence, it would take half the time they claim, and therefore, it would make it a real possibility that 600,000 people traverse a street on a daily basis.

In any case, the fact that the authors would entertain this argument, which means they admit that this argument is in opposition to the *pashtus* of the *Shulchan Aruch* and these *Rishonim* (mentioned above), demonstrates the authors' bias regarding city *eruv*.

The Sefer – Footnote 42 (continued):

...ויש שהצריכו ששים רבוא בהרחוב אבל לאו דוקא בכל יום: הרי הם תוס' שבת סד: ז"ל: ואנו שאין לנו דה"ר גמור דכל דה"ר שלנו כרמלית היא שהרי אין מבואות שלנו רחבות י"ו אמה ולא ס' ריבוא בוקעים בו, עכ"ל. וכן הוא בסמ"ק מצוה רפ"ב ז"ל: ורשות הרבים היא סרטיא ופלטיא פי' רחב י"ו אמות ובקיעות של ס' ריבוא בני אדם בוקעין בו, עכ"ל. ובבית הבחירה למאירי עירובין ו: ז"ל: ולא עוד אלא שגדולי הרבנים מוסיפין בו שאין נקרא דה"ר אף ברוחב י"ו אא"כ רגילה בו דריסת ששים רבוא, עכ"ל. (אלא שבסוף כתב שזו קולא יתירה).

Rebuttal: I don't understand why the authors only mention that there is a diversity of opinions in the *Rishonim* and fail to reveal that, besides for the *Shulchan Aruch*, many of the *Gedolei HaPoskim* maintain that the criterion of *shishim ribo* is a daily requirement (*Rav Ovadia Bartenura, Shabbos 11:1; Levush, 345:7; Masas Binyamin, siman 92; Perishah, O.C. 325:8; Olas Shabbos, 345:6; Zera Emes, 3:34; Tiferes Yisroel, introduction to Shabbos; Shulchan Aruch HaRav, 345:11; Michtam L'David, siman 2; Bais Meir, 364:2; Shulchan Atzei Shitim, 4:1:12; Bais Yaakov, Eruvin 6a; Yeshuos Yaakov, 345:5; Aishel Avraham 345:3, and Zivchei Tezdek, siman 102*).

Furthermore, it is difficult to derive much from the omission by some of the *Rishonim* that *shishim ribo* is a daily requirement. A case in point, the authors mention the *Meiri* in *Eruvin* (6b) where he omits that *shishim ribo* is a daily requirement; however, the *Meiri* in *Shabbos* (57a) clearly mentions that the criterion of *shishim ribo* is a daily requirement. In any case, it is fascinating that the authors would cite the *Meiri* as one of the *Rishonim* who does not maintain that the criterion of *shishim ribo* is a daily requirement, when the *Meiri* does not uphold the fundament of *shishim ribo* altogether. The authors argued above that the *Mishnah Berurah* did not cite those *Rishonim* who mentioned that the fundament is a daily requirement, since they did not subscribe to the criterion to begin with. I guess when it would help the authors in their opposition to city *eruvim*, then all rules fall by the wayside.

Furthermore, in order to form an opinion as to whether the criterion of *shishim ribo* is a daily condition or not, it would be prudent to investigate the source of the criterion, the *Behag*. Since some of the editions of the *Behag* do not mention the criterion of *shishim ribo* at all, some of the *Rishonim* did not actually see the words of the *Behag* in the original. Thus, these *Rishonim* only quoted what they heard in the name of the *Behag* regarding the criterion of *shishim ribo*, and it did not include the provision that it is a daily condition. However, now that we actually have the edition of the *Behag* that mentions the criterion of *shishim ribo* and the *Behag* clearly stipulates that the

criterion is a daily condition, there is no doubt that *b'chol yom* is provisional of *shishim ribo*.

In any case, even if the fundament of *shishim ribo* is not a daily requirement, there is no street that has *shishim ribo* traversing it on any given day of the year. Hence, an *eruv* would be allowed since the criterion of *shishim ribo* is rarely if ever achieved.

The Sefer – Page 57:

Application B: City B has a population of 1 million people. There are many roads that service the local neighborhoods and a few main roads that pass through the entire city. When traveling long distances across the city, these roads are the only practical route as the local roads are too slow for travel on long trips. It is assumed that almost all residents of the city must use all the main roads at least occasionally.(43) Many Poskim consider these main roads a reshut harabim as well, since they are used by 600,000 people on occasion.

Rebuttal: As we shall see in my rebuttal of the sources cited in the footnote (43), there are almost no *poskim* who maintain that it would be sufficient if the *shishim ribo* would just occasionally utilize the street. It is clearly illogical to include in the tally one who only on occasion makes use of a street. As the *Maharsham* argued (3:188), if the criterion of *shishim ribo* includes even those who occasionally use the street, how do we apply limits on the amount of time needed to fulfill the criterion? Clearly this is not the way the criterion of *shishim ribo* is calculated.

The Sefer – Footnote 43:

הנה פשוטות כל הראשונים שהבאנו לעיל דצריך בכל יום אין זה נחשב בכל יום, וגם הראשונים שכתבו שבוקעים בהם ששים רבוא יש לומר דצריך לכל הפחות שלפעמים יהא בהם ששים רבוא בחד יומא, אבל בכה"ג לעולם אין בהרחוב ששים רבוא. ...

Rebuttal: So the authors admit that, according to the *pashtus* of many *Rishonim*, the criterion of *shishim ribo* requires that they actually traverse the street, and the only question was if the requirement was every day or would on many days suffice to classify the street as a *reshut harabim*. Furthermore, it is the simple reading of the *Shulchan Aruch* that *shishim ribo* actually needs to traverse the street on a daily basis.

Moreover, since the criterion of *shishim ribo* is derived from the number of people who learnt by Moshe Rabbeinu in *machaneh Levia*, it would be prudent to peruse the *meforshim* on this issue to determine the frequency of their gathering. As a matter of fact, the overwhelming majority of *meforshim*

maintain that Moshe Rabbeinu held forth at these gatherings on a daily basis, and all of Klal Yisroel participated. Therefore, there should be no doubt that the criterion of *shishim ribo* is a daily requirement.

The Sefer – Footnote 43 (continued):

... אבל פשוט לשון רש"י שכתב עיר שמצוים בה...

Rebuttal: That *Rashi* uses the word *ir* [city] is an entirely different argument and is immaterial to the issue at hand, namely if the street would actually need *shishim ribo* traversing it on a daily basis. In any case, as I mentioned previously, according to *Rashi*, a city containing *shishim ribo* is only an example as to how a thoroughfare can support such a population.

The Sefer – Footnote 43 (continued):

... וכן מבואר בריטב"א עירובין נט. הובא בבה"ל בס"י שמ"ה סעיף ז' ד"ה שאין ששים רבוא, שמצוים לבוא ואפילו אם באים מחוץ לעיר וכ"ש שרגילים לבוא מהעיר עצמו, ...

Rebuttal: Besides for this not being exactly the *lashon* of the *Ritva*, the implication is incorrect. The *Ritva* is countering Rabbeinu Tam's issue with *shitas Rashi* [how is it possible that, at the time a city was established, it was classified as an *ir shel rabbim*?]. The *Ritva*'s rejoinder was that *Rashi* does not require that *shishim ribo* actually live in the city; it would be sufficient to include those who come into the city in the tally. The *Ritva*'s response does not preclude that *shishim ribo* would need to traverse the street itself in order for it to be classified as a *reshus harabbim*. The only question according to the *Ritva*'s understanding of *Rashi* is if the requirement of *shishim ribo* traversing the street is every day or would on most days suffice. In any case, the *Ritva* in *Shabbos* (6a) stipulates, *bokim bo shishim ribo*. Evidently, he maintains that the criterion is conditional of *shishim ribo* actually traversing the street.

The Sefer – Footnote 43 (continued):

... וכן הביא הבה"ל בשם הרי"א ז' והרמב"ן...

Rebuttal: The *Mishkenos Yaakov* (who the *Biur Halachah* is following) did not have the *Piskei Riaz*, only what was cited in his name in the *Shiltei Giborim*. In fact, the *Piskei Riaz* clearly states (5:5:1) that *shishim ribo* would need to traverse in the *reshus harabbim* [this just demonstrates that the *Rishonim* interchange many of their words regarding the conditions of the criterion].

It is important to note that the *Shiltei Giborim* himself (*Shabbos* 2a, note 3) states that the criterion of *shishim ribo* is a daily requirement.

The *Ramban* has absolutely no relevance to this matter. The *Ramban's* only argument was that even according to *Rashi* an intercity road does not need to fulfill the criterion of *shishim ribo* [in fact, the overwhelming majority of *Rishonim* and *Achronim* do not follow the *Ramban* regarding this matter (see Section One, note 30)].

The Sefer – Footnote 43 (continued):

...וע' במשכנות יעקב ס' ק"כ דלדבריו זה שכל א' מהששים רבוא משתמש בו לפעמים זה מספיק לעשות רה"ר, ...

Rebuttal: The *Mishkenos Yaakov* would not agree to the premise of this footnote. The *Mishkenos Yaakov* argues that the *Ritva* and a few other *Rishonim* maintain that even the accessibility of *shishim ribo* of the entire world would be sufficient to classify the roads as a *reshus harabbin*. Therefore, according to the *Mishkenos Yaakov*, the population of the city does not play a role in the tally. In fact, no *posek* agrees to this *chiddush* of the *Mishkenos Yaakov*. Furthermore, the *Mishkenos Yaakov* admits that the other *Rishonim* who uphold the criterion of *shishim ribo* require that *shishim ribo* actually traverse [each section of] the road.

The Sefer – Footnote 43 (continued):

...וכן הביא מהר"ן בשם הראה ז"ל: דאפשר לומר דבאותו זמן אפילו שאר מדברות שהיה להם דרך לשם לאותו מדבר הו"ה דאע"ג דפירש רש"י ובה"ג דלא הו"ה ר"ה אלא של ששים רבוא לאו דבעינן ששים רבוא אלא שיש כאן דרך לששים רבוא כלומר שיהא רגילין לילך שם אנשים רבים תדיר כששים רבוא וכאן הרי היו השיירות מצויות של ששים רבוא ואף על פי שלא היו כולם כאן בדרך כאחד, עכ"ל. ...

Rebuttal: The main argument of the *RaaH* [which is mentioned in the *Ran* (*Hamyuchos*)] is that in order to fulfill the requirement of *shishim ribo* we do not require that all the people traverse the road at the same time [בדרך כאחד]. However, this does not preclude that there would actually need to be 600,000 people who made use of the street in order to classify it as a *reshus harabbin*. Additionally, the *RaaH* maintains that only people who routinely utilize the street are included in the count of the criterion of *shishim ribo*. Conversely, since today people can make use of all roads (because the cities are not walled), many of our streets are only utilized occasionally by the entire population of the city. Consequently, there is no city that would be

classified as a *reshus harabbim* today according to the *RaaH*'s prescription of the criterion of *shishim ribo*.

The Sefer – Footnote 43 (continued):

...וכן בבית אפרים סי' כ"ו כתב שיהא דרך סלולה לס"ר המצוין שם בקירוב מקום ועיבורים ושבים שמה בכל עת עד שאפשר שביום אחד יעברו כולם בדרך ההוא וכי, עכ"ל.

Rebuttal: The Gedolei HaPoskim (*Maharsham*, 3:188 and *Minchas Yitzchak*, 8:32) have already stated that the simple understanding of the *Bais Ephraim* is that the *shishim ribo* would need to traverse the street itself for the street to be classified as a *reshus harabbim*, and the only question regarding his position was whether the requirement of *shishim ribo* traversing the street is every day or would on most days suffice.

The Sefer – Page 58:

Application C: City C has a population of 1 million people. There is a grid of many side and main streets running through this city. Residents living in the southern part of the city have their own access to and from the city. The same applies to other neighborhoods. It is assumed that many of the residents of the south side of the city will seldom, if ever, travel the roads on the north side of the city. The same applies to residents of other neighborhoods. There are Poskim who consider the roads to be a *reshus harabim*, based solely on the population of the city, which is more than 600,000.(44) Other Poskim are more lenient since none of these main roads are actually servicing a population of 600,000 or more.

Rebuttal: I reiterate, it is illogical to argue that the population of a city reflects the number of people who can make use of any street. Many people who live in one section of a city do not utilize the main streets in other sections of their city, so why should they be included in the tally of all the main streets of the city? As I mentioned previously, there are only one or two *poskim* who would consider all the roads in a city to be a *reshus harabbim* if the population of the city is greater than 600,000. The opinion of these *poskim* is not accepted l'halachah.

The Sefer – Footnote 44:

הנה לדעת הבית אפרים שהבאנו לעיל דכתב דמצוין שם בכל עת, לכאורה אין זה נחשב רה"ר, כיון דבדרך כלל אינם משתמשים בהרחובות שבצד השני של העיר כלל. וגם המשכנות יעקב שכתב מטורים יש לדון כיון דיש להם רחובות אחרים אין זה מסור להם. ...

Rebuttal: As mentioned previously, the *poskim* uphold that the *Bais Ephraim* requires that *shishim ribo* actually traverse the street over one day. The *Mishkenos Yaakov's shita* has nothing to do with a city.

The Sefer – Footnote 44 (continued):

...אבל ע' בספר שמחת ישראל בשם הגרש"ז אורבך ובשם הגר"ש אלישיב דכתב וז"ל: שאלתי את פי הגרש"ז שליט"א מהדעתו להלכה בעיירות גדולות בזמנינו שיש בהם ס' רבוא אבל אין בשום רחוב ס' רבוא וגם אין שם כ"כ הרבה בכל העיר שיהו ברחובות ס' רבוא בזמן אחד, והשיב שלמעשה יש להחמיר דהוה חשש דאורייתא, וכן אמר לי הגר"ש אלישיב שליט"א, עכ"ל. וכן שמענו מהגר"מ רוזנר שיש לו בכתב מהגר"ש אלישיב שאם יעלה מספר התושבים בירושלים ליותר מוששים רבוא שאין לסמוך שם על עירוב של צוה"פ.

Rebuttal: The sefer *Simchas Yisrael* cannot be relied on, as it was written by a member of the "*Chevrah Hilchos Issurei Eruvin*." A case in point is that it is very clear from the writing of Rav Shlomo Zalman Auerbach zt"l (*Minchas Shlomo*, 2:35:19) that the *shishim ribo* would need to traverse the road itself. So much for relying on *Simchas Yisrael*. Regarding Rav Yosef Shalom Elyashiv zt"l, however, there is a letter which seems to state (in reference to the Yerushalayim *eruv*) that *shishim ribo* is conditional of a city (*Kovetz Teshuvos*, 4:34). This though is in opposition to all the *poskim*, and moreover, the *metzius*; there were *eruvim* established in cities that contained populations greater than *shishim ribo* prior to WWII. Clearly, the world did not follow Rav Elyashiv regarding this matter. Furthermore, we do not have to look further than Yerushalayim itself; most people obviously do not follow this letter of Rav Elyashiv and make use of the *eruv* there (see also *Even Yisroel*, 8:37 and *Kinyan Torah*, 4:40). It should be noted that Rav Elyashiv was only referring to an *eruv* consisting of *tzuras hapesachim*. However, he certainly would have allowed an *eruv* formed by *mechitzos* that are *omed merubeh* to be established (see the rebuttal to footnote 40, and *The Toronto Community Eruv*, p. 15).

Moreover, Rav Elyashiv is quoted in his sefer *Ha'aros* on *Maseches Shabbos* (6b) as advancing numerous reasons why Yerushalayim does not fulfill the criterion of *shishim ribo* (e.g. we require that the *shishim ribo* traverse therein the entire day, that we do not include in the tally non-residents, women, children, infirm, and non-Jews). Consequently, it is possible that Rav Elyashiv would agree that most large cities do not fulfill the criterion of *shishim ribo* and an *eruv* of *tzuras hapesachim* can be established.

The Sefer – Page 58 (continued):

The opinion of Hagaon Rav Moshe Feinstein zt"l

Hagaon Rav Moshe Feinstein zt"l(45) has a unique formula for determining what constitutes a reshus harabim. According to his formula, a single street is not a reshus harabim unless 600,000 individuals travel this street every day, which is very rare in our time. However, if it can be assumed that 600,000 individuals can be found throughout all the streets of the city at one time, then the entire street grid of the city becomes one large reshus harabim. This assumption is only justified if there are close to three(46) million residents living in an area of the city that is twelve by twelve mil (a mil is 2000 amos, twelve mil equals approximately 8.5 miles). This concept of the entire city becoming a reshus harabim is derived from the machaneh Yisroel, the Jewish encampment in the desert.

Footnote 45: אגרו"מ או"ח ח"ה א"ס קל"ט

Footnote 46: אגרו"מ או"ח ח"ה ס" כ"ח ענף ב' אות ה' וס" כ"ט

Rebuttal: Rav Moshe zt"l, like most *poskim*, originally maintained (*Igros Moshe*, O.C. 1:109) that the criterion of *shishim ribo* was conditional on the street. Only later (*ibid.*, 1:139:5) did he formulate his *chiddush* in which *shishim ribo* when applied to a city was not dependent on a street but over a twelve *mil* by twelve *mil* area. Rav Moshe added that the criterion of *shishim ribo ovrin bo* would require a sizable population living and commuting into the twelve *mil* by twelve *mil* area so that it could physically satisfy the condition of 600,000 people collectively traversing its streets. In the final two *teshuvos* which followed, we see that Rav Moshe codified his *chiddush* that the requirement of the criterion of *shishim ribo* is, "just about three million people," (*ibid.*, 5:28:5) or, "at least five times *shishim ribo*," (*ibid.*, 5:29) which could amount to even more than three million people.

It is important to explicate why Rav Moshe argued that the criterion of *shishim ribo* is, "at least five times *shishim ribo*." Rav Moshe wrote (*ibid.*, 4:87) that since *eruv* in the past had been erected in cities whose populations exceeded *shishim ribo*, one could not classify a city as a *reshus harabbim* solely on the basis of the existence of a population of 600,000. Hence, Rav Moshe posited that the requirement is a population of three million. Rav Moshe's argument is in direct opposition to those who allege that the criterion of *shishim ribo* is conditional of a city with a population greater than 600,000.

[It should be noted, 21 ¼ inches is sufficient according to Rav Moshe's *shiur amah* in regards to Shabbos (see *ibid.*, 1:136). Therefore, twelve *mil* would be approximately 8.1 miles.]

The Sefer – Page 58 (continued):

This position represents both a great leniency and a great stringency. On the one hand, a street is not a reshut harabim unless 600,000 people travel the street every day. On the other hand, in a city with the necessary population density where a reshut harabim would be assumed, every side street is also considered part of this reshut harabim.

