



## OVERHANGS AND OBSTRUCTIONS: SHADY PROBLEMS REQUIRE CREATIVE SOLUTIONS

Sukkot is a time when we leave the protection of our homes and move into a sukkah. We live in an abode where only the schach separates us from the sky above. For some, however, building a sukkah directly under the sky comes with complications. Obstructions such as trees, overhead balconies, roof eaves, or patio screening can prevent the sukkah from providing exclusive protection from the elements. In this article, we will deal with some of the common questions relating to these obstructions. Under what circumstances can we construct a valid sukkah under an obstruction? How

does the obstruction affect the seating configuration within the sukkah?

### A Sukkah Under a Tree

The Mishna compares a sukkah under a tree to an indoor sukkah:

העושה סוכתו תחת האילן כאילו עשאה בתוך הבית.

*One who builds a sukkah under a tree is as if it was built inside of a house.*

### Mishna, Sukkah 9b

An indoor sukkah is clearly invalid, and its invalidity is not based on a single technicality. The house is a permanent structure that prevents the

schach from providing shade. More fundamentally, R. Yehuda Aryeh Leib Alter, *Sefat Emet, Sukkah 9b*, notes that the mitzvah of sukkah requires us to leave our home (or at least the roof over our head), and simply putting up a sukkah indoors would not accomplish that. Why then does the Mishna compare a sukkah under a tree to an indoor sukkah? The Gemara provides the following answer:

אמר רבא לא שנו אלא באילן שצלתו מרובה מחמתו אבל חמתו מרובה מצלתו כשרה ממאי מדקתני כאילו עשאה בתוך הבית למה לי למיתני כאילו עשאה בתוך הבית ליתני פסולה אלא הא קמ"ל דאילן דומיא דבית מה בית צלתו מרובה מחמתו אף אילן צלתו

מרובה מחמתו וכי חמתו מרובה מצלתו מאי  
הוי הא קא מצטרף סכך פסול בהדי סכך כשר  
אמר רב פפא בשחבטן.

*Rava said: this rule only applies to a tree that provides more shade than sunlight. However, if its sunlight is greater, it is valid. How do we know this? From the fact that the Mishna states that it is as if it was built inside a house. Why does it say it is as if it was built inside a house? Why not just say that it is invalid?*

*Rather, this comes to teach us that we are dealing with a tree that is similar to a house. Just like a house provides more shade than sunlight, so too, the tree [discussed in our Mishna] is one that provides more shade than sunlight. And if it provides more sunlight than shade, why does that help? Isn't one going to have to combine invalid schach (i.e. the tree) with valid schach? R. Papa answers that this can be solved if one lowers the branches [onto the schach].*

Suppose there is an area where we plan to build a sukkah, but one of the corners has a few branches hanging over the area. Can a valid sukkah be built in that area, or is it necessary to cut those branches? [Lowering the branches onto the schach is usually not a practical option.] Tosafot, ad loc, s.v. *Ha*, deduce from the Gemara that a tree only poses a problem if its shade is necessary for the total shade in the sukkah to exceed its sunlight. However, if the sukkah has enough valid schach without the tree and the tree only covers a minority of the sukkah, the sukkah is valid.

R. Eliezer ben Yoel HaLevi (Ra'aviah no. 613) takes a different approach. He notes that if part of the schach is under a tree, that part of the schach is, practically, not providing any shade. Therefore, the schach that is under the tree cannot be counted toward the requirement for the sukkah to have more shade than sunlight. Rabbeinu Nissim, *Sukkah* 5a, s.v. *V'Nimtza*,

follows Ra'aviah's approach and takes the idea one step further by declaring the area under the tree as invalid.

Practically, what this means is that one would not fulfill the mitzvah by sitting in the part of the sukkah under the tree. Furthermore, if the tree covers the entire length or width of the sukkah for a span of four *tefachim* (approximately 14 inches),<sup>1</sup> it could potentially invalidate the sukkah.<sup>2</sup>

As a matter of halacha, *Shulchan Aruch* 626:1 writes that there are those (*yesh omrim*) that validate a sukkah where the tree only covers a minority portion and there is enough schach without the tree to provide majority shade (Tosafot), and there are those who invalidate such a sukkah (Ra'aviah). *Mishna Berurah*, *Bei'ur Halacha* ad loc., notes that whenever *Shulchan Aruch* quotes two opinions as "*yesh omrim*," the halacha follows the second opinion, in this case, the Ra'aviah. However, in a pressing situation, where we have no way to fulfill the mitzvah, and the branches cannot be cut, we may rely on the opinion of Tosafot.