Rebuttal: Rav Moshe's position is not a leniency at all. There are few *poskim* who maintain that the criterion of *shishim ribo* is conditional of a city [which according to Rav Moshe is an area of twelve *mil* by twelve *mil*]. The overwhelming majority of *poskim* follow the simple reading of the *Shulchan Aruch* that the criterion of *shishim ribo* is conditional of the street. Only if 600,000 people would actually traverse the street itself on a daily basis would it be classified as a *reshut harabim* (see also Section Three). Moreover, Rav Moshe admits that his *shita* is a *chiddush* that is not mentioned in the *Achronim* (ibid., 139:5, 4:87). Consequently, Rav Moshe's *shitas* are not leniencies since the simple understanding of the criterion of *shishim ribo* is that it is conditional of the street.

The Sefer – page 58 (continued):

Application: A large city with a population of two million people has a busy main street that is used, at least occasionally, by half of the city's population. This street meets the criterion of being wider than sixteen amos. In terms of the traffic criterion, this main street would be considered a reshut harabim according to many Poskim, since the city's population is more than 600,000 and the street itself services 600,000 people occasionally.

Rebuttal: It is not "many *poskim*" but only one or two *poskim*. The overwhelming majority of *poskim* maintain that the criterion of *shishim ribo* is conditional on 600,000 people actually traversing the street. The authors continuously confuse this issue. The one or two *poskim* who argue that the fundament of *shishim ribo* is conditional of the city maintain that if the city contains a population of 600,000 people the entire city would be classified as a *reshut harabim* and not just the main street. On the other hand, for the one or two *poskim* who uphold that the criterion of *shishim ribo* is fulfilled if a street services 600,000 people occasionally, the city's population would not play a role in the tally; only the number of people who actually traverse the street itself (at the minimum occasionally) would be included in the tally.

The Sefer – Page 59:

However, according to the opinion of Hagaon Rav Moshe Feinstein, the street is not a reshus harabim, since it is not traveled by 600,000 individuals on a daily basis. The entire city would not be considered a reshus harabim because it does not have a density similar to the density of the Jewish encampment in the desert, since the entire population is only two million people.

Rebuttal: The authors got this right. It should be noted that even with all of Rav Moshe's *chiddushim* in regards to *eruv*, few cities would be classified as a *reshus harabbim* since they do not meet all of his criteria.

The Sefer – Page 59 (continued):

Many Poskim would not construct an eruv that includes a street that services 600,000 individuals unless there are additional halachic considerations that would provide a basis for leniency. An eruv that excludes the main streets is a much better option, since the side streets do not service 600,000 people even occasionally.

Rebuttal: I reiterate, it is not “many poskim.” The authors have a tendency to use the label “many poskim” when in fact the term should be “one or two poskim.” On the contrary, there are almost no *poskim* who maintain that a road would be classified as a *reshus harabbim* if it just services *shishim ribo* without actually having 600,000 people traversing it within a day or, at the minimum, on occasion. Moreover, an *eruv* would be allowed in most modern day cities since they do not meet the criterion of *mefulash u'mchuvanim m'shaar l'shaar*, and most cities would be able to make use of the Chazon Ish's *shita* in *mechitzos*, as well, which the authors conveniently omitted in the English section.

The Sefer – Page 59 (continued):

However, some Poskim(47) would object to this as well, since the city has a total population of more than 600,000 individuals.

Rebuttal: As we shall see in the source mentioned in the following footnote (47), there really is only one *posek* who maintains as such.

The Sefer – Footnote 47

כך שמענו מהגר"מ רחוק בשם הגר"ש אלישיב, שבעיר שיש בו ששים רבוא כל הרחובות אפילו הקטנות אם שייכים הם להרבים, אין לתקנם, בצוה"פ.

Rebuttal: The person who the authors cite as the source for Rav Elyashiv's *shita* is also a member of “*Chevrah Hilchos Issurei Eruvin*” and cannot be

trusted (see *Or Yisroel*, no. 44 pp. 55-72, no. 45 pp. 130-144, for a rebuttal of much of what this source alleges in his *sefer*).

The Sefer – Page 59 (continued):

If the population of the aforementioned city would be larger, and it would have a population of three million people living in an area approximately 8.5 by 8.5 miles, then Hagaon Rav Moshe Feinstein would consider the entire city a reshush harabim. Rav Moshe terms this concept, where an entire neighborhood, not just a single street, becomes forbidden, as machaneh Yisroel — a Jewish encampment (similar to that of the desert). Within such an area even side streets are forbidden.

Rebuttal: However, it is important to note that while Rav Moshe maintained that if an area of twelve *mil* by twelve *mil* contained a population of three million, the entire area is classified as a *reshush harabim*; nevertheless, we see that he allowed *eruv* for Kew Garden Hills, Queens (*Igros Moshe*, O.C. 4:86); Oak Park and Southfield, Detroit (*ibid.*, 5:29), and the Jewish quarters in Europe (*ibid.*, 5:28:5). Rav Moshe allowed these city *eruv* despite the fact that these cities were part of a twelve *mil* by twelve *mil* area, which Rav Moshe considered a possible *reshush harabim*. The reason Rav Moshe allowed for a neighborhood of these large cities to be demarcated with a *tzuras hapesach* was because it encompassed less than *shishim ribo*. In his *teshuvah* regarding Detroit, Michigan, the Debrecener rav (*Kenesses Yechezkel*, vol. 1, 2009) stated that he understood that Rav Moshe's *shita* was that one can demarcate a neighborhood from a large contiguous built up city even though it's under the rubric of a metropolis. [On the other hand, regarding Boro Park and Flatbush, Rav Moshe was led to believe that they independently contained populations greater than *shishim ribo*; therefore, he argued that a *tzuras hapesach* could not demarcate these Brooklyn neighborhoods (*Igros Moshe*, O.C. 5:28:5 and Addendum to O.C. 4:89).]

Lest one think that a *tzuras hapesach* could not demarcate a *reshush harabim*, I would note that there are *Rishonim* and *Achronim* who maintain that it is sufficient if a *tzuras hapesach* encompasses less than *shishim ribo* (see *Tosfos Rid*, *Eruvin* 22a; *Or Zarua*, *Eruvin* 22a; Rav Yonasan Stief *zt"l* in *Mahari Stief*, *siman* 68; Rav Chaim Michael Dov Weissmandel *zt"l* in *Toras Chemed*, p. 93, and Rav Elya Meir Bloch *zt"l* in *Kol Tzvi* number 7).

Consequently, Rav Moshe would allow almost all city *eruv* as long as the *tzuras hapesachim* did not include a population of *shishim ribo*.

The Sefer – Page 59 (continued):*Main roads and side streets*

As mentioned previously, in the times of Chazal, cities were typically comprised of alleyways and a single main road. At present, cities consist of a complex grid of side streets and main streets; it is important to determine which current day streets are comparable to the reshush harabim of ancient times.

Rebuttal: The answer is none. As I mentioned previously, since the populace of today's cities utilizes many thoroughfares, none of the streets are traversed by its entire population. Consequentially, even if a city today contains a population of *shishim ribo*, no street would be classified as a *reshush harabim* since they are not traversed by the city's entire population.

The Sefer – Page 59 (continued):

According to the Rishonim mentioned earlier that do not require shishim ribo, the Poskim agree that it is prohibited to enclose even the side streets of such a city if they have a width of sixteen amos.

Rebuttal: Yet again I must state that we do not *pasken* like these Rishonim. Furthermore, there are additional factors that would allow *eruv* in most of our cities, even according to these Rishonim, such as *mefulash u'mechavananim m'shaar l'shaar* and *mechitzos*.

The Sefer – Page 59 (continued):

Contemporary side streets are not similar to the muvaos of the time of Chazal. The muvaos are private property, which belonged to the residents of the mavoi. By contrast our streets are public property and serve as an auxiliary to the main streets.(48)

Footnote 48:

כך שמענו מהגר"ש מילער והגר"מ ברלין ועוד כמה פוסקים והטעם דלא דמי למבואות שבזמן התלמוד דבאמת היה שייך רק לבני המבוי.

Rebuttal: But Rav Shlomo Miller *shlita* (see footnote 39) maintains that we follow the Rishonim who uphold the criterion of *shishim ribo*. So why are the authors even mentioning this issue in the name of this *posek* here?

The Sefer – Footnote 48 (continued):

ויותר מזה שמענו מכמה תלמידים דלדעת הגר"מ פיינשטיין זצ"ל בעיר שיש לו דין מחנה ישראל (כמו שבארנו בפנים) כל הרחובות ואף רחוב ללא מוצא (dead-end street) דינו כרשות הרבים. וטעמו משום דלא דמי למבואות שבימי חז"ל שלא היה שייך כל כך לרבים,

אבל הרחובות שלנו שייכי ממש לרבים והוא כקדן זויט דאי לא דלא ניהא תשמישתיה נחשב
כרשות הרבים עצמו.

Rebuttal: The above is total fiction, and there is no way that Rav Moshe would have said this. You see, dear reader, these arguments are made by people who are simply trying to fit Rav Moshe into their own agenda but do not know *hilchos eruvin* very well, which proves their undoing in the end. The argument that a dead-end street could be halachically categorized as a functional *keren zavis*, which is classified as a *reshus harabbim*, is total *am haratzus*. The Rambam (*Shabbos* 14:4) explicitly states that a *keren zavis* in three *mechitzos* is classified as a *karmelis*. Consequentially, since all dead-end streets are inherently enclosed with three *mechitzos*, if we would seal the fourth side with a *tzuras hapesach*, it would be classified as a *reshus hayachid l'chol hadeios* [just as a house situated in the twelve *mil* by twelve *mil* area is classified as a *reshus hayachid*]. Therefore, there is no doubt that Rav Moshe would not have said that a dead-end street cannot be demarcated.

In any case, Rav Moshe should not be included in this footnote. Rav Moshe maintained that, without a doubt, we rely on the criterion of *shishim ribo* (*Igros Moshe*, O.C. 5:24:10, and see also 3:94:3; 5:19).

Furthermore, this entire argument regarding the difference between the public's rights to the *mavoi's* in the time of *Chazal* and their rights today is spurious. In fact, local community members [as opposed to the general public] currently do maintain jurisdiction over their thoroughfares regarding many matters. It is important to note that the *Avnei Nezer* (O.C. 273:5) declared, regarding this matter, that one should not make this distinction as there was no difference between *Chazal's* era and today.

The Sefer – Page 59 (continued):

However, private roads that are designated for members of a residential development, and are not intended for the general public, have a status of a *mavoi*.⁽⁴⁹⁾

Footnote 49:

ך נראה שהרי יש רשות להבעלים לשנותו אם יסכימו כולם והו"ל כהמבואות שבימי חז"ל. וכך שמענו מהגר"מ רוזנר בשם הגר"ש אלישיב זצ"ל דרוב דשייך לשכונה לא צריך להחמיר וכ"ש בזה.

Rebuttal: See my previous rebuttal.

The Sefer – Page 60:

According to the Rishonim that requires *shishim ribo*, there are various ways to understand this requirement, as explained above. There are those who understand that any city whose population exceeds 600,000 people is considered a *reshus harabim*. According to this understanding, there are strong grounds to argue that only main streets are associated with the full population of the city and are considered to be *reshuyos harabim*, and the side streets are not accorded the same status.⁽⁵⁰⁾ According to the opinions that the road itself must service 600,000 individuals either occasionally or every day, the side streets obviously do not meet this criterion.

Rebuttal: I reiterate, none of the Rishonim maintain that *shishim ribo* is conditional of the city. A city containing *shishim ribo* is only an example as to how a thoroughfare can support such a population. Furthermore, there is almost no *posek* who upholds that the criterion of *shishim ribo* is conditional on a street that services *shishim ribo*. *Shishim ribo* would actually need to traverse the street (at least occasionally) to be classified as a *reshus harabbim*.

The Sefer – Footnote 50:

כך שמענו מהגר"מ ברלין, אולם שמענו מהגר"מ רוזנר ששמע מהגר"ש אלישיב זצ"ל שאם יעלה מספר התושבים בירושלים ליותר מששים רבוא שיש לאסור הטלטול בכל הרחובות אפילו הקטנים ביותר, אבל רחוב ששייך לשכונה בודדת שהוא מנותק מעיקר העיר אינו בכלל זה.

Rebuttal: I reiterate, there is almost no *posek* who upholds that the criterion of *shishim ribo* is conditional on a street that services *shishim ribo*. *Shishim ribo* would actually need to traverse the street to be classified as a *reshus harabbim*. [I doubt that Rav Berlin maintains otherwise.]

Regarding Rav Elyashiv's opinion, as mentioned previously, this source is unreliable. In fact, what I wrote previously regarding Rav Elyashiv (in my rebuttal of footnote 44) is proof positive that this source is not to be trusted. Rav Elyashiv is quoted in his *sefer Ha'aros on Maseches Shabbos* (6b) as advancing numerous reasons why Yerushalayim does not fulfill the criterion of *shishim ribo* (e.g. we require that the *shishim ribo* traverse therein the entire day, that we do not include in the tally non-residents, women, children, infirm, and non-Jews). Clearly, this source made up out of whole cloth his claim that Rav Elyashiv would object to the Yerushalayim *eruv* today.

Moreover, Rav Elyashiv allowed an *eruv* in Toronto, a city containing *shishim ribo*, since it consisted of *mechitzos, omed merubeh al haparutz*. In any

case, most people carry in the Yerushalayim *eruv* notwithstanding the fact that the city contains a population greater than *shishim ribo*.

The Sefer – Page 60 (continued):

According to Hagoon Rav Moshe Feinstein, if the city has the density to be considered a *machaneh Yisroel*, as explained above, every street even the dead-end streets(51) become part of the *machaneh Yisroel* and it is forbidden to enclose them.

Footnote 51: כך שמענו מכמה תלמידים:

Rebuttal: I reiterate, to suggest that even dead-end streets are included in the *reshus harabim* is absurd. Even according to Rav Moshe's *shitos* in *eruv*, to claim that a street in *machaneh Yisroel* which was enclosed by three *mechitzos* would not have been classified as a *reshus hayachid* is incongruous. This is clearly in opposition to the *Rambam*. Those arguing this should learn through the *inyan* prior to making such ignorant statements in the name of Rav Moshe.

The Sefer – Page 60 (continued):

Private roads and roads less than sixteen amos wide

Occasionally, in housing complexes there are private roads that are only open to members of that particular complex and their guests. Such roads are similar to the *muvaos* in the time of Chazal and may be enclosed with an *eruv* according to all opinions. Similarly, alleyways within the public street system usually serve only local traffic, and they may be enclosed with an *eruv* according to all opinions. There may be rare instances where a *mavoi* too can become a *reshus harabim* if the public traffic uses the *mavoi* as a shortcut. A city street that is less than sixteen amos wide is not a *reshus harabim* according to all opinions.

Rebuttal: This is obvious and does not require commentary.

The Sefer – Page 60 (continued):

There is a question, however, whether the space where the cars park in the street can count towards the required sixteen amos.(55)

Footnote 55:

כך שמענו ממו"ר הגר"ד צוקער שליט"א ומהגר"ש מילר שליט"א שמקום שחונים שם ה*cars* אינם בכלל הט"ז אמה. אבל שמענו מהגר"י בלסקי ומתלמידים אחרים שלדעת הגר"מ פיינשטיין זצ"ל הכל נעשה לצורך ההילוך של הרבים ונחשבים כחלק של הרה"ר.

Rebuttal: I am impressed that the authors would mention this *machlokes*, but I think that the authors should have mentioned a more essential

disagreement, if we include the occupants of a vehicle in the tally of the *shishim ribo*.

Many don't realize that **most** *poskim* maintain that the occupants of a vehicle are not tallied in the *shishim ribo* (Bais Ephraim, O.C. 26; Maharsham, 1:162; Yeshuos Malko, *siman* 26-27; Harei B'samim, 5:73; Bais Av, 2:9:3; Mahari Stief, *siman* 68; Satmar Rav, *Kuntres Meoz U'Mekedem* p. 27; Divrei Yatziv, 2:172:13; V'yaan Yoseph, 1:155:1; *Kuntres Tikkun Eruvin Manhattan*, *siman* 12 p. 105; *Kinyan Torah*, 4:40:6, and Rabbi Eliezer Y. Waldenberg *zt"l*, author of the *Tzitz Eliezer*, as cited in *The Contemporary Eruv*, 2002 p. 54 note 119). The reason is either because a vehicle itself is considered a *reshus hayachid* and therefore its occupants are not incorporated in the count or because we only include pedestrians (*holchei regel*) who traverse the street in the tally.

It is important to note that the concept that only *holchei regel* creates a *reshus harabbim* is already mentioned in the *Rishonim* (Or Zarua, *Hilchos Erev Shabbos siman* 4, and Rabbeinu Avraham ben HaRambam in *Birchas Avraham*, *siman* 15).

However, I must say that I am pleased to hear that Rav Zucker *shlita* and Rav Miller *shlita* maintain that the space that parked cars occupy is not included in the width of the criterion of sixteen *amos*. I would add that Rav Yaakov Blau *zt"l* mentions this argument as well (*Nesivos Shabbos*, *Perek* 3 note 2). Regarding Rav Moshe, if the authors would have learnt through Rav Moshe's *teshuvos*, they would have realized that there is no need to quote what others have to say in his name. Rav Moshe wrote himself in *Igros Moshe*, O.C. 5:28:8 that cars do not minimize the criterion of sixteen *amos*.

The Sefer – Page 60 (continued):

Application: One would like to make an eruv using tzuros hapesach on the side street in front of his house. If the street is less than sixteen amos wide, such an eruv may be possible; as above, it is questionable if the parking spots are measured as part of the sixteen amos needed to create reshut harabim. If the streets are wider than sixteen amos, then a ba'al nefesh should avoid using such an eruv.

Rebuttal: No, a *Baal Nefesh* can rely on our *eruv*, either because we uphold the criterion of *mefulash u'mecahvanim* or the criterion of *shishim ribo l'chatchilah*. Moreover, once a *tzuras hapesach* is established, the issue of *delasos* is only *d'rabbanan*, and then there is no doubt that we can rely on the criterion of *shishim ribo* to remove this proscription. Moreover, many cities

can rely on *mechitzos*, in which case the encompassed area is classified as a *reshus hayachid*.

The Sefer – Page 60 (continued):

However, there is basis to be lenient, even if the city has a population of 600,000.

Rebuttal: It is not a leniency to rely on the criterion of *shishim ribo*; it is *halachah p'suka*. Furthermore, the overwhelming majority of *poskim* maintain that the criterion is not conditional of the population of the city, but only of 600,000 people actually traversing the street.

The Sefer – Page 60 (continued):

*If however, the density of the city is such that 3,000,000 are present in an area twelve mil by twelve mil, Hagaon Rav Moshe considers every street a *reshus harabim*, and an eruv should not be made. In general an eruv should never be attempted on a street or sidewalk without the guidance of an expert in the topic of *eruv*.*

Rebuttal: In most cities there is no 8.1 by 8.1 mile area encompassing a population even close to three million; no doubt, Rav Moshe would allow an *eruv* anywhere in these cities. Moreover, Rav Moshe would allow most city *eruv* if they are making use of *mechitzos* (see Section One, 3:2).

The Sefer – Page 150:

I. Issues Relating to Community Wide Eruvin

*It is beyond the scope of this sefer to fully address all of the issues that relate to communal *eruv*. The objective of this chapter is to review the *halachic* underpinnings that affect the *kashrus* of community wide *eruv*.*

Rebuttal: However, the authors did a good job in sowing doubt regarding city *eruv* until now. Clearly the authors have an agenda.

The Sefer – Page 150:

*It should be noted that the discussions in this chapter refer to cities that have less than 600,000 residents. The clear tradition of establishing communal *eruv* in European cities originates from the smaller cities that were common in those times. There is less of a precedent for establishing *eruv* in larger cities. Additionally, there may also be questions of a Torah prohibition in large cities. A discussion regarding the establishment of *eruv* in large cities is beyond the scope of this work, and nothing stated here or in Chapter Three should be construed as a *halachah l'maaseh* statement regarding this serious topic.*

Rebuttal: How very interesting; however, Rav Moshe stated (*Igros Moshe*, O.C. 4:87) that since, historically, *eruv* had been erected in cities with populations exceeding *shishim ribo*, one could not classify a city as a *reshus harabbim* solely on the basis of the existence of a population of 600,000. Evidently, Rav Moshe maintained that there was precedent to establish *eruv* in large cities.

Moreover, the *Divrei Malkiel* (4:3) stated when writing to the people erecting an *eruv* in the city of Odessa, which had approximately *shishim ribo*, that, “*the minhag is to erect eruv even in the largest of cities, and it does not concern us that they contain shishim ribo since the shishim ribo is dispersed over all its streets.*” So who are we to believe, the authors who state, “*There is less of a precedent for establishing eruv in larger cities,*” or the *Divrei Malkiel* who bore witness to the *minhag* of pre-WWII Europe and stated that “*the minhag is to erect eruv even in the largest of cities.*”

Furthermore, there are additional reasons besides *shishim ribo* why *eruv* were established in large pre-WWII European cities, including *mefulash*. As Rav Shlomo Dovid Kahane zt”l (*Divrei Menachem*, O.C. vol. 2, pp. 42-43) posited, the *heter* to erect an *eruv* in a large city such as Warsaw was universally accepted as the streets were not *mefulashim u’mechuvanim m’shaar l’shaar*. [Actually, the *Bais Ephraim* stated that one of the *heterim* in large cities was the criterion of *mefulash*, as well.]

The above is proof positive that the authors are incorrect, and there was precedent to establish *eruv* even in the largest of cities.

The Sefer – Page 150 (continued):

A. *The concept of a citywide eruv*

It has been universally accepted for hundreds of years that eruv can be built to enclose entire cities. In pre-WWII Europe, it was considered the responsibility of every Rav of a community to ensure that his city had a valid eruv.

Rebuttal: In fact, until sixty years ago, there never was a question if an *eruv* should be established even in large cities containing *shishim ribo* only how to establish an *eruv*. Today, with the “*Chevrah Hilchos Issurei Eruvin*,” the question is how not to establish/allow a city *eruv*.

The Sefer – Page 150 (continued):

Interestingly, many Rabbanim (1) in America were opposed to the establishment of citywide eruv.

Rebuttal: As usual, the authors use the word “many” when in fact there are very few rabbanim who opposed *eruv* in America.

Let's explore the reasons given to establish *eruv* (in pre-WWII Europe):

- 1) To begin with, it is a mitzvah to erect an *eruv* (*Tur* and *Shulchan Aruch*, O.C. 366:13, 395:1; for proof that it's a requirement for a city as well, see *BeHag*, *Perek Hador* and *Chasam Sofer*, O.C. 99).
- 2) The *Chasam Sofer* (O.C. 99) states that it is not possible for an individual to ensure that all the members of his household do not carry inadvertently on Shabbos.
- 3) It helps to minimize *chilul Shabbos* by our Jewish brethren who are unfortunately not religious and carry on Shabbos without an *eruv* (*Nefesh Chayah*, *siman* 25, and *Bais Av*, 2:1:25).
- 4) Additionally, an *eruv* helps to increase our *oneg Shabbos*, e.g. the ability to take leisurely strolls and bring needed food (*Perishah*, O.C. 395:1; see also *Emek Sheilah*, *Parshas Kedoshim*, ois 10).

I will add some select quotes from the *poskim* of the previous generations:

- (1) וז"ל שו"ת מהרי"א הלוי ח"ב סימן קח: עלינו לחפש בחורין וסדקין אחרי פתח היתר כדי שינצל מחילול שבת ח"ו.
- (2) ועיין בבית מאיר סימן שפ"ד סעיף כ' שכתב, דעתה ששכיח דדיירי ישראל עם עכו"ם במבוי וחצרות היה אפשר לומר דמותר לערב בלא שכירות, אמנם חלילה להקל וכו', אלא בשעת הדחק טוב יותר לערב מכל מקום בלא שכירות משלא לערב כלל ולנהג איסור בטלטול, דממש קרוב לודאי שרוב המון עוברים ומטלטלים בלי עירוב כלל.
- (3) וז"ל שו"ת הרי"ם סימן ד: איני יודע למה רום מעלתו מחפש אחר חומרות בדבר שהעיד מהרי"ט שנהגו היתר וכו' אין להחמיר רק כשאפשר לתקן בנקל.
- (4) וז"ל שו"ת ישועות מלכו או"ח סימן כה: יש להורות לעת הצורך בפשיטות כדברי מהרי"ט, בפרט שנהגו כן אחרי כל החכמים שהיו אחרי והגאון בעל נה"מ ובעל בני יעקב והגאון המל"מ והכנה"ג חלילה להרהר אחרי הוראתם בשעת הדחק, כי ידוע כי קלקול העירוב מביא לידי עבירות חמורות.
- (5) וז"ל הרה"ג ר' חיים בערלין (שהיה בנו של הגאון הנצי"ב ז"ל חתן הגאון ר' חיים מוואלאזין ז"ל) בריש תשובתו לענין העירוב באדעסא (בקונטרס תקון שבת): ונתתי שמחה בלבי על אשר שמו על לבם לעסוק בתקון גדול כזה בעירם, וכן ראוי והדור לנו, וכמו שאמר רבב"ח לאב"י בעירובין ס"ח ע"א "מבואה דאית ביה גברי רברבי כרבנן לא להוי בה לא עירוב ולא שיתוף?", והמקום היא בעזרם ותבא עליהם ברכת טוב.
- (6) וז"ל שו"ת שערי דיעה חלק ב' סימן יח: אין לגבב חומרות בידי עירובין, שהלכו בהם להקל.
- (7) ועיין בשו"ת זקן אהרן (להרה"ג ר' אהרן וואלקין אבד"ק פינסק) ח"ב סימן יז (ומובא בספרו של השואל שו"ת חלקת יעקב ח"א סימן קפג) שכתב: כבר ידוע שרבותינו הראשונים והאחרונים צעקו ככרוכיא על אלו שמחטטים לחפש חומרות בהלכות עירוב. וע"ש ריש סימן יח וסוף סימן כ.
- (8) ובספר רחובות העיר (אנטווערפן תשמ"ט) עמוד יח מביא בשם הגאון ר' יחזקאל אבראמסקי ז"ל (אודות העירוב באנטווערפן) שאמר לו: תעשו עירוב בלי חומרות (פירוש, שלא יפריע לכם מלעשות עירוב בגלל איזה חומרא שאינו מעיקר הדין).

Is America so different from pre-WWII Europe that the above motives do not apply anymore? The real question is why should America be any different?

The Sefer – Footnote 1:

גם הגר"י קמנצקי התנגד לעשיית עירובין בכל העיירות באמריקא מטעמים אחרים, (כך שמענו מוה"ש פורסט ששמע מפיו, וכן הוא בספר אמת ליעקב ריש סי' שס"ג).

Rebuttal: I do not believe a word attributed to a *gadol* when the issue is *eruv*.

First of all, the statement in *Emes L'Yaakov* is *siman* 345 (note 402), and was not written by Rav Yaakov Kamenetsky *zt"l* but was only word of mouth. While the authors cite others who claim to have heard from Rav Yaakov about his opposition to *eruv* in America, besides the statement in the *Emes L'Yaakov*, it is probable that the source of this note is one and the same since he was involved in publishing *Emes L'Yaakov* (see the *hakdamah*).

One of the issues that Rav Yaakov had with large city *eruv* stated in this *Emes L'Yaakov*, namely *tznius*, (mingling) is a case in point. How can one make such an argument when, in fact, the *Perishah* states that an *eruv* helps to increase our *oneg Shabbos* by allowing one to take leisurely strolls! Moreover, why was pre-WWII Europe any different than America regarding this issue? Hence, it is more likely that it is unreliable hearsay.

Furthermore, one should always doubt the veracity of statements that are said in the name of *gedolim* when we do not see that the issue at hand ever concerned these *gedolim* at all. This argument sounds more like something emanating from Chassidshe rabbanim and not from those of the Lita. In any case, this argument is in fact a blanket statement against all *eruv* – since these issues can be problematic with *eruv* in both large and small cities and even with *eruv* in bungalow colonies – and it would be better to discount its veracity than to believe that it originated from Rav Yaakov.

Moreover, see the introduction to the Deal NJ *eruv sefer* (p. 7) where we see that Rav Yaakov agreed that an *eruv* should be established. It follows that all the statements said in the name of Rav Yaakov are specious.

The Sefer – Page 150 (continued):

Hagaon Rav Aharon Kotler was of the opinion that considering the many Rishonim who do not mention the requisite of 600,000 people, the previously accepted custom of considering only an area that has 600,000 people or more to be a reshus harabbim should not be relied upon in America.

Rebuttal: Actually, the authors misunderstood Rav Aharon's *teshuvah*. Rav Aharon argues (*Mishnas Rav Aharon, siman 6:10*) that the *Mishnah Berurah* did not want to rely on *shishim ribo* at all, and, therefore, Rav Aharon reasoned that the *heter (l'chatchilah)* to establish *eruv* in pre-war Europe was the criterion of *mefulash u'mechavanim*. [However, Rav Aharon subsequently argued that only in very specific cases can we rely on the criterion of *mefulash u'mechavanim*.] Hence, Rav Aharon is not arguing that in pre-WWII Europe they relied on the criterion of *shishim ribo*, but only that they relied on the fundament of *mefulash u'mechavanim*. Following this, we can conclude that, according to Rav Aharon, there is no difference between pre-war Europe and America; we never relied on the criterion of *shishim ribo*. Clearly the world did not follow Rav Aharon regarding this matter.

The Sefer – Page 150 (continued):

Hagaon Rav Moshe Feinstein, unlike Rav Aharon strongly believed in upholding the previously accepted minhag ha'olam.(2)

Rebuttal: It is worth mentioning again Rav Moshe's statement (*ibid.*, 4:87) that since, historically, *eruv* had been erected in cities with populations exceeding *shishim ribo*, one could not classify a city as a *reshus harabbim* solely on the basis of the existence of a population of 600,000. There is no doubt that Rav Moshe tried to base his *chiddushim* in *eruv* on precedent.

The Sefer – Footnote 2:

היינו להמונן עם, אבל לבני תורה אפילו באירופא לא הקילו ברחוב שהיה בו ט"ז אמה,

Rebuttal: This is simply incorrect, and I believe a purposeful perversion of Rav Moshe's *teshuvah*. This is what Rav Moshe stated (*Igros Moshe, O.C. 5:24:10*):

"דבמקומותינו נוהגין בהחלט כרש"י, שלכא דין רשות-הרבים כשאין בוקעין ס' רבוא, שהרי נוהגין להתיר לטלטל בצורת-הפתח, שאין מועיל להתיר רשות-הרבים בצורת-הפתח דבעינן דלתות. והוא משום, דבכל מקומותינו נוהגין כרש"י בדין וודאי, ורק שאיכא יחידים מת"ח שמחמירין לעצמן, ולאחרים הן עצמן עוסקין לתקן כל צורות הפתח שהיו בכל העיירות, כדי להתיר הטלטול, משום שהיה הכרח גדול, ונעשה כן בכל בעיירות, אף שהיו הרחובות רחבות הרבה יותר מט"ז אמה. הרי שנוהגין כרש"י בהחלט אף לקולא"

"In all our areas, the custom was to follow shitas Rashi unconditionally; however, there were a select few talmidei chachamim who were stringent on themselves,"

Hence, either most *talmidei chachamim* were not on the level of *Bnei Torah* or the majority of *Bnei Torah* did avail themselves of their town's *eruv*. In short, according to Rav Moshe, most *Bnei Torah* did make use of their town's *eruv*.

The Sefer – Footnote 2:

ושמענו בשמו דמה שנהגו להקל דאין רשות הרבים בלא ששים רובא אינו מנהג גמור, דלעולם החמירו הרבנים על עצמם, וא"כ יש מקום לבעל נפש להחמיר.

Rebuttal: So let's try to understand what the authors are suggesting. There are three categories of people: laymen, *Bnei Torah/talmidei chachamim*, and rabbanim. The authors agree that all laymen carried in pre-war Europe; however, as I demonstrated above, their claim that *Bnei Torah/talmidei chachamim* did not carry is false as Rav Moshe said clearly that only a select few *talmidei chachamim* were stringent regarding this matter. We are only left with one category (which the authors are referring to in the above quote), the rabbanim — did they or did they not carry? Maybe the authors are suggesting with this quote that when Rav Moshe stated that only a select few *talmidei chachamim* were *machmir*, he meant that it was the rabbanim who were stringent? However, this would mean that Rav Moshe was inferring that besides the rabbanim all *Bnei Torah/talmidei chachamim* did carry. Following this, one cannot argue that it is the rabbanim who establish the *minhag* for a *Baal Nefesh*, when all the *Bnei Torah/talmidei chachamim* did avail themselves of their town's *eruv*. *Bnei Torah/talmidei chachamim*, are definitely categorized as *Baalei Nefesh*; hence, the authors' entire argument is negated and should be classified as unreliable hearsay.

In any case, Rav Moshe stated repeatedly in this *teshuvah* that without a doubt the custom was to follow *shitas Rashi*, and he never mentioned that a *Baal Nefesh* should be stringent. Why should we believe what people say in his name when there is no written *teshuvah* to suggest otherwise?

The Sefer – Page 150 (continued):

Nevertheless, he did not always support the construction of citywide eruvin. Rav Moshe felt that each Rav should determine for his respective city (3) what the effect of an eruv would be as well as the likelihood that the eruv would remain properly supervised.

Rebuttal: It is fascinating how Rav Moshe's opinion regarding the need for *eruv* evolved.

The following is a synopsis of Rav Moshe *shitos* regarding the need for *eruv*:

- (1) בכל תשובותיו מיירי רק לענין אם יש מצוה להשתדל לעשות עירוב.
- (2) בסימן כ"ח לא ברירא ליה שלא לעשות עירוב, דהא יש תיקון למחללי שבת "בשביל אלו שאין יודעין כלום", רק ד"נוטה יותר לומר שליכא חיוב למונעו מעבירה".
- (3) בסימן פ"ו כותב בברירות: "הנני רואה בזה תועלת גדולה והצלה ממכשול בשוגג ובמזיד וכו', דלכן הוא טובה גדולה ותועלת לשמירת שבת, ואני אומר שיפה עשיתם".
- (4) גם בסימן כ"ט כתב דכשאיכא הרבה תובעין נחשב לצורך, "ויש אולי מקומות ששייך להחשיב גם צורך גדול, ושייך להרב המקומי לידע זה, וא"כ וודאי לא שייך למחות, ואולי יש גם להשתדל בזה", וסיים: "שלכן אם רוב הרבנים יודעים מקהילותיהם שרוצים ותובעין שיתקנו עירובין, שנמצא שהוא צורך גדול, יש גם להשתדל לתקן עירובין". וידוע דרוב מורי ההוראה בשכונות בארא פארק חשבו זה לצורך גדול מחמת כמה וכמה טעמים.
- (5) וכל השקו"ט בתשובותיו הנ"ל הם רק לענין לכתחלה, אבל עירוב שכבר נעשה וכשר להלכה, לא כתב בשום מקום שלא יטלטלו בו משום ספיקותיו. ואדרבה לגבי דעטראיט וסיגעייט וקיו גארדענס כתב מפורש לעשות עירוב, ולא כתב בשום מקום שבעל נפש יחמיר שלא יטלטל בעירוב כשר.

From the above, it appears that Rav Moshe would agree that if the rabbanim uphold that there is a great need for an *eruv*, they should strive to establish one. More so, there is no doubt that Rav Moshe would concur that if a kosher *eruv* is established, one can carry therein, and (as stated above) he maintained that even a *Baal Nefesh* does not need to be stringent.

The Sefer – Footnote 3:

כך שמענו מכמה מקורות, וכן משמע מתשובותיו, ושמענו מהגר"מ היינעמאן כשהיה מסופק אם לעסוק בעשיית עירוב בעירו ששאל מהגר"ד פיינשטיין מהו דעת אביו בעשיית עירובין בעיירות שאין בהם חשש רה"ר, והשיב שדעת אביו שאי אפשר למחוק כל הענין של עירובין מהשו"ע.

Rebuttal: The authors did not quote the entire story. In the new *kuntres* on *hilchos eruv* compiled and based on the *shirum* of Rav Moshe Heineman *shlita* (which was reviewed and revised by him), there is the following story (p. 42):

"Q 6. What did Rav Moshe say about the Baltimore *eruv*?

A: Making an *eruv* was a local decision as we asked the Rosh Yeshiva first. When Rav Moshe Feinstein was in Baltimore, we asked him if we can make an *eruv* in Baltimore. After asking us some questions, he answered, "If you want to make an *eruv*, then you can make an *eruv*." I asked him, "Should we make an *eruv*?" He answered, "If you want to make an *eruv*, then you can make an *eruv*." Then I asked

him, “Should we not make an eruv?” He answered, “If you want to make an eruv, then you can make an eruv.” We didn’t know what that meant, so I asked Rav Dovid Feinstein shlita. He told me that his father Rav Moshe doesn’t want to get involved in eruvin because he has experience that if he says, “Make an eruv” then a delegation will come to him saying, that having an eruv in a city is a terrible kilkul. If he says, “Do not make an eruv,” then another delegation will come to him saying, “Not making an eruv is a terrible kilkul.” Therefore, Rav Moshe would just say you could make an eruv if you want to, but doesn’t say you should. I asked Rav Dovid, “What does your father really hold?” He answered, “**My father holds if halachically you can make an eruv, you should make an eruv because you can’t just push an entire chelek of Shulchan Aruch to the side saying that hashkafos hatorah is not to have it.**”

The final words of the last sentence are very revealing. Rav Dovid shlita states that his father maintains that the *hashkafos* argument is simply incorrect because it would do away with an entire *chelek* of the *Shulchan Aruch*. I think that this should be repeated to the *Chevrah Hilchos Issurei Eruvin* who are more *machmir* than Rav Moshe in *hilchos eruvin*, and seek to negate every eruv possible.

The Sefer – Page 150 (continued):

Currently, many Poskim (4) maintain that since many cities already have existing eruvim, the focus should be on upholding the highest standards for eruvim as opposed to avoiding their creation.

Footnote 4: כך שמענו מהרבה פוסקים מובהקים ומהתלמידים של הגדולים שהזכרנו בפנים.