### **Coverings that Don't Provide Shade**

The Mishna, *Sukkah* 10a, states that if we place a sheet under the schach to prevent leaves from falling, the sukkah is invalid. The Gemara infers from the Mishna that the issue with the sheet is that our intent is to prevent leaves from falling, but if the sheet is for decorative purposes, it is permissible. Rashi, ad loc., s.v. *HaNesher*, writes that the sheet that the Mishna invalidates is meant to catch leaves that fall on the table. However, Tosafot, ad loc., s.v. *Pires*, quote Rabbeinu Tam who disagrees. If the purpose is to protect the person sitting in the sukkah from leaves or

from the sun, why is that any different from a sheet for decorative purposes? Shouldn't both be permissible? Rabbeinu Tam's opinion is similar to the opinion of Tosafot regarding an overhanging tree. If the schach provides enough shade on its own, a covering is less problematic. Rather, the Mishna is talking about a sheet that is intended to preserve the actual schach from drying out and becoming invalid. Since the sheet contributes, albeit indirectly, to ensuring that there is shade in the sukkah, that type of sheet cannot be used.

*Shulchan Aruch*, *Orach Chaim* 629:19, codifies Rashi's opinion as the primary opinion and then mentions Rabbeinu Tam's opinion that we may place a sheet to protect ourselves from falling leaves or from the sun. *Mishna Berurah* 629:58 rules that we should only rely on Rabbeinu Tam's opinion if the situation is so pressing that placing the sheet is the only way we can sit in the sukkah. Furthermore, if we do so, we should not recite a beracha upon sitting in such a sukkah.

### **Glass Covers**

In the last two centuries, a number of achronim have raised the following question: Is it permissible to place a sheet of glass or translucent plastic on top of the sukkah (either under or over the schach) in order to prevent rain from coming in? The argument to permit a glass covering is that the glass does not provide shade. The problem with a tree or other overhang is that they contribute to the shade of the sukkah or they inhibit the ability of the schach to provide shade. As such, glass would not pose a problem.

The glass cover option was rejected by poskim for a number of reasons. First, R. Tzvi Pesach Frank, *Har Tzvi*,

*Sukkah* 9b, notes that if the glass prevents all rain from coming in, then it is similar to building a sukkah indoors. One of the problems with an indoor sukkah is that it is permanent, and a key indicator of permanence is its ability to be rainproof. R. Frank adds that even if we did not use a glass sheet, but rather glass strips, such that some rain would still come in, there would still be an issue. This is because the term “shade” may not necessarily be limited to blocking sunlight, but to providing protection from the elements. Glass, which doesn’t block sunlight but protects from rain, may be no different than a tree. R. Yeshaya Shechter, *Moadim L’Yisrael* pg. 26, quotes from R. Yitzchak Zev Soloveitchik that the requirement for the schach to provide the majority of the shade is a quantitative issue. The schach must provide shade for the majority of the area of the sukkah. Glass may let most sunlight through, but it does provide a slight amount of shade, and those who walk under a glass ceiling from an outdoor area will notice that there is less sunlight. Since the glass covers the entire area and provides a small amount of shade over a majority of the area, it is no different than other covers (see *Yalkut Yosef, Sukkah* pg. 148). R. Shmuel HaLevi Vosner, *Shevet HaLevi* 4:57, thinks that it is obvious that a plastic translucent cover is problematic. However, he notes that according to Rabbeinu Tam, a sheet that protects from the rain is valid, and therefore, if one wants to place a cover on the sukkah and sit there while it is raining, one may do so as long as long as a beracha is not recited.