Rebuttal: You could have fooled me. From the looks of it, I would say that the resistance to city *eruvim* continues even after they are established (no doubt the authors know something about this because this happened in their hometown of Chicago).



SECTION TWO

What Follows is an Analysis and a Refutation in a Linear Fashion of the Chicago Community Kollel Publication, Encounters, December 21, 2018, Entitled City Eruvin,

Encounters:

The Definition of Reshus Harabim

The defining criterion of a reshus harabim is public access. A shared parking lot of a large residential building is not considered a reshus harabim since the general public is denied access to the lot (other reasons may also apply as explained below). Additionally, we derive several requirements from the structure of the Jewish encampment in the desert. For example, the Gemara proves that the public domain in the desert was sixteen amos wide. Hence we derive that a reshus harabim must be at least sixteen amos wide. Similarly, a thoroughfare that has a roofed structure above it is not considered a reshus harabim since the reshus harabim in the desert did not have a roof. The reshus harabim in the desert was regularly travelled by 600,000 individuals. While the Gemara does not mention this, one may suggest that for a thoroughfare to be considered a reshus harabim, it must be frequented by 600,000 individuals. This question is debated by the Rishonim as explained below.

Rebuttal: While we derive all the criteria of a *reshus harabbim* from the *diglei hamidbar*, the *Pnei Yehoshua*, *Bais Meir*, *Bais Ephraim*, and the *Mishkenos Yaakov* (and just about all the other *Achronim*) maintain that we derive the fundament of *shishim ribo* specifically from the number of Yidden who learnt by Moshe Rabeinu in *machnah Levia*. [Hence, these *Achronim* maintain that the criterion is conditional of the street and not the city.]

Encounters:

The Opinions of Rambam and Rashi

The Rambam and others are of the opinion that only the primary characteristics of a reshus harabim are derived from the Mishkan. According to this view, the traffic volume is considered incidental and is not a defining factor in a reshus harabim. This would mean most of our public roads, provided that they are wider than sixteen amos, are considered a reshus harabim. According to this

opinion, making an eruv using tzuros hapesach would not be an option in any of our modern day cities.

Rebuttal: This is irrelevant since we do not *pasken* like the Rambam regarding the criterion of *shishim ribo*. Moreover, the Rambam would allow most *eruvim* because the streets are not *mefulash u'mechavanim* (see Bais Yosef) and since most city streets are encompassed by more than three *mechitzos* (and the Rambam maintains *lo asu rabbim u'mevatlei mechitztah*).

While the Mishnah Berurah, following the Mishkenos Yaakov, may have cast doubts on the criterion of *shishim ribo* (since he maintains that most *Rishonim* do not uphold the fundament), the *poskim* who followed him uphold the criterion (Bais Av, 2:5; Mahari Stief, *siman* 68; Rav Moshe zt"l, Igros Moshe, O.C. 5:24:10; Minchas Yitzchak, 2:50; Divrei Yatziv, 173:4; Minchas Shlomo, 2:36:2:6; Even Yisroel, 8:36; Tzitz Eliezer, 10:13, 13:32, 14:90, and Rav Shmuel Vosner zt"l, Shevet HaLevi, 8:97:6). Some *poskim* even mentioned that the Mishnah Berurah did not see the Bais Ephraim's rebuttal of the Mishkenos Yaakov's list of *Rishonim* (Toldos Shmuel, 3:81:7, 3:86:8; Bais Av, 2:5:2; Divrei Yatziv 2:173:1, and Even Yisroel, 8:36). Moreover, we now know that the tally of *Rishonim* who uphold the criterion is even greater than the Bais Ephraim knew of. Thus, there is no doubt that we accept the criterion of *shishim ribo l'chatchilah*. Furthermore, those *Rishonim* (as I mentioned previously regarding the Rambam) who do not support the criterion of *shishim ribo* would rely on the fundament of *mefulash u'mechavanim*, and that in many situations *mechitzos* can be utilized to enclose the area.

Encounters:

The Opinion of Rashi

According to Rashi, a reshus harabim must have that same volume of traffic as found in the midbar. Accordingly, any street that does not serve 600,000 individuals is not considered a reshus harabim. Depending on how we compute this volume, this opinion would allow an eruv in many, or perhaps all, modern day cities.

Rebuttal: The most important opinion, the Shulchan Aruch's, clearly maintains that the criterion is conditional of the street and not the city (even Rav Moshe acknowledged that this is the *pashut p'shat* in the Shulchan Aruch; see Igros Moshe, O.C. 139:5). Furthermore, since the Shulchan Aruch uses the term *shishim ribo ovrin bo*, it implies a thoroughfare in continuous use and not merely the presence of 600,000 people in the vicinity who would have the ability to utilize the street.

Encounters:

Does the Accepted Practice Follow Rashi or the Rambam?

In Europe, most cities did not have populations of 600,000 people, and it was definitely the accepted practice to have an eruv, following the opinion of Rashi.

Rebuttal: However, there were some large cities with populations greater than 600,000 people that established *eruv* in pre-war Europe, and most of the population did make use of it (Warsaw, Lodz, and Odessa). Hence, nearly a million Yidden made use of their town *eruv*, and as the *Divrei Malkiel* (4:3) wrote “*the minhag is to erect eruv in even in the largest of cities, and it does not concern us that they contain shishim ribo since the shishim ribo is dispersed over all of its streets.*”

It should be noted that the authors omitted that some *poskim* relied on the criterion of *mefulash u'mechuvanim m'shaar l'shaar* to allow *eruv* in pre-war Europe (*Mahari Asad*, *siman* 54; *Divrei Malkiel*, 4:3, and Rav Shlomo Dovid Kahane *zt"l*, *Divrei Menachem*, O.C. vol. 2, pp. 42-43).

Encounters:

It is important to note that in Litveshe communities, the baalei nefesh, the scrupulous individuals, would not carry.

Rebuttal: This sentence is pure fiction. The few *Baalei Nefesh*, from Litveshe and Chassidishe communities alike, who were stringent did so mainly because of issues with the *tzuras hapesachim*. It is possible that a few *rabbanim* did not carry because they did not want to rely on the criterion of *shishim ribo*.

There is no doubt that, even in Litveshe communities, the vast majority of people carried in their town *eruv*, and hence, were relying on the fact that there was no *shishim ribo* traversing therein (e.g., *Minhagei Lita: Customs of Lithuanian Jewry*, 2008, Page 72; I personally spoke to many Yidden from the *heim*, even from Litveshe communities, and all were in agreement that almost all townspeople carried; this is supported as well by the many *Yizkor* books, even of Litveshe communities, which mention the use of their town *eruv*).

Furthermore, (as mentioned previously,) Rav Moshe admitted (*Igros Moshe*, O.C. 5:24:10) that only a select few *talmidei chachamim* were stringent regarding the criterion of *shishim ribo*. Hence, either most *talmidei chachamim* were not *Baalei Nefesh* or the majority of *Baalei Nefesh* did avail themselves

of their town *eruv*. In short, according to Rav Moshe, most people did make use of their town *eruv* in the Lita.

[In fact, there was an *eruv* in Radin where it seems that the *Chofetz Chaim* may have even carried at times; see *Dugmah M'Darchei Avi*, p. 31. There was no greater *Baal Nefesh* than the *Chofetz Chaim*.]

In any case, there is no reason for a *Baal Nefesh* to be stringent today, either because we now know that the overwhelming majority of *Rishonim* uphold the criterion of *shishim ribo* (and it is *halachah p'suka*, as well), or because we can rely on the criterion of *mefulash u'mechavanim*, or we can rely on the fact that most cities are classified as a *reshus hayachid me'd'Oraysa*, since they are encompassed by *mechitzos*.

Encounters:

R' Moshe Feinstein zt"l points out that the original minhag was to follow Rashi albeit with reservation.

Rebuttal: There is no such statement by Rav Moshe. On the contrary, Rav Moshe stated (*Igros Moshe*, O.C. 5:24:10, see also 3:94:3; 5:19, as mentioned above) that only a select few *talmidei chachamim* were stringent, but he insists that we follow *shitas Rashi* without reservations.

Encounters:

We must therefore be very hesitant to take the minhag beyond its original limits. Now that some cities are larger, and we have a second debate about how Rashi would calculate the 600,000 people, we must gravitate toward the more stringent calculations, to avoid taking an extremely lenient position.

Rebuttal: This argument is not the opinion of any *posek* of stature but only of some *yungerleit* [*Chevrah Hilchos Issurei Eruvin*] who have no inkling of the halachic process.

As I mentioned previously, this argument is inane. If we were to accept the opinion of any *posek* regarding how the fundament of *shishim ribo* is fulfilled, one could not then apply the uncertainty that there are *Rishonim* who do not allow for this criterion at all since the principle of *shishim ribo* has been accepted by that *posek*, and the overwhelming majority of *poskim* as *halachah p'suka*. To them, it is no longer a matter of debate either because it is the *minhag* or because we now know that the majority of *Rishonim* accepted the criterion [this argument is elementary to those who know

anything about the halachic process, and was argued emphatically by Rav Fishel Hershkowitz zt"l].

Encounters:

In Europe, many chasidim seemingly followed Rashi without reservation. Perhaps R' Moshe's argument would not apply to those who follow the chasidish tradition.

Rebuttal: While Chasidim may have been major promoters of *eruv*in (witness all the Rebbe's who advocated for the *eruv* of Manhattan), it wasn't just Chasidim who relied on *shitas Rashi*; even those from Litveshe communities did so (as I mentioned above, and even Rav Moshe subscribed to the criterion of *shishim ribo l'chatchilah*).

Encounters:

How to Calculate the 600,000

1. *ששים רבוא בכל יום* - a street which is traversed by 600,000 people every day
According to this opinion, there must be 600,000 people using the street every day. That is equivalent to 7 people every second for 24 hours straight. Considering that the typical commuter travels both directions each day, this would require 14 commuters per second. Some *poskim* strongly object to this opinion, as it is unlikely that such a significant condition exists without much of a hint from the *Gemara*. Nevertheless, there are strong sources for this opinion, and it is fairly accepted that any street without this traffic volume is at worst a *safek reshus harabim*, a questionable *reshus harabim*. According to this view, aside from Times Square (worthy of a separate discussion), there may very likely not be any *reshus harabim* in America.

Rebuttal: The authors are purposefully conflating the issues. The *poskim* (*Rishonim*) who strongly object to the fundament of *shishim ribo* because it is not mentioned in the *Gemara* are those who oppose the criterion of *shishim ribo* altogether. Those who make these arguments that it would take an improbable number of commuters per second to attain 600,000 people are not *poskim* but only *yungerleit*, and their contention does not hold water. In fact, the improbability of ever fulfilling the criterion of *shishim ribo* is why those *Rishonim* who uphold the fundament argue that there is no *reshus harabbim* today. This ignorant argument is in essence questioning the *Rishonim* who posit that there is no *reshus harabbim* anymore. In fact, the authors admit (see their *sefer*, pp. 56-57, notes 42-43) that the *pashtus* of many *Rishonim* and the *Shulchan Aruch* is that the criterion of *shishim ribo* requires that they actually traverse the street (they only question if the requirement

would be daily). The authors should stop and think for a moment who are they questioning, the *Rishonim* and the simple reading of the *Shulchan Aruch*?

[Moreover, the authors' specific argument, "*Considering that the typical commuter travels both directions each day,*" hence, we would need additional commuters to meet the criterion of *shishim ribo* (since we do not count the same people twice) is specious. As I mentioned in Part Two (see my rebuttal of note 42), people take more than one step per second. Hence, it is conceivable to attain *shishim ribo* traversing the street in half the time the authors realize, and it is a real possibility. Additionally, a road that can possibly support this volume of commuters would not necessarily have them travel in both directions on the same sixteen *amos* (hence, it would be possible to have *shishim ribo* traversing a road even if we would only once tally those commuters traveling multiple times on the road daily).]

Encounters:

2. עיר שיש בו ששים רבוא - a city which has 600,000

This opinion is based on the simple reading of Rashi in Eruvin which states that a reshus harabim is a city that has 600,000 people. According to this understanding, the entire grid of streets is one domain and will collectively form a public domain encompassing all the streets. While in Europe most cities were smaller, in America many cities have more than 600,000 residents. R' Elyashiv followed this opinion and did not sanction eruvin in any big city.

Rebuttal: As I mentioned previously, *Rashi (Eruvin 59b)* is informing us as to how cities were planned. Cities in the past had a main road which all residents used to enter and exit the city (because most cities were walled), and this thoroughfare was the *reshus harabbim* of the city. Therefore, when *Rashi* and the *Rishonim* who follow him use the word city in reference to *shishim ribo*, they are not signifying that the criterion is conditional on a city but only that the main thoroughfare in a city containing *shishim ribo* would be classified as a *reshus harabbim* if it is actually traversed by its entire population.

Following this since the populace of today's cities — because they are not walled — make use of many thoroughfares, it is not a given that the main arteries are actually traversed by its entire population. Consequentially, even if a city contains a population of *shishim ribo*, it is almost certain that no street would be classified as a *reshus harabbim* since they are not traversed by the city's entire populace.

Furthermore, even though *Rashi* mentions city, he cannot be supposing that the criterion is conditional of the city. The *Gemara* (*Shabbos*, 6a) cites a *Tosefta* stating that there are three areas which are categorized as a *reshus harabbim*: *sratya* [an intercity road], *platya* [marketplace], and *mavo'os hamefulashim* [alleyways that open into the *sratyas* and *platyas*]. Nowhere in the *Gemara* do we see that a city is an area classified as a *reshus harabbim*.

I reiterate, there were cities in pre-war Europe that contained a population greater than *shishim ribo*, and the townspeople availed themselves of their *eruv*.

As I mentioned, Rav Elyashiv ז"ל (in his *sefer Ha'aros*, on *Maseches Shabbos*, 6b) advanced numerous reasons why Yerushalayim does not fulfill the criterion of *shishim ribo* (e.g. we require that the *shishim ribo* traverse its confines the entire day, that we do not include in the tally non-residents, women, children, infirm, and non-Jews). Consequently, it is possible that Rav Elyashiv would agree that most large cities do not fulfill the criterion of *shishim ribo*, and an *eruv* of *tzuras hapesachim* can be established. Additionally, most cities can make use of *mechitzos omed merubeh al haporutz*, and Rav Elyashiv would definitely allow these *eruv*.

Encounters:

3. משתמש לששים רבוא - 600,000 utilizing the street

This opinion reckons each street on its own, and requires 600,000 on the single street. It does not require that each of the 600,000 individuals actually use the street every day, and as long as there 600,000 people, each of whom use the street occasionally, it is considered a reshut harabim. This arguably includes many of the main streets in large cities. The Mishnah Berurah and many contemporary poskim are machmir based on this view.

Rebuttal: There is almost no *posek* who maintains that it would be sufficient if 600,000 people would only traverse the street on occasion. It is illogical to argue that the population of a city reflects the number of people who can make use of any street. Many people who live in one section of a city do not utilize the main streets in other sections of their city, so why should they be included in the tally of all the main streets of the city? As the *Maharsham* argued (3:188), if the criterion of *shishim ribo* includes even those who occasionally use the street, how do we apply limits on the amount of time needed to fulfill the criterion. To label a street as a *reshus harabbim*, the criterion of *shishim ribo* requires that there be 600,000 people traversing the

street at least on some/many days of the year. Hence, there is almost no street, even in large cities, that would be classified as a *reshus harabim*.

The authors are conflating the issues regarding the *Mishnah Berurah*. First of all, we do not know if the *Mishnah Berurah* accepted these alternative conditions of the criterion of *shishim ribo*. The *Mishnah Berurah* only states that we need to study these alternative conditions *l'halachah*, and he does not say that we should follow these opinions. In fact, the *Mishnah Berurah* (*Shaar HaTziyun*, 345:25) clearly maintains that *shishim ribo* is dependent on the street and not the city [the *Mishnah Berurah* indicates this by the usage of the phrase, "*derech hamavoi hamefulash*"].

In any case, as mentioned previously, the *Mishnah Berurah* is following the *Mishkenos Yaakov* who has an unusual understanding of these *Rishonim*, and the *Bais Ephraim* strongly objected to his reading of these *Rishonim*. We follow the *Bais Ephraim* regarding *eruv*. Furthermore, today the *kisvei yados* of these *Rishonim* have been published, and we have their entire statements regarding the *inyan* (and not just what is quoted in their name), and they demonstrate that the *Bais Ephraim* was definitely correct.

Encounters:

4. The Opinion of R' Moshe Feinstein - 3 million In the city

R' Moshe Feinstein views the entire grid of streets throughout the entire city as one collective *reshus harabim*, and theoretically the collective volume of 600,000 people would make every public street into a *reshus harabim* (similar to the second abovementioned opinion). However, *R' Moshe* adds two significant leniencies. First, he limits the size of the city to 12 by 12 mil, approximately eight by eight miles. Secondly, he requires that all 600,000 people be present on the streets at the same time. *R' Moshe* determined that if there is a total population of 3 million people (within eight by eight miles), then we are to assume that there will be 600,000 present in the streets during high traffic moments. However, since the primary criterion is the presence of 600,000 on the roads, business districts that have commuters who use the roads within the 12 by 12 mil square, must count the commuters as well.

R' Moshe's opinion results in both a *kula* and a *chumra*. In the larger cities, it results in a stringency that all streets are forbidden, not just the main roads. On the other hand, in the cities that don't reach this threshold, *R' Moshe* would allow an *eruv* even on the streets that service 600,000 people, as long as they do not use the street every day, while most other *poskim* would be *machmir* on such streets.

Rebuttal: Mostly this is an accurate observation of Rav Moshe's *shitos* (I have a few quibbles, but they are not essential). However, the authors are not being forthright regarding Rav Moshe's *shitos* resulting in *kulos*. Rav

Moshe wrote that his understanding of the criterion of *shishim ribo* is a *chiddush* since the simple understanding of the *Shulchan Aruch* is that the criterion of *shishim ribo* is conditional of the street. Hence, the litmus test if Rav Moshe's methods result in *kulos* would be to judge it against his *shitos'* counterpart, namely that *shishim ribo* is conditional of the street. Undoubtedly, Rav Moshe would be considered a *machmir*. Moreover, the entire premise is misleading since there is no *shita* (besides for the *Mishkenos Yaakov* who is a *daas yachid*) that upholds servicing a road is sufficient to label a street as a *reshus harabbim* (if the street never had *shishim ribo* traversing it within a day and at the minimum on occasion). Hence, to label any part of Rav Moshe's *shitos* as a *kula* is not being honest since Rav Moshe's entire approach is a *chumra*. [One thing is for sure, it is not, "most other *poskim* (who) would be *machmir* on such streets," since it is at the most only one or two *poskim* of repute that entertain this concept that it is sufficient to classify a street as a *reshus hrabbim* if the streets only service 600,000 people.]