## Patio Screening

In 17<sup>th</sup>-century Egypt, many homes had no windows, and in order to provide light for the house, a skylight was constructed. The skylight was big enough to construct a sukkah underneath (for our purposes, we will assume that either there was no glass covering or it was removable), but there was a problem: in order to prevent bugs from coming in, there was netting placed at the top of the skylight. R. Avraham ben Mordechai HaLevi, the chief rabbi of Cairo at the time, addresses the validity of a sukkah built under netting in his *Ginat Veradim, Orach Chaim* 4:8. He notes that while netting would be considered *satum* — completely closed — in other areas of halacha, regarding sukkah, the netting should be treated the same as an overhanging tree. As such, according to Tosafot, if there is enough schach to provide majority shade without the netting, the sukkah is valid. According to Ra’aviah, if there is enough schach such that if we could remove all of the schach directly under each strand of netting and still have majority shade, the sukkah is valid. From a practical perspective, if we are using insect screening with 67% openness, we would have to provide 50% more schach than if there were no screen.<sup>3</sup> R. Yaakov Etlinger, *Bikkurei Yaakov* 626:8, seems to disagree. R. Etlinger is discussing a sukkah built in an area that has a removable roof. While the roof is removable, the support beams for the roof are not. The schach is well below the level of the beams and the shade provided by the beams is minimal, but R. Etlinger notes that if the beams, which are not valid for schach, are within three *tefachim* (approximately 10.5 inches) of one

another there is a different problem — *lavud*. *Lavud* means that if there is a gap of less than three *tefachim*, we view that gap as if it were filled. This concept is employed as a leniency in many sukkot. While most rishonim assume that *lavud* is only employed as a leniency, Rashba, *Eruvin* 16b, s.v. *Ee Muki*, writes that *lavud* is also applied as a stringency. As such, we should view the entire array of support beams that are within three *tefachim* of each other as one fully enclosed unit. *Mishna Berurah*, 626:17, in discussing this case, writes that in order to fulfill all opinions, we should remove enough beams so that there is a gap of more than three *tefachim* between them. He also provides a solution: if the schach is resting on the same level as the beams such that the schach fills in the gaps, one would certainly not apply *lavud* to the beams.

If we accept R. Etlinger’s reasoning, netting or screening (at least when schach does not fill in the holes) would also be problematic, since we would view the entire net as if it were enclosed. R. Shlomo Zalman Auerbach, *Minchat Shlomo* 1:91 (19), discusses a case where there are multiple clothes lines hanging above a sukkah within three *tefachim* of each other. The clothes lines provide minimal shade, but if we assume *lavud*, they would invalidate the sukkah. R. Auerbach notes that even those who would apply *lavud* as a stringency may not do so when the whole purpose of the gaps is to provide space between each row. Being that R. Etlinger’s comments are not the letter of the law but an added stringency, we may be lenient when the gaps were intentionally placed to create space. R. Auerbach’s comments should apply to netting as well. This is the conclusion of R. Shammai Gross, *Shevet HaKehati*

5:106, who permits placing netting over the schach to prevent bugs from coming in. R. Ovadia Yosef<sup>4</sup> ruled that if one needs to use a screen, it is preferable to set it up in such a way that the schach fills in the gaps between the holes. However, if that is not possible, one may use the screen and recite a beracha upon sitting in such a sukkah.

## Balconies, Overhangs and Eaves

A sukkah only requires three walls. As such, if the sukkah would have three walls remaining were we to remove the wall under an overhang, the sukkah remains valid. What if there is an overhang over multiple walls or there is no fourth wall and there is an overhang over the third wall? The Mishna, *Sukkah* 17a, states that if a house has a hole in the middle of the roof and schach is placed on the roof, if (three of) the walls are within four *amot* (approximately 85 inches) of the schach, the sukkah is valid (figure 1).