Encounters:

Utilizing Omed Merubo

According to some *poskim*, there is perhaps an option for enclosing larger cities. We previously explained that the issue with enclosing a *reshus harabim* is the concept of *asi rabim umivatlei mechitzos*, the abundance of people negates the partitions. What if a superior *mechitzah* is used in place of the typical *tzuros hapesach*? If yes, which *mechitzos* can be used to enclose a *reshus harabim*? The *Gemara* (*Eruvin* 6a & 22a) states that a *reshus harabim* may be enclosed with doors that are locked at night. Actual doors have two benefits: they are perhaps superior *mechitzos*, and they actually stop the flow of traffic when they are closed. It is therefore questionable if we could use other superior *mechitzos* that do not actually stop traffic.

The possible alternative to *tzuros hapesach* is *omed meruba*, a majority of fence. This means that if a fence encloses the majority of each side we view the side as if it is completely enclosed. In the picture below, there are ten standing pickets, bordering a space of nine missing pickets. In this case, the smaller open section does not invalidate the larger partition, due to the concept of *omed meruba*.

Rebuttal: So is it, "questionable if we could use other superior *mechitzos* that do not actually stop traffic," or is it the, "possible alternative to *tzuros hapesach* is *omed meruba*, a majority of fence ... if a fence encloses the majority of each side we view the side as if it is completely enclosed." The answer is if you are *machmir* in all things regarding *eruvim* then of course nothing would be sufficient. However, if you understand the halachic process and learn through the

inyan, you would know that the overwhelming majority of *poskim* (I listed previously in Part One over forty Gedolei Haposkim) maintain that *mechitzos*, which are *omed merubeh*, are more than sufficient to enclose a *reshus harabbim* (and *delasos* would not be needed to close the *pirtzos*; *tzuras hapesachim* would be sufficient). Hence, while there may be a few *poskim* who posit otherwise, there is no doubt that this is the way we *pasken* since it is the overwhelming majority of *Achronim* who maintain *lo asu rabbim u'mevatlei mechitztah*.

Encounters:

In London, where the population exceeded 600,000, they constructed an eruv, with the approval of R' Chaim Ozer Grodzinski and the Chazon Ish. The reasoning for this leniency was the fact that the city was enclosed by channels on three sides. The benefit of these channels is that they comprised three walls of omed meruba, as opposed to typical tzuros hapesach. At the time the eruv was made, there is not much record of anyone voicing a dissenting view to R' Chaim Ozer's leniency.

Rebuttal: First of all, it seems as if the authors never read Rav Chaim Ozer's *teshuvah*. The city that was under discussion was Paris and not London [and the *eruv* was never finalized because they were unable to close the *pirtzos* with *tzuras hapesachim* (*Divrei Menachem*, O.C. vol. 2, p. 39, note 2)].

Furthermore, the reason why there was no dissenting view (besides for which they were from the Gedolei Hador) was because Rav Chaim Ozer's and the *Chazon Ish's* opinion was the accepted *halachah p'suka* by the overwhelming majority of *poskim* (hence Rav Chaim Ozer stated his opinion without any qualifications). In fact, the majority of dissenting views are a modern day phenomenon by some *yungerleit* [*Chevrah Hilchos Issurei Eruvin*]. Hence, the implication that Rav Chaim Ozer was relying on some kind of leniency is nonsense. It is not a leniency when it is accepted *halachah p'suka* by the overwhelming majority of *poskim*.

Encounters:

However, R' Moshe Feinstein takes a dissenting approach, and upon analysis, R' Chaim Ozer's opinion is actually predicated on four assumptions, each of which is debated by various Acharonim. In Eretz Yisroel, following the Chazon Ish, the poskim are very inclined to allow questionable reshuyos harabim to be enclosed with omed meruba. In America, where R' Moshe Feinstein was the posek hador, there is much reservation to following this leniency on its own. However, even R' Moshe agrees that three partitions are sufficient to enclose a reshus harabim at least on a d'Oraisa level. For this reason, even in America, three partitions

provide a tremendous benefit in any area which may have 600,000 according to some opinions.

Rebuttal: This is basically nonsense. Rav Moshe's only dissenting approach was regarding the *chiddush* of the *Chazon Ish* — that the *omed* creates a *mechitzah* and would usually classify the entire city as a *reshus hayachid* even if only one street was enclosed by three *mechitzos*, — which few city *eruvim* would need to rely on since they can make use of three rows of *mechitzos habatim* for every street. In fact, the authors admit that, "R' Moshe agrees that three partitions are sufficient to enclose a *reshus harabim*." However, what the authors added, that Rav Moshe would only agree to *mechitzos* on a *d'Oraysa* level, suggesting that *me'd'rabbanan delasos* would be required to close the breeches, is simply incorrect. The authors are referring to Rav Moshe's *teshuvah* regarding Manhattan (*Igros Moshe*, O.C. 1:139:3, and referenced in 5:28:5) where he discusses the bridges leading from Manhattan — which were open along their sides and hence, were not enclosed by three *mechitzos* — would possibly according to his opinion need to be rectified with *delasos*. Nevertheless, Rav Moshe states clearly (*ibid.*, the end of *anaf gimmel*) that if the *tzuras hapesach* is erected in a *reshus hayachid* [in Manhattan proper, which is encompassed by more than three *mechitzos*, as opposed to the bridges, which are not], it is sufficient. Many cities can establish their *tzuras hapesachim* in an area that is encompassed by three *mechitzos* (a *reshus hayachid*), and even *me'd'rabbanan, delasos* would not be needed according to Rav Moshe and the overwhelming majority of *poskim*.

Instead of the authors admitting that the reason why Rav Chaim Ozer allowed the Paris *eruv* without hesitancy was because he supposed that these, "four assumptions," are in fact *halachah p'suka*, they argue that these four assumption are, "debated by various *Acharonim*." It is about time that they accept the fact that the *Mishkenos Yaakov's* (and Rav Aharon Kotler who agreed with him) opinion has not been accepted by the *Achronim*. These debates were settled by the overwhelming majority of *Gedolei Haposkim* years ago [and they just about unanimously posit *lo asu rabbim umevatlei mechitztah, pirtzos esser* is only *me'd'rabbanan*, and that a *karmelis* does not require *delasos* (these actually are the main assumptions)].

In any case, in order to object to these *eruvim*, one would need to maintain that *shishim ribo* is conditional of a city, that *mefulash u'mecahvanim* is conditional of a walled city, that we *pasken asu rabbim umevatlei mechitztah*, and that *pirtzos esser* is *d'Oraysa*. This dear reader is what I am referring to when I state that those who do so have no inkling in the halachic process [I

am not arguing that no *posek*, namely the *Mishkenos Yaakov* and Rav Aharon Kotler zt"l who followed him, had objected to all these criteria, but only that to expect that the world follow them is halachically unseemly].

Encounters:

Is It Practical to Enclose a City with Partitions?

Surprisingly, many cities have been successful in creating enclosures with three actual mechitzos. Common mechitzos include existing structures such as water channels, elevated tracks with steep inclines or walls, or fences along interstate highways, cemeteries, or train tracks.

Rebuttal: Why is this surprising? Is it because it allows these cities to establish *eruv* that the *machmirim* have less to be stringent about? Is it because to negate these *eruv* one would need to be creative in their *chumros*?

Encounters:

Uneven Mechitzos

The Opinion of the Chazon Ish

To create a reshuv hayachid utilizing the benefit of omed meruba, three out of four mechitzos must be solid partitions, while the fourth side may be made of tzuros hapesach. The biggest challenge is that city enclosures aren't typically shaped as perfect squares. What if a city has seven sides with two sides that are not comprised of omed meruba? The Chazon Ish presents an approach where every enclosure is viewed as a theoretical square, and each side is somehow classified as a segment of one of the four sides. The challenge is that there is an infinite number of possible shapes, and it is not always possible to determine how the theoretical square should be formed. (Try figuring the theoretical four sides in a pentagon.) While the application of the Chazon Ish's opinion isn't always clear, in general the Chazon Ish is much more lenient in formulating a valid omed meruba in uneven enclosures.

Rebuttal: The authors are incorrect; no one argues with the *Chazon Ish* regarding this issue, and this entire paragraph is an invention of the authors. Since the authors do not expound on this issue here, but only in the Hebrew section of their *sefer* (pp. 321-338), I will not negate their fabrications in this rejoinder; instead there will be a standalone Hebrew rebuttal.

Encounters:

The Opinion of the Acharonim

Many other authorities understand that for omed mernba to be effective, the open area must be substantially in line with the actual partitions. This means

that even if the city is enclosed primarily with actual partitions, if there is a slight deviation in shape it will invalidate the omed meruba benefit. The city shown is enclosed primarily with mechitzos, on the west, south, and east side and with tzuras hapesach on the north side. At first glance it would seem like a three-mechitzah enclosure. Yet there are a few sections of tzuras hapesach on the west and east sides that are not aligned with the mechitzah (these sections are marked by yellow arrows), and according to most American poskim, it would not have the benefit of omed meruba on three sides.

Rebuttal: There is something sinister going on here. The authors know that they are on shaky ground so they conflate and obfuscate. You see, dear reader, the implication here (and even more so in the Hebrew section of their *sefer*, p. 332) is that Rav Moshe's opinion is included in these *Achronim* who oppose the *Chazon Ish's shitos* because, "*the open area must be substantially in line with the actual partitions.*" In fact, Rav Moshe never mentioned a word about this issue, and the, "*many other authorities,*" that the authors claim to be in opposition to the *Chazon Ish's shitos*, [besides the four previous *poskim* who the authors assert would agree to their inventions] is actually only one *poesk*, namely Rav Shlomo Miller *shlita* [Rav Dovid Feinstein *shlita* mentioned there agreed with the *Chazon Ish* albeit for an alternative reason].

Apparently, the reason why the authors mentioned, "*In America, where R' Moshe Feinstein was the Posek Hador, there is much reservation to following this [Chazon Ish's] leniency on its own,*" is because they know that the only opposition to the *Chazon Ish's shitos* that people in America would recognize is that of Rav Moshe's.

The authors' entire argument illuminates their quest to find fault with every possible motive to establish city *eruv*. The fact that *mechitzos* can be used in many cities should have satisfied the authors' quest for stringencies [notice how the authors express surprise that many cities can make use of *mechitzos*], but instead they invented a way to negate *eruv*, even those that make use of *mechitzos*.

As to the merit of the authors' argument, it is basically nonsense. As I mentioned above, the authors only expound on their fabrications in the Hebrew section of their *sefer*, so there will be a standalone Hebrew rebuttal, as well.



SECTION THREE

An Overview of the Pertinent Halachic Issues Regarding Citywide Eruvin

1 - WHERE ONE MAY CARRY ON SHABBOS

Min haTorah, the prohibition against carrying is from a *reshus hayachid* [private domain] to a *reshus harabbim* [public domain] and vice versa or the moving of an object four *amos* in a *reshus harabbim*.

Chazal added a prohibition against carrying in a domain known as a *karmelis* [an area that cannot be classified as a *reshus hayachid*, since it does not have the required *mechitzos*, or as a *reshus harabbim*, because it does not meet the necessary criteria]. Since there are similarities between a *reshus harabbim* and a *karmelis*, *Chazal* prohibited carrying between any two domains as well as within any domain other than a *reshus hayachid* itself¹ in order to prevent any inadvertent transgression of the laws of carrying in a *reshus harabbim* (*Shabbos*, 6a see *Rashi ad loc.* and *Shulchan Aruch, Orach Chaim* 346:1).

Since the only domain in which carrying remains permissible is a *reshus hayachid*, our primary concern when planning the construction of an *eruv* is that we be able to rectify the area under consideration as a *reshus hayachid*.

1:2A - WHAT IS A RESHUS HAYACHID – MECHITZOS

The *Shulchan Aruch* (O.C. 345:2) defines a *reshus hayachid* as an area that is enclosed by walls [*mechitzos*] which are at least ten *tefachim* high and

¹ *Me'd'rabbanan*, even after determining that a halachically enclosed area is a *reshus hayachid*, the ability to carry therein is contingent on the residents forming a unified entity or *eruvei chatzeiros*. Since this requirement is *me'd'rabbanan*, *Chazal* were lenient and only necessitated a symbolic unified ownership. Depending on who joins this symbolic partnership, one or two methods may be employed: *eruvei chatzeiros* or *sechiras reshus*.

encompass an area that is at the minimum four *tefachim* by four *tefachim*. An area which is ten *tefachim* deep or is ten *tefachim* high is also classified as being encompassed by *mechitzos*. [An alternative form of *mectitzah*, a *tzuras hapesach* will be dealt with further on; see 2:1.]

Me'd'Oraysa, if the *mechitzos* enclose an area on three sides, the area is classified as a *reshus hayachid* (Tur and Shulchan Aruch, O.C. 363:1). At the minimum, each of the three sides must be *omed merubeh al haparutz* [i.e. more partition than breaches] for it to be considered whole for halachic purposes (ibid., 362:9-10, 363:1).²

² Once the walls are *omed merubeh al haparutz* on three sides, nearly all *Rishonim* and *Achronim* maintain that the multitudes [*rabbim*] do not negate the enclosure, *lo asu rabbim u'mevatlei mechitzta*.

The Following is a list of the majority of *Rishonim* who uphold *lo asu rabbim u'mevatlei mechitzta*: 1) *Tosfos*, see *Bais Ephraim*, p. 39b and *Avnei Nezer* 276:2. 2) *Rabeinu Chananel*, see *Ravyah* p. 321. 3) *Rambam*, *Mishnayos Eruvin* 2:4, *Yad* 17:10, 17:33. 4) *Maggid Mishnah*, ibid., 5) *Hagaos Maimones*, ibid., *Basra* 9. 6) *Ravyah*, p. 270. 7) *HaEshkol*, *Eruvin siman* 55. 8) *Sefer HaBattim*, *Perek* 13. 9) *Tosfas Yshanim*, *Shabbos* 6b. 10) *Or Zarua*, *Eruvin* 33b. 11) *Mahrach Or Zarua*, *Piskei Eruvin*, *Perek* 2 ois 57. 12) *Ramak*, as cited in *Hagaos Ashri*, 20b. 13) *Rabeinu Chananel Ben Shmuel*, *Eruvin* 22a. 14) *Rivevan*, *Eruvin* 22a. 15) *Rid*, *Tosfos Eruvin* 22a, *Piskei* 20a. 16) *Ri'az*, *Piskei* 2:1:6. 17) *Sefer HaMeoros*, *Eruvin* 17b. 18) *Baal Hamaor*, see *Bais Ephraim* p. 39b.

The following is a (partial) list of the overwhelming majority of *poskim* who maintain *lo asu rabbim u'mevatlei mechitzta*: 1) *Chacham Tzvi*, *siman* 5, 37. 2) *Knesset Yechezkal*, *siman* 2:3. 3) *Mayim Rabim*, *siman* 34-36. 4) *Maharit Tzahalon*, *siman* 251. 5) *Tosfos Shabbos*, *siman* 363. 6) *Chavas Daas*, *Nachlas Yaakov*, *Eruvin*. 7) *Pri Megadim*, *Rosh Yoseph*, *Shabbos* 6b. 8) *Even HaOzer*, *Eruvin* 6b, 22a. 9) *She'eilas Yaavetz*, *siman* 7 and *Mor U'Ketziyah*, *siman* 363. 10) *Keren Oreh*, *Eruvin* 7a. 11) *Noda B'Yehudah*, O.C. *Mahadura Tinyana*, 42 and *Teshuvah M'Ahavah*, *siman* 112. 12) *Gaon Yaakov*, *Eruvin* 11a, 21a. 13) *Michtam L'David*, *siman* 1. 14) *Shulchan Aruch HaRav*, O.C. 363:42, 364:4 and *Kuntres Achron*, O.C. 345:2. 15) *Tiferes Tzvi*, *siman* 11. 16) *Bais Ephraim*, O.C. 26 (the *Chevrah Hilchos Issurei Eruvin* argue that the *Bais Ephraim* only maintains *lo asu rabbim* in a situation of *shem daled mechitzos* and not in a situation of three *mechitzos*; this is *hevel*, as the *Bais Ephraim*'s diagrams prove otherwise, and in due time, I will demonstrate the speciousness of their arguments). 17) *HaEleph Lecha Shlomo*, *siman* 181. 18) *Aishel Avraham*, *siman* 345. 19) *Chai Adam*, *klal* 71:15 and *Nishmas Adam* 71:9. 20) *Chesed L'Avraham*, *siman* 39. 21) *Chasam Sofer*, O.C. 89. 22) *Maharham Shick*, O.C. 171, 181. 23) *Bais Shlomo*, *siman* 43, 51. 24) *Tzemach Tzedek*, *Shabbos* 100a and *Eruvin*, the end of *Perek* 5. 25) *Nefesh Chayah*, *siman* 25. 26) *Shaar HaZekeinim*, p. 116b. 27)

Chazon Nachum, *siman* 36. 28) *Rabeinu Yosef M'Sluts*, *siman* 11. 29) *Maharia HaLevi*, *siman* 94. 30) *Maharsham*, 3:188, 9:18. 31) *Yeshuos Malko*, *siman* 21. 32) *Sharei Tzion*, *siman* 4. 33) *Avnei Nezer*, *siman* 268:4, 276:1, 279:2. 34) *Harei B'samim*, 5:73. 35) *Imrei Yosher*, *siman* 102 and *Minchas Pitim*, *siman* 364. 36) *Kaf HaChaim*, O.C. 364:12. 37) *Divrei Malkiel*, 3:10, 14. 38) Rav Chaim Berlin in *Tikkun Shabbos Odessa*, p. 28 and in *Nishmas Chaim*, *siman* 29. 39) *Achiezer*, 4:8. 40) *Aruch HaShulchan*, O.C. 364:1. 41) *Even Yikrah*, *siman* 58. 42) *Chazon Ish*, O.C. 74:10, 107:4.

There is a major misunderstanding regarding whom the *Mishnah Berurah* follows, the *Chachamim* and Rav Elazar [*lo asu rabbim u'mevatlei mechitzta*] or Rav Yehudah [*asu rabbim u'mevatlei mechitzta*] and Rav Yochanan [*delasos neulos*]. There are those who argue that the *Biur Halachah*, 364:2, is proof that the *Mishnah Berurah*'s opinion is in accordance with Rav Yehudah, since he argues that most *poskim* do not accept the *Rambam* who follows Rav Elazar who maintains *lo asu rabbim* of a *tzuras hapesach* on a *d'Oraysa* level. Hence, the *Mishnah Berurah* maintains that a *tzuras hapesach* is not sufficient to encompass a *reshus harabbim* on a *d'Oraysa* level; only *delasos* would be effective, as set forth by Rav Yochanan.

This is incorrect. The fact is the *Mishnah Berurah* in *Shaar HaTziyun siman* 363:94 maintains that we *pasken lo asu rabbim u'mevatlei mechitzta* even in a situation of *mechitzos b'y'dai shomayim* [natural walls, whose efficacy is halachically inferior than *mechitzos b'y'dai adam*, man-made walls] (see also *Biur Halachah*, *ibid.*, 36). It follows that the *Mishnah Berurah* in 363:156 argues that it is halachically sufficient if a *mechitzah* consisting of a *tel hamislaket* [a slope with an adequate halachic gradient] encompasses an entire city and does not mention that a *Baal Nefesh* should be stringent because there may be roads that are wider than 16 *amos* [hence, the *Mishnah Berurah* must be relying on *lo asu rabbim* of the *tel hamislaket*].

Why then does the *Mishnah Berurah* in the *Biur Halachah*, 364:2, accept Rav Yochanan who requires *delasos me'd'Oraysa*? Subsequent to what I argue above [that the *Mishnah Berurah* upholds *lo asu rabbim u'mevatlei mechitzta*], there is no doubt that the *Mishnah Berurah* is only following those *poskim* who maintain that Rav Yochanan can also be in agreement with the *Chachamim*, and they would in certain situations — such as in an area which is encompassed by *tzuras hapesachim* or only two *mechitzos* — require *delasos* [actually, this is the *Bais Ephraim*'s and *Chazon Ish*'s argument, and in fact, both the *Ravyah* (p. 270, 276) and *Eshkol* (*siman* 64-65) quote Rav Yochanan yet *pasken* like the *Chachamim* which buttress's the *Bais Ephraim*'s and *Chazon Ish*'s assertion]. This is further evident from the fact that the *Mishnah Berurah* (*Biur Halachah*, 364:2) only affirms that the *Rif* and the *Rosh* follow Rav Yochanan regarding *delasos neulos* but does not articulate that they accept Rav Yehudah l'halachah.

However, *me'd'rabbanan*, until the area is entirely enclosed, it is classified as a *karmelis*. Therefore, in order that the area be reclassified, *me'd'rabbanan*, as a *reshus hayachid*, we are required to rectify the fourth side of the enclosure — and the breaches [*pirtzos*] in the three sides, even those which are more than ten *amos* wide³ — with a *tzuras hapesach* [literally: form of a

In short, the *Mishnah Berurah* maintains *lo asu rabbim* in accordance with the *Chachamim* and in a situation of three *mechitzos* would not require *delasos* even *me'd'rabbanan*. However, if an area is encompassed by *tzuras hapesachim* or only two *mechitzos*, he would require *delasos me'd'Oraysa* pursuant to Rav Yochanan [however, it should be noted that many *poskim* maintain that a *tzuras hapesach* would be sufficient *me'd'Oraysa*; see 2:1]. This follows why the *Mishnah Berurah* [according to his understanding] asserted that it is only the *Rambam* who maintains *lo asu rabbim* on a *d'Oraysa* level even in a situation of *tzuras hapesachim* encompassing an area. However, many *poskim* who follow the *Chachamim*, would require *delasos* in accordance with Rav Yochanan, when only *tzuras hapesachim* are being used to encompass a *reshus harabbim*.

³ Nearly all *poskim* maintain that *pirtzos esser* [a breach of ten *amos*] is only proscribed *me'd'rabbanan*; hence, a *tzuras hapesach* would suffice to close the breach: 1) *Mabit in Kiryat Sefer, Shabbos Perek 16*. 2) *Pnei Yehoshua, Shabbos 6a*. 3) *Markeves HaMishna, Shabbos, 14:1*. 4) *Pri Megadim, Mishbetzes Zahav, 363:1*. 5) *Bais Meir, siman 364*. 6) *Shulchan Aruch HaRav, O.C. 345:11*. 7) *Zera Emes, Eruvin 17*. 8) *Rabeinu Yosef M'Slutsk, O.C. 11*. 9) *Bais Ephraim, O.C. 26-27* (the *Chevrah Hilchos Issurei Eruvin* argue that the *Bais Epharim* upholds *pirtzos esser* is *d'Oraysa* in a situation of three *mechitzos* as opposed to *pasei bira'os*; this is *hevel*, and in due time, I will demonstrate the speciousness of their arguments). 10) *Keren Oreh, Eruvin 19b*. 11) *Nefesh Chayah, Tikkun Eruvin* (Barnov), p. 30. 12) *Tiferes Tzvi, siman 11*. 13) *Tikkun Eruvin Krakow, teshuvah 1*. 14) *Avnei Nezer, O.C. 265:13, 265:25, 276:1, 279:3*. 15) *Toras Chesed*, see beginning of the *sefer Emek Yehoshua Achron*. 16) *Melamud Leho'il, siman 68*. 17) *Aruch HaShulchan, O.C. 362:26*. 18) *Chavatzelet HaSharon, O.C. 19*. 19) *Chazon Ish, O.C. 107:5-8*. 20) *Achiezer, 4:8*. 21) *Igros Moshe, O.C. 2:89-90*.

None of the *Rishonim* state explicitly that a *pirtzos esser* is a matter of a *d'Oraysa* – Rav Aharon Kotler *zt"l* and others extrapolate from some *Rishonim* as such. However, the fact is four *Rishonim* state unequivocally that *pirtzos esser* (and more) is only *d'rabbanan* (*Hashlama, Eruvin 5a*; *Tosafos Rabeinu Peretz, Eruvin 22a*; *Tosafos HaRosh, Eruvin 17b*, and *HaEshkol*, p. 167).

[Additionally, it's difficult to understand Rav Aharon's (*Mishnas Rav Aharon*, 6:2) argument that *Rabeinu Chananel* (101a) maintains *pirtzos esser* is a matter of a *d'Oraysa*. Since *Rabeinu Chananel* is referring to Yerushalayim which had *shem daled mechitzos*,

doorway, comprising of two vertical posts capped by a bar or string].⁴ Only then would it be permissible to carry therein.

1:2B - HOW MECHITZOS CAN BE EMPLOYED FOR CITYWIDE ERUVIN

Hence, any area, including those that contain the criteria of a *reshus harabbim* therein, which are encompassed on three sides by *mechitzos omed merubeh al haparutz* can be rectified with *tzuras hapesachim*, and there would be no requirement of *delasos*.⁵ Additionally, many cities can utilize the *omed merubeh* of the *mechitzos habatim* that bound their streets on three sides (at the minimum).⁶ Furthermore, most cities can make use of *mechitzos habatim* utilizing the *chiddush* of the *Chazon Ish* (see details in the footnote⁷).

consequently, according to R' Yehudah, the *pirtzah* would have to be at the minimum 13 1/3 *amos*. Why would *Rabeinu Chananel* only go according to R' Meir (even more so, the Yerushalmi states this part of the *Mishna* is according to R' Yehudah)? Moreover, according to the way the *Meiri* (11b) understands *Rabeinu Chananel* we see that he maintains *pirtzos esser is d'rabbanan*. (See *Divrei Yechezkel, siman 5:13* for an alternative explanation of this *Rabeinu Chananel*.)

⁴ It is important to note that the *tzuras hapesach* can be utilized, *me'd'rabbanan*, to encircle a smaller section of the area enclosed by the *mechitzos* instead of closing the fourth side of the *mechitzos* themselves since the *tzuras hapesach* is being erected in a *reshus hayachid d'Oraysa*.

⁵ This is the opinion of the overwhelming majority of *poskim* (that only when all the criterion of a *reshus harabbim* are met is there a requirement of *delasos*), including, *Levush* (345); *Magen Avraham* (363:40); *Tosfos Shabbos* (364:4); *Shulchan Aruch HaRav* (O.C. 364:4); *Rav Chaim Volozhiner zt"l* (*Shu"t Nishmas Chaim*, p. 1); *Bais Ephraim* (O.C. 26), and *Mishnah Berurah* (364:5).

⁶ *L'kol hadeios, batim* are no different than *mechitzos*, see for instance: *Mabit* (1:48); *Magen Avraham* (358:5); *Ginas V'radin* (*klal* 3:22); *Mayim Rabim* (*siman* 38), and the *Bais Ephraim* (*Teshuvos HaBach HaChadashos, siman* 3, p. 258). Furthermore, the following *poskim* explicitly state that *batim* qualify as *mechitzos* even when encompassing a *reshus harabbim*: *Shulchan Aruch HaRav* (O.C. 363, *Kuntres Achron* 1); *Bais Ephraim* (*siman* 26, p. 37b, 49a); *Bais Shlomo* (*siman* 51); *Nefesh Chayah* (*siman* 30), and *Mahari Stief* (*siman* 68).

⁷ The *Chazon Ish* argues: Since, *me'd'Oraysa*, a break in an enclosure that is *omed merubeh* does not negate the enclosure, when a street which continues through a city ends, either with houses or a dead end, the whole length of that street flanked by *mechitzos habatim* on both sides and its dead end would be considered *omed merubeh*

2:1 - RECTIFYING AREAS THAT ARE NOT ENCOMPASSED BY MECHITZOS

The above is referring to areas that are enclosed by *mechitzos*, which are inherently a *reshus hayachid me'd'Oraysa*. The following is regarding areas that cannot make use of *mechitzos*:

A *tzuras hapesach*⁸ would reclassify a *karmelis* as a *reshus hayachid*. However, regarding a *reshus harabbim*, the *Shulchan Aruch* (O.C. 364:2) states that only *delasos* [doors to close the breaches] would rectify it and not a *tzuras hapesach*.

There is a *machlokes haposkim* whether or not the *Shulchan Aruch's* requirement of *delasos* for a *reshus harabbim* is on a *d'Oraysa* level or only a requirement *me'd'rabbanan*. However, many *poskim* maintain that only *me'd'rabbanan* is there a requirement of *delasos*; *me'd'Oraysa*, a *tzuras hapesach* would suffice to reclassify a *reshus harabbim* as a *reshus hayachid*.⁹

on three sides, and *me'd'Oraysa*, a *reshus hayachid*. As a result, the intersections of that street, which were *pirtzos*, would halachically be termed *k'omed dami*, closed. Consequently, all streets that run perpendicular through this street — which now has three *mechitzos* and halachically closed intersections — would in turn be encompassed by three *mechitzos* themselves, their own *mechitzos habatim* on both sides of the street and a third wall, the *omed* of the intersection. This creates a spiraling effect throughout the entire city. The *Chazon Ish* concludes that there rarely would be in large cities a *reshus harabbim* because we would always find one street that is enclosed by three walls.

The halachic distinction between the *Chazon Ish's chiddush* and the above mentioned *poskim* (see note 6) is as follows: According to these *poskim* in order that the street/area be classified as a *reshus hayachid*, we would need, at the minimum, for the *mechitzos habatim* to enclose the street on three sides. However, according to the *Chazon Ish*, as long as one street in a city is encompassed by three *mechitzos*, all the intersecting streets which are only lined with two *mechitzos* would be classified as halachically enclosed by three *mechitzos*, as well. Given that today in most cities all the streets are enclosed on all [and not just two] sides by *mechitzos habatim*, there is no need to only rely on the *Chazon Ish's chiddush* since we can also rely on all of the above mentioned *poskim*.

⁸ There are those who claim that the term *eruv* refers to *eruvei chatzeiros* and not to a *tzuras hapesach*. However the *Gemara* (*Eruvin*, 6a) calls a *tzuras hapesach* an *eruv*; see also the *Piskei Rid* (*Shabbos* 6a) for further proof that the term *eruv* applies to both the physical construct and the *brachah*.

⁹ See *Korban Nesanel* (*Succos* 1:34:1); *Pri Megadim* (*Rosh Yosef, Shabbos* 6b); *Shulchan Aruch HaRav* (O.C. 364:4); *Gaon Yaakov* (*Eruvin* 11a); *Rav Chaim of Volozhin zt"l*

Accordingly, since the requirement of *delasos* is *me'd'rabbanan*, we can be lenient [*safek d'rabbanan l'kulla*] and apply any additional *heter* to remove the obligation of *delasos*.¹⁰

However, since the *Shulchan Aruch's* opinion is mired in a *machlokes*, and even according to the *poskim* who allow a *tzuras hapesach* for a *reshus harabbim* on a *d'Oraysa* level, we still have to contend with the requirement of *delasos me'd'rabbanan*, it is essential to establish the classification of an area — is it or is it not a *reshus harabbim*? — in order to ascertain whether or not a *tzuras hapesach* would suffice on all levels and according to the majority of opinions.

2:2A- AREAS CLASSIFIED AS A RESHUS HARABBIM

The *Gemara* (*Shabbos*, 6a) cites a *Tosefta* which states that there are three areas that can be categorized as a *reshus harabbim* [if they meet all the criteria; see further]: *sratya*, an intercity road;¹¹ *platya*, marketplace; and *mavo'os*

(*Otzar Reb Chaim Berlin, Shu"t Nishmas Chaim*, p. 1); *Tzemach Tzedek* (*Eruvin* the end of *Perek* 5); *Aishel Avraham* (*siman* 345); *Yeshuos Malko* (O.C. 21); *Avnei Nezer* (O.C. 273:16, 279:2, 289:2); *Aruch HaShulchan* (O.C. 364:1); *Levush Mordechai* (4:4); *Bais Av* (2:9:3), and *Kaf HaChaim* (O.C. 364:12).

While the *Bais Ephraim* and the *Chazon Ish* maintain that a *tzuras hapesach* would not suffice on a *d'Oraysa* level, they uphold that in order to negate a *tzuras hapesach* we require *shishim ribo* to traverse therein (see *Bais Ephraim siman* 26, p. 49b, and *Chazon Ish*, O.C. 108:12). Consequently, since most *eruvim* do not have *shishim ribo* traversing through the *tzuras hapesachim*, there would be no requirement of *delasos* (even *me'd'rabbanan*).

¹⁰ *Avnei Nezer* (O.C. *siman* 273:16, 279:2, 289:2); *Kanah V'Kanamon* (5:56); *Livush Mordechai* (4:4), and *Bais Av* (2:9:3).

¹¹ The *Rishonim* when discussing the classification of a *sratya* as a *reshus harabbim* clearly maintain that it is an intercity road (*Rashi, Shabbos* 6a; *Rabeinu Yehonason M'Lunil, Shabbos* 6a; *Ravyah, Eruvin siman* 379; *Ramban, Eruvin* 59a; *Semag, Asin Drabbanan* 1; *Riaz, Shabbos*, 1:1:17; *Meiri, Shabbos* 6a; *Ritva, Shabbos* 6a; *Rabeinu Yerucham, Toldos Adom V'Chavah* 12:4; *Ran, Shabbos, Rif daf* 2a; *Shitas Hamyuchos LaRan, Shabbos* 6a; *Ohel Moed, Shar HaSabbos* 13:2; *Rivash, siman* 405, and *Nimukei Yosef, Eruvin, Rif daf* 6a).

While *Rashi*, may at times label a *sratya* as a road that is traversed by the multitudes [as opposed to an intercity road], when he identified a *sratya* as an inherent *reshus*

ha'mefulashim, alleyways that open into the *sratyas* and *platyas*.¹² Our roads are usually classified as *mavo'os hamefulashim* since our marketplaces are typically indoors [which are essentially a *reshus hayachid*]¹³ and our intercity roads are highways, which are generally not incorporated into our towns.

Therefore, since our roads rarely if ever open on both ends into *sratyas* and *platyas*, they are not classified as a *reshus harabbim*. However, since [some insist that] there is a possibility that we may have *sratyas* and *platyas* that our *mavo'os hamefulashim* can open into, and some *poskim* also maintain that it would be sufficient to classify *mavo'os hamefulashim* as a *reshus*

harabbim (Shabbos, 6a) he clearly maintained that a *sratya* is an intercity road. In any case, besides the fact that the preponderance of *Rishonim* clearly state that a *sratya* is an intercity road, *Rashi* upholds that any road included in a city, even the road that connects the intercity roads [which maybe are classified as *sratyas*], would need to satisfy all criteria of a *reshus harabbim* in order to be characterized as such (see *Eruvin*, 6b, *Rashi* ad loc. regarding Yerushalayim and Mechuza). Consequentially, it is irrelevant if *Rashi*, at times, defined a *sratya* as being inside of the city limits. Likewise, those *Achronim* (the *Bais Ephraim* and *Avnei Nezer*), who referred to a road included in a city as a *sratya*, maintain that it would need to satisfy all criteria of a *reshus harabbim* (besides maybe for Rav Chaim Volozhiner *zt"l*). [However, there is no doubt that the *Bais Ephraim* and *Avnei Nezer* maintained that inside of the city limits a *sratya* is not an inherent *reshus harabbim*.]

¹² The following is a list of *Rishonim* who clearly maintain that a *mavo hamefulash* [alleyway] is not an inherent *reshus harabbim*, only when it links up with a *sratya* and *platya* is it classified as such: *Shiltos* (*Parshas Beshalach siman 49*); *Rashi* (*Shabbos 6a, Eruvin 7a*); *Sefer Ha'itim* (*ois 206*); *Rabeinu Yehonason M'Lunil* (*Shabbos 6a*); *Ravyah* (*Hilchos Eruvin 379*); *Rambam* (*Shabbos 14:11*); *Rivevan* (*Eruvin 6a*); *Ramban* (*Eruvin 59a*); *Semag* (*Asin D'rabbanan 1*); *Rashba* (*Avodas Hakodesh, Beis Nesivos 3:1*); *Ritva* (*Shabbos 6a*); *Orchos Chaim* (*Hilchos Shabbos ois 231*); *Rabeinu Yerucham* (*Nesiv 12:4*); *Meiri* (*Shabbos 6a*); *Sefer HaNer* (*Shabbos 6a*); *Ran* (*Shabbos 2a*); *Ohel Moed* (*Shaar HaShabbos Derech 13:2*); *Nimukei Yosef* (*Shabbos 6a*), and *Rivash* (*siman 405*).

However, some *Achronim* argue that it would be sufficient to classify a *mavo hamefulash* as a *reshus harabbim* if it would open into a *karmelis* [outside of the city limits]. Nevertheless, the overwhelming majority of *poskim* follow the *Rishonim* and maintain that a *mavo hamefulash* is only classified as a *reshus harabbim* if it opens into a *reshus harabbim*, a *sratya* or *platya*, but not if it opened into a *karmelis*, (for a succinct description of how the *Shulchan Aruch*, 345:7, relates to the *Tosefta* I would recommend the *Shulchan Aruch Harav*, 345:11).

¹³ See *Bais Av*, 2:6:4.

harabbim if they open into a *karmelis*, therefore, we have to define the criteria that render these areas a *reshus harabbim*.

2:2B - THE CRITERIA OF A RESHUS HARABBIM

The *Shulchan Aruch* (O.C. 345:7) gives four defining conditions of what constitutes a *reshus harabbim*: *rechovos* or *shevakim*¹⁴ [marketplaces/*platyas*] that are at least sixteen *amos* wide, that are not roofed [*mikorim*], that are open and aligned from gateway to gateway [*mefulash m'shaar l'shaar*], and have 600,000 people traversing it daily [*shishim ribo* (sixty myriads) *ovrim bo b'chol yom*].

Since all four criteria have to be realized for the area to be classified as a *reshus harabbim*, if even one criterion is not met, an *eruv* of *tzuras hapesachim* can be erected.¹⁵

As most public roads are more than sixteen *amos* wide and not roofed, most citywide *eruvim* would be predicated on two criteria: *mefulash u'mechavanim* and *shishim ribo*.

2:3A - THE CRITERION OF MEFULASH U'MECHANIM

The text of the *Shulchan Aruch* reads:

"What is a *reshus harabbim*? Marketplaces that ... are not walled and even if they are walled but they [the marketplaces] are open from gateway to gateway [*mefulash m'shaar l'shaar*], they would then be classified as a *reshus harabbim*"

The *Magen Avraham* (345:6; based on the *Bais Yoseph*) and most *poskim*¹⁶ assert that *mefulash m'shaar l'shaar* infers *mefulash u'mechavanim m'shaar l'shaar*, meaning the marketplace is aligned from gateway to gateway.

¹⁴ The *Shulchan Aruch* in 345:7, uses the words *rechovos* and *shevakim*, which according to most *poskim* are just alternative labels for marketplaces (see *Metzudos Tzion*, *Shir Hashirim* 3:2; *Mayim Rabim*, *siman* 38, and *Bais Ephraim*, *siman* 26 p. 44b). The *Magen Avraham* indicates on the word *rechovos* that *sratyas* are included in these halachos set forth by the *Shulchan Aruch*. In 345:8-9 the *Shulchan Aruch* deals with *mavo'os hamefulashim*.

¹⁵ See note 5.

¹⁶ Besides the above mentioned *Magen Avraham* see also: *Olas Shabbos* (345:6); *Tosfos Shabbos* (345:13); *Elya Rabbah* (345:13); *Pri Megadim* (*Aishel Avraham*, 345:6);

2:3B - HOW DO WE DEFINE THE CRITERION OF MEFULASH U'MECHANIM

From a simple reading of the *Shulchan Aruch*, it is apparent that the criterion of *mefulash m'shaar l'shaar* is conditional of a walled marketplace and not a walled city.¹⁷ Consequently, the city gate that the *Shulchan Aruch* is referring to is the *sha'ar* of the marketplace and not the *sha'ar* of the city walls.

Hence, the overwhelming majority of *poskim* uphold that the criterion of *mefulash m'shaar l'shaar* as it pertains to city roads is not conditional of a city encompassed by walls.¹⁸

Shulchan Aruch Harav (345:11); *Mishnah Berurah* (345:20), and *Aruch Hashulchan* (345:15).

¹⁷ It is patently clear from the *Rishonim* [since they argue that Yerushalayim was open upon its length and width, and was *mefulash u'mechavanim m'shaar l'shaar*, *Ritva*, *Eruvin* 22a; *Or Zarua*, *Hilchos Eruvin siman* 129, and *Meiri*, *Eruvin* 6a, 20a], that only the entryways to the commencement and conclusion of the *mavo's*/roads are categorized as the gateways [*she'arim*], and the intersecting roads do not establish additional gateways to the street [e.g. it is not sufficient that each segment of a street between intersections is *mefulash*]. Hence, the criterion of *mefulash u'mechavanim m'shaar l'shaar* is conditional on the road being literally straight from end to end through the city limits.

¹⁸ It is important to examine the meaning of the word *mefulash* so we can clarify why some *Rishonim* only mention *mechavanim m'shaar l'shaar* in conjunction with a walled city.

Tosfos (*Eruvin* 6a) states:

רב אמר תורתו כמפולש: ואפי' גרסינן דלתות איכא למימר "דמפולש גמור" הוא וכו' ואין לתמוה למה יהיה מבוי עקום חמור "ממפולש גמור"

The *Rashba* (*Eruvin* 6a) posits:

וההוא דמבוי העשוי כנדל: אבל כשהוא פתוח לשתי רשיות הוא צריך לסבב וע"כ נראה כמפולש מפני שעוברים בתוכו משער לשער

The *Rosh* (first *Perek Eruvin siman* 6) submits:

ולישנא דתורתו כמפולש לא משמע כפירשו דמשמע דתורת מבוי שהוא עקום תורתו כאילו היה מפולש ביושר בלי עקמומיות

The *Ran* (*Eruvin* 6a) advances:

מבוי עקום: אבל אחרים פירשו דתורתו כמפולש היינו כאילו היה מבוי אחד ישר ומפולש

From the above *Rishonim*, we can discern that a *mavoi akum* [crooked ally/street] is never called a *mavo hamefulash* [open ended alley/street] — only that its laws are similar to a *mavo hamefulash*. Thus, we see from the terminology of the *Rishonim* (in reference to *hilchos Eruvin*; see *Teshuvos HaRashba*, vol. 2 *siman* 95) that a *mavo hamefulash*

The following are some of the *poskim* who maintain that *mefulash u'mechavanim m'shaar l'shaar* is not conditional of a city encompassed by walls:

The *Mishnah Berurah* (364:8), when describing the cities of his times, stated that there were streets that were sixteen *amos* wide and *mefulash u'mechavanim m'shaar l'shaar*. Therefore, a *Baal Nefesh* should be stringent since in order to erect an *eruv* in these cities, they would have needed to rely on the fact that the street did not have *shishim ribo* traversing it. As we know that most towns in his times were not walled, we can deduce that he accepted the criterion of *mefulash u'mechavanim* as not being dependent on a walled city.

The *Divrei Malkiel* (4:3) states that to find a street in a large city which is *mefulash*, open from one end of the city to the other, is unheard of, and that is why the *minhag* is to erect *eruv* even in the largest of cities. He wrote this *teshuvah* regarding Odessa, a city that was not walled.

Rav Shlomo Dovid Kahane zt"l (*Divrei Menachem*, O.C. vol. 2, pp. 42-43), one of the main rabbanim of Warsaw before World War II, posited that the *heter* to erect an *eruv* in a large city such as Warsaw, which was unwalled from the year 1877 (*Encyklopedia Warszawy*, 1994 p. 187), was universally accepted as the streets were not *mefulashim u'mechavanim m'shaar l'shaar*.

denotes an alleyway/street that runs straight from end to end and does not indicate a curved ally/street at all. This is the rationale why the *Olas Shabbos*, *Magen Avraham*, *Tosfos Shabbos*, *Elya Rabbah*, *Pri Megadim*, *Shulchan Aruch Harav*, *Mishnah Berurah*, and *Aruch Hashulchan*, define *mefulash* as being *mechavanim m'shaar l'shaar* because they are following the *Rishonim* who describe a *mavo hamefulash* as running straight from end to end and not curved at all. Only a street running straight from end to end is identified as being *mefulash*.

Now we can clarify why some *Rishonim* only mention the requirement of *mefulash* in reference to an open city, but for a walled city they add the condition of *mechavanim m'shaar l'shaar*. In an open city, these *Rishonim* only need to cite the requirement of *mefulash* since, as detailed above, it denotes *mechavanim* [straight] as well; however, in a walled city there is a possibility that the street, even if it is *mefulash u'mechavanim*, ends at the city wall [in which case the street would be encompassed by three *mechitzos*]. Hence, these *Rishonim* add the condition of *mechavanim m'shaar l'shaar* that the street needs to be open and the gateways/*shaarim* need to be aligned straight through [connecting to the *srtayas* outside of the city] in order to be classified as a *reshus harabbim*.

More so, he claimed, a small city would have a greater issue establishing an *eruv* since its streets would be *mefulash*. In a small city, there is usually one main street running straight through the center of the town, as opposed to a large city where the streets are generally not straight from city gate to city gate. [See footnote for an additional list of *poskim*.¹⁹]

2:3C - DOES THE CRITERION OF MEFULASH U'MECHANIM PERTAIN TO ALL AREAS

According to all *Rishonim* and most *Achronim*, to be classified as a *reshus harabbim*, *mavo'os hamefulashim* [and the *sratyas* included in the city] would be required to extend and align on both ends through the city limits and to connect to the *sratyas* outside of the city. According to some *Achronim*, it would be sufficient to classify the *mavo'os hamefulashim* [and the *sratyas* included in the city] as a *reshus harabbim* if they would open into a *karmelis* outside of the city limits. However, according to some *Rishonim* and *Achronim*, *platyas* would need to be *mefulash* only if they are bounded by more than two *mechitzos* [this is irrelevant today, either because our *platyas*

¹⁹ The following is a list of some additional *poskim* who maintain that *mefulash u'mechavanim m'shaar l'shaar*, is not conditional of a city encompassed by walls: *Mayim Rabim* (*siman* 38, p. 39b; in regards to *sratyas* and *mavo'os hamefulashim*); *Pri Megadim* (*Aishel Avraham*, 364:2, *Mishbetzes Zahav*, 363:18); *Bais Meir* (*siman* 363:29); *Bais Ephraim* (*siman* 26 44b; in regards to *sratyas* and *mavo'os hamefulashim*); *Tzemach Tzedek* (*Shabbos* 6a; in regards to *sratyas* and *mavo'os hamefulashim*); *Mahari Asad* (*siman* 54); *Shoel U'Maishiv* (1:2:87); *U'Bacharta B'Chaim* (*siman* 117), and *Maharsham* (3:188).

Furthermore, we can add the following, the *Magen Avraham* (345:6; based on the *Bais Yoseph*) and most *poskim* (*Olas Shabbos*, *Tosfos Shabbos*, *Elya Rabbah*, *Pri Megadim*, *Shulchan Aruch Harav*, *Mishnah Berurah*, and *Aruch Hashulchan*) assert that *mefulash m'shaar l'shaar* infers *mefulash u'mechavanim m'shaar l'shaar*, meaning runs straight from gateway to gateway. Therefore, since all *Rishonim* (and *Achronim*) maintain that *mefulash* is a fundament of a *reshus harabbim*, even in a city that is not walled (e.g. *Rashi*, *Eruvin*, 59a; *Ravyah*, *Eruvin*, *siman* 379; *Rokeach*, *siman* 175; *Rid*, *Piskei*, *Sukkah* 43a, and the majority of *Rishonim* who mention the criterion of *mefulash* without the qualifier of city walls), and the *Gedolei HaPoskim* uphold that, *mefulash* infers *mechavanim*, hence all city streets would need to be *mefulash u'mechavanim m'shaar l'shaar* to be classified as a *reshus harabbim*, irrespective if the city is walled or not.

are indoors or because they are encompassed on at least three sides by *mechitzos habatim*]. Nevertheless, most *Rishonim* and *Achronim* do not make this distinction, and irrespective if the *platyas* are encompassed by *mechitzos*, all areas included in a city would need to be *mefulashim u'mechuvanim m'shaar l'shaar* to be classified as a *reshus harabbim*.²⁰

2:3D - HOW THE CRITERION OF MEFULASH U'MECHAVANIM CAN BE EMPLOYED FOR CITYWIDE ERUVIN

City roads are classified as *mavo'os hamefulashim*, and even if [one would argue that] some of our roads are classified as *sratyas* and *platyas*, since they usually are not aligned from one end of the city to the other, they are not *mefulashim u'mechuvanim m'shaar l'shaar*. Consequently, these areas which are sixteen *amos* wide fail to meet this criterion; hence, they cannot be deemed as a *reshus harabbim*, and *tzuras hapesachim* would suffice to enclose the area.

2:4A - THE CRITERION OF SHISHIM RIBO

The text of the *Shulchan Aruch* reads:

"What is a *reshus harabbim*? Marketplaces that are sixteen *amos* wide ... and there are those who say [*v'yeish oimrim*] that if they [the marketplaces] do not have 600,000 people traversing it daily [*shishim ribo* (sixty myriads) *ovrim bo b'chol yom*], they are not a *reshus harabbim*."

Since there is a difference of opinions among the *Rishonim*, when the *Shulchan Aruch* (O.C. 345:7) mentions the criterion that the marketplace requires *shishim ribo*, it prefaces it with a qualifier, "*v'yeish oimrim*," there are those who say. Subsequently, there is a *machlokas haposkim* if the *Shulchan Aruch* maintains that the criterion of *shishim ribo* can be relied on *l'chatchilah*.

²⁰ The following is a list of some of the *Rishonim* and *Achronim* who maintain that irrespective if the *platyas* are encompassed by *mechitzos*, all areas included in a city would need to be *mefulashim u'mechuvanim m'shaar l'shaar* to be classified as a *reshus harabbim*: *Rashi* (*Eruvin* 2a); *Rambam* (14:1); *RaaH*, (*Ran Hamyuchos*, *Shabbos* 6b); *Or Zarua*, (*Hilchos Eruvin siman* 164); *Semag* (beginning of *Hilchos Eruvin*); *Rosh* (*Tosfos Eruvin* 59a); *Smak* (*Mitzvah* 282 p. 296); *Tur* (*siman* 345); *Sefer HaNeyar* (*Hilchos Eruvin* p. 51); *Nimukei Yosef* (*Hilchos Tzitzis*, *Rif* pagination, *daf* 14); *Levush* (364:2); *Tosfos Shabbos* (364:4); *Bigdei Yesha* (364:2), and *Tiferes Yisroel* (introduction *Shabbos*).

2:4B - DO WE ACCEPT THE CRITERION OF SHISHIM RIBO L'CHATCHILAH

The *Bais Ephraim* rules that relying on *shishim ribo* is not a matter of following a majority but only that the criterion was accepted as our *minhag* in Tzorfas and Ashkenaz. However, since the *Mishkenos Yaakov* argued that the *Magen Avraham* and *Taz* were mistaken in their opinion that the majority of *Rishonim* maintain that *shishim ribo* is a fundament of a *reshus harabbim*, the *Bais Ephraim* presented evidence that the majority of *Rishonim* accepted *shishim ribo*.

In fact, we can add to the *Bais Ephraim*'s tally of *Rishonim*, since we know today of many more *Rishonim* who accepted the criterion of *shishim ribo* [more than seventy accept the criterion and thirteen clearly do not²¹]. Hence,

²¹ This is my preliminary list, I will eventually publish a complete list with over seventy *Geonim* and *Rishonim* who uphold the criterion and thirteen who do not.

Gaonim - 1) *Bahag*, Berlin edition, p. 131. 2) *Rav Amram Gaon*, *Halachos Pesukos Min HaGaonim*, *siman* 70. 3) *Sar Shalom Gaon*, *Chemdah Genuzah*, *siman* 70 and *Sharei Teshuvah*, *siman* 209 (see also *Sefer Ha'itim*, ois 92). 4) The *Gaon* mentioned in the *Sefer Ha'itim*, ois 206.

Rishonim - 5) *Rashi*, *Eruvin* 6a, 6b, 26a, 59a, 47a. 6) *Baalei HaTosfos*, *Eruvin* 6a, 26a, 59a, and *Shabbos* 6b, 64b. 7) *Sefer Ha'itim*, ois 92, 206, 209. 8) *Rabeinu Shmuel*, *Or Zarua*, ois 164. 9) *Machzor Vitri*, *Perek B'mah Isha*, ois 31, 32. 10) *Ra'avan*, *Shabbos* 349. 11) *HaEshkol*, *Hilchos Tzitzis* ois 31. 12) *Ha'itur*, *Hilchos Tzitzis*, *Shaar 3 Shaar Adom Chelek* 1. 13) *Ravyah*, *Hilchos Eruvin* 379, 391. 14) *HaManhig*, *Hilchos Shabbos HaTzarichos* ois 138. 15) *Rokeach*, *Hilchos Shabbos* 175. 16) *Sefer HaNer*, *Eruvin* 6a, 59a. 17) *Sefer HaTrumah*, ois 214, 239. 18) *Or Zarua*, *Hilchos Shabbos siman* 16, *Eruvin* 129. 19) *Rid*, *Piskei Eruvin* 6a, 59a, *Tosfos Pesachim* 69a and *Teshuvos*, *siman* 107. 20) *MaHrach Or Zarua*, *Piskei Eruvin Perek 2* ois 57. 21) *Rivevan*, *Eruvin* 6b, 59a. 22) *Semag*, *Hilchos Shabbos* p. 17. 23) *Maharam MeRotenberg*, *siman* 31, *Eruvin* ois 9, 10. 24) *RaaH*, *Ran* (*Hamyuchos*), *Shabbos* 6b. 25) *Riaz*, *Eruvin Perek* 1:5, 5:5. 26) *Talmid HaRashba*, *Chiddushei Eruvin*, 2a, 59b. 27) *Mordechai*, *Shabbos* 64b, 100a. 28) *Smak*, *Mitzvos Hatluyos B'Shabbos* p. 296, 299. 29) *Hagahos Maimonios*, *Eruvin Perek* 5:2, 5:4. 30) *Rosh*, *Beitzah* 24a, *Eruvin* 6a (see also *Kitzur Piskei HaRosh*, *Perek* 1:8). 31) *Tur*, O.C. 345, 364, 392. 32) *Ramak*, *Piskei* (*Rabeinu Mendel Kloizner*) *Shabbos* 6a, *Hagahos Ashri*, *Eruvin* 6b, 20b. 33) *Rabeinu Yerucham*, *Toldos Adom V'Chavah* 12:4, 12:17. 34) *Orchos Chaim*, *Hilchos Shabbos* ois 284. 35) *HaAgudah*, *Perek* 5:56. 36) *Tsedah LaDerech*, *Perek* 42, 46. 37) *Sefer HaNeyar*, *Hilchos Eruvin* p. 51. 38) *Hagahos Ashri*, *Eruvin* 6b, 20b. 39) *Nimukei Yosef*, *Hilchos Tzitzis*. 40) *HaAgur*, *siman* 537.

The following is a list of *Rishonim* who oppose the criterion of *shishim ribo*:

we accept the fundament either because this is the *minhag* or because the overwhelming majority of *Rishonim* [and all of those from Tzorfas and Ashkenaz,²² and at least four *Gaonim*²³] upheld the criterion *l'chatchilah*.²⁴

Additionally, many *poskim* maintain that, notwithstanding the qualifier, “*vyeish oimrim*,” the *Shulchan Aruch* does accept the criterion of *shishim ribo l'chatchilah*.²⁵ Moreover, there is no doubt that the *Rema* accepted *shishim ribo* as a fundament of a *reshus harabbim*.²⁶ Consequently, *Benei Ashkenaz*, who

1) *Rambam*, *Hilchos Shabbos* 14:1. 2) *Hashlama*, *Eruvin* 6a. 3) *Ramban*, *Shabbos*, 57a, and *Eruvin* 59a. 4) *Sefer HaMeoros*, *Eruvin* 6a. 5) *Rashba*, *Teshuvos HaRashba siman* 722. 6) *Hagahos Mordechai*, *Shabbos Perek* 6. 7) *Ritva*, 59a. 8) *Magid Mishnah*, *Shabbos* 14:1. 9) *Meiri*, *Bais HaBechirah Shabbos* 57a, and *Eruvin* 6b, and *Chidushim Eruvin* 6b. 10) *Ran*, *Shabbos Perek* 6, *Chidushim Eruvin* 6a. 11) *Rivash*, *siman* 405. [*Rabeinu Tam*, *Rashbam*, and *Yereim* on the *Mishkenos Yaakov's/Mishnah Berurah's* list of those opposing the criterion are debatable and today can be listed with those who maintain that *shishim ribo* is a criterion of a *reshus harabbim* (at least regarding *Rabeinu Tam* and the *Rashbam*).]

²² The fact that we now know that there is not one *Rishon* from Tzorfas and Ashkenaz who objects to the criterion of *shishim ribo* explicitly, demonstrates that *Benei Ashkenaz* accepted the criterion *l'chatchilah*, without reservations.

²³ The *Bahag's* opinion is considered *Divrei Kabbalah* (*Tosfos*, *Chulin* 44a; *Rosh*, *Berachos* 84 ois 14; *Shach*, *Y.D.* 25:2) and is not dismissed easily. Today, we know of an additional three *Gaonim* who uphold the fundament, and we do not know of even one who objects to the criterion, which demonstrates that there is a deep *mesorah* underpinning the fundament of *shishim ribo*.

²⁴ While the *Mishnah Berurah* (*Biur Halachah*, 345:7, and 364:) following the *Mishkenos Yaakov* maintains that the majority of *Rishonim* upheld that *shishim ribo* is not a criterion of a *reshus harabbim*, as mentioned above, their list of *Rishonim* has been superseded.

²⁵ The following is a list of some of the *poskim* who maintain that the *Shulchan Aruch* accepted *shishim ribo* as a fundament of a *reshus harabbim*: *Magen Avraham* (345:7); *Yad Aharon* (345:2); *Pachad Yitzchak* (*Erech*, *Reshus Harabbim*); *Erech HaShulchan* (345:2); *Pri Megadim* (*Aishel Avraham*, 345:7, *Mishbetzes Zahav*, 345:6); *Tosfos Chadashim* (*Shabbos*, *Perek* 11:1); *Zera Emes* (3:41); *Sedeh Haaretz* (*Chelek* 3, p. 29), and *Maharsha Alfandari* (*O.C. siman* 9).

²⁶ While the *Bais Meir* questions (as cited in the *Biur Halachah*, 345:7) what the *Rema's* opinion is, the *Bais Ephraim* (and even the *Mishkenos Yaakov*) and all the other *poskim* cite additional proof that the *Rema* does uphold the criterion of *shishim ribo*.

follow the *Rema*, certainly accept the criterion as a fundament of a *reshus harabbim*, *l'chatchilah*.

2:4C - HOW THE CRITERION OF SHISHIM RIBO IS CALCULATED

From a simple reading of the *Shulchan Aruch*, it is apparent that the criterion of *shishim ribo* is conditional of the marketplace/street.

It was the *mesorah* through the ages that the criterion of *shishim ribo* is dependent on a single marketplace/street.²⁷ The *Divrei Malkiel* (4:3) stated

²⁷ The main argument cited by those who claim that the criterion of *shishim ribo* is conditional on a city (as opposed to a street) is that *Rashi*, the foremost supporter of this fundament, employs the word *ir* [city] when mentioning *shishim ribo* (*Eruvin* 6a):

ר"ה: משמע רחב שש עשרה אמה ועיר שמצויין בה ששים רבוא

However, there is a simple explanation as to why *Rashi* makes use of the word “*ir*” in reference to the criterion of *shishim ribo*. *Rashi* expounds in *Eruvin* 59b:

דרך עיירות להיות פתחי פילושיהן לאורכם ור"ר עוברת מפתח לפתח וחלוקה לאורכה ... והני דרסי בהך רה"ר ... ורה"ר זו מחברתם שכולם מעורבין בה

Likewise, we find in *Tosfos Rid* (*Eruvin* 59b):

דדמי מבוי האמצעי לכל מבואות העיר הפתוחין לעיר, כמו המבוי לחצרות ... כך כל מבואות העיר דורסין על המבוי האמצעי כשרוצין לצאת מן העיר ולהיכנס

Similarly the *Smag* states (beginning of *hilchos Eruvin*):

וכן בתוך העיר ימצא רה"ר, כגון שרחוב שלה רחב שש עשרה אמה וכו' ומפולש משער לשער ובוקעין בו ס' רבוא

Rashi, *Tosfos Rid*, and the *Smag* are informing us as to how cities were planned. Cities in the past had a main road that all residents used to enter and exit the city [because most cities were walled], and this thoroughfare was the *reshus harabbim* of the city. Consequentially, when *Rashi* and the *Rishonim* who follow him use the word city in reference to *shishim ribo*, they are not signifying that the criterion is conditional on a city but only that the main thoroughfare in a walled city containing *shishim ribo* would be classified as a *reshus harabbim* if it is actually traversed by its entire population.

This follows why *Tosfos* (*Eruvin*, 6a), *Rosh* (*Eruvin*, *siman* 8), *Ritva* (*Shabbos*, 6a), *Ran* (*Eruvin*, 6a) and *Meiri* (*Eruvin*, 6b), when citing *Rashi's shita* regarding *shishim ribo*, omit the word city because, as defined by *Rashi*, a city containing *shishim ribo* is only an example as to how a thoroughfare can support such a population.

Following this we can extrapolated that since the populace of today's cities — because they are not walled — make use of many thoroughfares, it is not a given that the main arteries are actually traversed by its entire population. Consequentially, even if a city contains a population of *shishim ribo*, it is almost certain that no street would be

when writing to the people erecting an *eruv* in the city of Odessa, which had approximately *shishim ribo*, that, “the *minhag* is to erect *eruv*in even in the largest of cities, and it does not concern us that they contain *shishim ribo* since the *shishim ribo* is dispersed over all its streets.”²⁸ [See more about this issue when we discuss Rav Moshe Feinstein’s *shitos* in *eruv*in (3:1).]

Furthermore, since the *Shulchan Aruch* uses the term *shishim ribo ovrin bo*, it implies a thoroughfare in continuous use and not merely the presence of 600,000 people in the vicinity who would have the ability to utilize the street.

The *Bais Yitzchak* (*Y.D. siman* 136:3) responded to one who suggested that the criterion of *shishim ribo* is not conditional on people actually traversing the road, whose mere presence in the area would be sufficient, “[that] this is in opposition to most *poskim* including *Rashi* and *Tosfos*.” The *Maharsham* argued (3:188), if the criterion of *shishim ribo* includes even those who occasional use the street, how do we apply limits on the amount of time needed to fulfill the criterion. Clearly this is not the method we use to calculate the criterion of *shishim ribo*.²⁹

classified as a *reshus harabbim* since they are not traversed by the city’s entire populace [it should be noted that this is similar to the *Aruch HaShulchan*’s approach, 345:19-22].

²⁸ These are some of the additional *poskim* who clearly maintain that *shishim ribo* is dependent on the street: *Levush* (345:7); *Perishah* (O.C. 325:8); *Pnei Yehoshua* (*Shabbos* 5b); *Sedei Haaretz* (*Y.D.* p. 29:3); *Zera Emes* (3:34); *Bais Meir* (*Shabbos* 5b); *Bais Yaakov* (*Eruvin* 6a); *Yad Dovid* (*Eruvin* 55a); *Shulchan Aruch HaRav* (363:44); *Bais Ephraim* (p. 46); *Mishkenos Yaakov* (p. 126); *Chiddushi Harim* (*siman* 4); *Yeshuos Malko* (*siman* 27); *Mishnah Berurah* (*Shaar HaTzion*, 345:25) [the *Mishnah Berurah* indicates this by the usage of the phrase, “*derech hamavoi hamefulash*,” — it is important to note, the *Mishnah Berurah*’s (345:24) primary issue is whether the *shishim ribo* are required to traverse the street every day of the year or whether occasional use of the street by 600,000 people would be sufficient, see also *Toldos Shmuel*, 3:86:10]; *Minchas Elazar* (3:4); *Bais Av* (2:5:2); *Maharshag* (2:25); *Chazon Ish* (107:6); *Mahari Stief* (*siman* 68); *V’yaan Yoseph* (131:1, 155:1, 195:2); *Divrei Yatziv* (173:4); Rav Shmuel Vosner *zt”l* (in *Shevet HaLevi*, 6:41); Rav Yechezkel Roth *shlita* (in *Emek HaTeshuvah* 5:19), and see also the *shaila* to the *Chacham Tzvi* in *siman* 37.

²⁹ Besides the above mentioned *Bais Yitzchak* and *Maharsham*, the *Divrei Chaim* (*Lekutim siman* 3); *Yeshuos Malko* (O.C. *siman* 27); *Sefas Emes* (*Shabbos*, 6b); *Divrei Malkiel* (4:3); *Bais Av* (2:5:2:3), and *Minchas Yitzchak* (8:32), all agreed that the criterion of *shishim ribo* is only met when 600,000 people actually traverse the street.

2:4D - DOES THE CRITERION OF SHISHIM RIBO PERTAIN TO ALL AREAS

There is no doubt that all areas included in city limits — such as *sratyas* [if they can be classified as such], *platyas*, and *mavo'os hamefulashim* — would require *shishim ribo* to traverse its confines in order to be classified as a *reshus harabbim*. However, some *Rishonim* and *Achronim* maintain that if the *sratya* is outside of the city limits, it would not need to include *shishim ribo* traversing it. Nevertheless, the overwhelming majority of *Rishonim* and *Achronim* maintain that even outside of the city limits, a *sratya* would also require *shishim ribo* traversing it in order to be classified as a *reshus harabbim*.³⁰

While it is beyond the scope of this essay, suffice it to say that those who suggest that the *Bais Ephraim's* understanding of the *Ritva*, that the mere presence of *shishim ribo* in the vicinity would classify a street as a *reshus harabbim*, are mistaken. The *Gedolei HaPoskim* (mentioned above, the *Maharsham*, and *Minchas Yitzchak*) understood the *Bais Ephraim* otherwise. The only question regarding the *Bais Ephraim's* position was whether the requirement of *shishim ribo* traversing the street is every day or would on most days suffice.

Furthermore, all those who claim that there are additional *poskim* who uphold this condition in the criterion of *shishim ribo*, are incorrect, as all their claims are hearsay posited by the *Chevrah Hilchos Issurei Eruvin* (while it is beyond the scope of this essay, suffice it to say that all of their arguments have been negated).

³⁰ While the *Ramban*, and *Piskei Rid*, maintain that a *sratya* would not need to fulfil the criterion of *shishim ribo*, they clearly state that they are referring to a *sratya* that is an intercity road, outside of the city boundaries. The few *Achronim* (*Bais Yaakov* and *Yeshuos Malko*) who follow these *Rishonim* are also referring to an actual intercity road, outside of the city limits, and only those roads would not need *shishim ribo* traversing therein to be categorized as a *reshus harabbim*. However, those *poskim* who refer to the main road inside of the city limits as a *sratya* (*Bais Ephraim* and *Avnei Nezer*), uphold that it would need to fulfil the criterion of *shishim ribo* to be classified as a *reshus harabbim* (besides for maybe Rav Chaim Volozhiner zt"l).

Moreover, the overwhelming majority of *Rishonim* (Rav Amram Gaon, *Hilchos Psukos, siman* 70; Sar Shalom Gaon, *Sharei Teshuvah siman* 209; *HaEshkol, Hilchos Tzitis, ois* 31; *Smak, Mitzva* 282; *Rosh, Beitzah, 3:2; Ritva, Shabbos* 6a, and *Terumas Hadeshen, siman* 55, and the over twenty *Rishonim* that state that there is no *reshus harabbim* today at all, which would include *sratyas*) and *Achronim* disagree with the *Ramban* and *Tosfos Rid*, and maintain that there is no difference between roads inside

2:4E - HOW THE CRITERION OF SHISHIM RIBO CAN BE EMPLOYED FOR CITYWIDE ERUVIN

City roads are classified as *mavo'os hamefulashim*, and even if [one would argue that] some of our roads are classified as *sratyas* and *platyas*, since they are not traversed by *shishim ribo*, these areas which are sixteen *amos* wide fail to meet this criterion; hence, they cannot be deemed as a *reshus harabbim*, and *tzuras hapesachim* would suffice to enclose the area.³¹

3:1 - ACCORDING TO RAV MOSHE FEINSTEIN ZT"l – THE CRITERION OF SHISHIM RIBO

While, according to Rav Moshe zt"l, we would not be able to rely on the criterion of *mefulash u'mechavanim*, there is no doubt that he would allow that we can rely on the fundament of *shishim ribo*.

Let's explore Rav Moshe's *shitos* regarding the criterion of *shishim ribo*:

Like most *poskim*, Rav Moshe originally maintained (*Igros Moshe*, O.C. 1:109) that the criterion of *shishim ribo* was dependent on the street having *shishim ribo* traversing it. However, later (*ibid.*, 1:139:5) he formulated his *chiddush* in which *shishim ribo*, when applied to a city, was not dependent on a street but over a twelve *mil* by twelve *mil* area [approximately 8.1 by 8.1 square miles]. Rav Moshe added that the criterion of *shishim ribo ovrin bo* would require a sizable population living and commuting into the twelve *mil* by twelve *mil* area so that it could physically satisfy the condition of 600,000 people collectively traversing its streets. When these criteria are met, the area would be classified as a *reshus harabbim* and a *tzuras hapesach* would not be adequate; *delasos* at the *pirtzos* would be needed. However, at this time,

the city and those that are outside of the city, both would need to fulfil the criterion of *shishim ribo* to be classified as a *reshus harabbim*.

³¹ Even one of the above fundaments would be sufficient ground to permit an *eruv* of *tzuras hapesachim l'chatchilah*. Moreover, even if one would allege that according to some *Achronim* (and contrary to the overwhelming majority of *poskim*) the above fundaments would not allow an *eruv*, nevertheless, they would have to agree that each issue is still at the very minimum a *safek*. Consequentially, we are left with a *sfek sfek sfeika*, and we would therefore go *l'kula* even if the matter was a *d'Oraysa*. Lest one think that *sfek sfeika* is not utilized in these situations, one should peruse the *Yeshuos Malko* (O.C. *siman* 21); *Avnei Nezer* (O.C. 273:16, 279:2), and *Levush Mordechai* (4:4).

Rav Moshe did not quantify how many people would be required to live in this twelve *mil* by twelve *mil* area.

In the first *teshuvah* quantifying how many people would be required to live in this twelve *mil* by twelve *mil* area, Rav Moshe stated (*ibid.*, 4:87) that since, historically, *eruv* had been erected in cities with populations exceeding *shishim ribo*, one could not classify a city as a *reshus harabbim* solely on the basis of the existence of a population of 600,000. He then added that, although the actual number of inhabitants could possibly vary according to the city, in Brooklyn, it would most likely require four to five times *shishim ribo*. In the final two *teshuvos* which followed regarding Brooklyn, we see that Rav Moshe codified his *chiddush* that the requirement is, "just about three million people," (*ibid.*, 5:28:5) or, "at least five times *shishim ribo*," (*ibid.*, 5:29) which could amount to even more than three million people. Consequently, in the Chicago *eruv* pamphlet (*West Rogers Park Eruv*, 1993 p. 23), it is stated that Rav Dovid Feinstein *shlita* was in agreement that according to his father's *shitah* there must be a minimum of three million people in order for the city to be defined as a *reshus harabbim*.

It's important to note that Rav Moshe maintained the above regarding *shishim ribo* only as it applied to a city. However, with regard to a *sratya* [intercity road], Rav Moshe stated (*Igros Moshe*, O.C. 1:139:5, 4:87, 5:28:16) that the *shishim ribo* would need to traverse a particular section of the road on a daily basis to be classified as a *reshus harabbim*.

In most cities, since there is no 8.1 by 8.1 mile area encompassing a population even close to three million, no doubt, Rav Moshe would allow an *eruv* consisting of *tzuras hapesachim* anywhere in these cities.

3:2 - ACCORDING TO RAV MOSHE FEINSTEIN ZT"L – MECHITZOS

Rav Moshe states regarding Manhattan (*ibid.*, 1:139, and referenced in 5:28:5), that the bridges leading from the city — which were open along their sides and hence not enclosed by three *mechitzos* — would possibly, according to his opinion, need to be rectified with *delasos*. Nevertheless, Rav Moshe states clearly (*ibid.*, the end of *anaf gimmel*) that if the *tzuras hapesach* is erected in a *reshus hayachid* [in Manhattan proper which is encompassed

by more than three *mechitzos*, as opposed to the bridges which are not], it is sufficient, and *delasos* would not be required.³²

Many cities can establish their *tzuras hapesachim* in an area that is encompassed by three *mechitzos* [such as *mechitzos habatim*³³], a *reshus hayachid*, and *delasos* would not be required according to Rav Moshe and the overwhelming majority of *poskim*.

³² Regarding Manhattan, Rav Moshe stated that, based on additional *shitos yechidaos* (*shitas HaRashbah* regarding *platyas* and *Rabeinu Ephraim*), even with *mechitzos* and *delasos* at the *pirtzos*, Manhattan would not have been classified as a *reshus hayachid* (*Igros Moshe*, O.C. 1:39:5-6).

However, Rav Moshe only utilized these *shitos* in conjunction with his *chiddush* regarding *delasos* [on the bridges] to nullify the benefit the *mechitzos* encompassing Manhattan would have provided (*ibid.*, 1:39:6). Therefore, since Rav Moshe concurred that *delasos* are not necessary when a *tzuras hapesach* is established in a *reshus hayachid*, there is no question that Rav Moshe would have allowed *eruv* in these situations, and would not have been concerned about these other *shitos yechidaos* [even more so, we do not have to be concerned with *shitas HaRashbah*, since we usually do not have any *platyas* today; see note 13].

³³ However, Rav Moshe did not agree to the *chiddush* of the *Chazon Ish* — that the *omed* creates a *mechitzah* (as understood by most people, however see Section Four), and would usually classify the entire city as a *reshus hayachid*, even if only one street was enclosed by three *mechitzos* — which few city *eruv* would need to rely on, since they can make use of three *mechitzos habatim* for every street.

IN SUMMATION:

- 1) Many city streets are encompassed by *mechitzos habatim* on three sides, that are *omed merubeh al haparutz*; alternatively, many cities can utilize existing structures as *mechitzos*, and notwithstanding the criteria of a *reshus harabbim* contained therein, the area is deemed a *reshus hayachid me'd'Oraysa*, and *tzuras hapesachim* can be utilized to rectify the breaches.
- 2) If *mechitzos* are not being utilized, many *poskim* maintain that *me'd'Oraysa* a *tzuras hapesach* would suffice to reclassify a *reshus harabbim* as a *reshus hayachid*. Accordingly, since the requirement of *delasos* is *me'd'rabbanan*, we can be lenient [*safek d'rabbanan l'kulla*] and apply any additional *heter* to remove the obligation of *delasos*.
- 3) Even if one would argue that it is not universally accepted that a *tzuras hapesach* would suffice to reclassify a *reshus harabbim* as a *reshus hayachid*, we can establish an *eruv* of *tzuras hapesachim* in most cities since we do not have a *reshus harabbim/sratya* and *platya* for the *mavo'os hamefulashim*/our streets to open into.
- 4) Even if one would argue that our streets do not need to open into a *sratya/platya*, we can rely on the fact that our streets do not meet two criteria of a *reshus harabbim* — *shishim ribo* and *mefulash u'mechavanim* — and therefore, an *eruv* consisting of *tzuras hapesachim* can be established.
- 5) Rav Moshe *zt"l* would allow most city *eruvim*, since they do not meet the criterion of *shishim ribo*, and the fact that most city streets are encompassed by *mechitzos habatim* on three sides; alternatively, many cities can utilize existing structures as *mechitzos*.