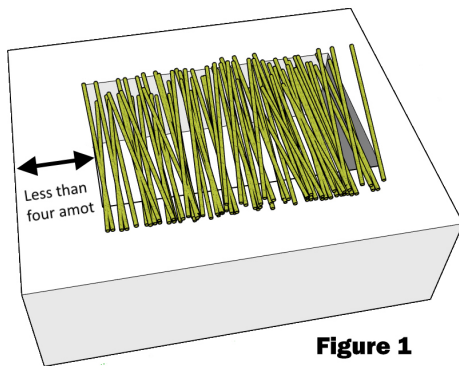


Figure 1

The Gemara, *Sukkah* 4a, refers to this concept as *dofen akumah*, a bent wall. Rabbeinu Nissim, *Sukkah* 2a, s.v. *Banah*, explains that we view the ceiling of the house as part of the wall, and it is as if the wall itself is curved. He notes two implications of this explanation. First, we do not fulfill the mitzvah by sitting under the ceiling.

Second, if the wall does not extend all the way up to the level of the schach (Figure 2), *dofen akumah* cannot be applied.

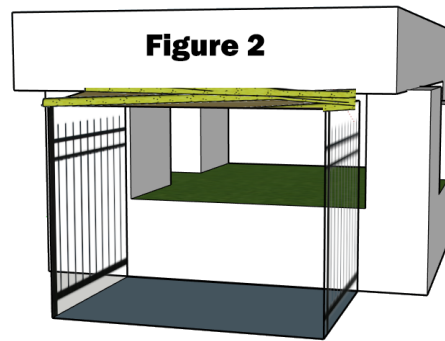


Figure 2

R. Yaakov ben Asher, *Tur, Orach Chaim* no. 632, agrees with Rabbeinu Nissim's first application that we do not fulfill the mitzvah sitting under the overhang. However, he disagrees with Ran's second application. He writes that *dofen akumah* applies:

אפילו אין הדופן אלא ל' טפחים והגג גבוה ממנו הרבה שאנו רואין הדופן כאילו עולה עד למעלה.

... even if the wall is only ten *tefachim* high (approximately 35.5 inches) and the roof is much higher, because we view the wall as if it rises to the top.

*Magen Avraham* 632:1 codifies the opinion of Rabbeinu Nissim that *dofen akumah* is not effective unless the walls reach the schach. R. Akiva Eger, in his responsa (*Pesakim UKetavim* no. 12), disagrees. He contends that Rabbeinu Nissim is consistent with his own opinion, *Sukkah* 9a, that we cannot combine two leniencies to complete the structure of the sukkah. In this case, we would require *gud asik* to project the walls to the top of the sukkah, combined with *dofen akumah* to convert the ceiling into a wall that bends toward the valid schach. However, R. Eger notes that *Shulchan Aruch, Orach Chaim* 630:9, permits a sukkah with a wall that does not extend to the level of

the schach and where the schach is not directly over the wall, but within three *tefachim*. In this case, *gud asik* is required to project the walls vertically and *lavud* is required to project the schach horizontally, and we do allow combining both of these leniencies. We see that as a matter of halacha, we permit combining two leniencies. Despite R. Eger's assertion, *Mishna Berurah, Beur Halacha* 632:1, rules that one should show deference to the opinion of Rabbeinu Nissim.

What if the walls extend up to the level of the schach, but the overhang is higher up (Figure 3)? Is schach required underneath the overhang or can we assume that since the area underneath the overhang is covered, no schach is necessary? This scenario is far more common nowadays than the scenario discussed by Rabbeinu Nissim, and could occur if we are using schach mats that are simply not long enough to reach the wall, or if our sukkah frame doesn't extend under the overhang.

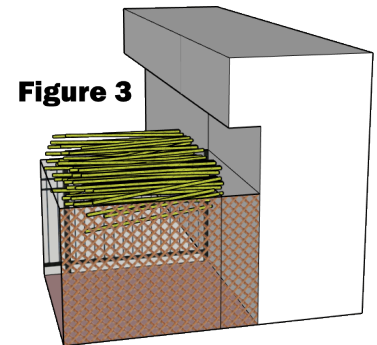


Figure 3

From a halachic perspective, the issue is as follows: *Dofen Akumah* converts a ceiling into a wall. It does not convert air space into a wall. In order to employ *dofen akumah* in this situation, we first have to lower the overhang to the level of the schach, based on the halachic principle of *chavot rami* — the principle that allows the lowering of a ceiling. Can *chavot rami* be

combined with *dofen akumah*?

R. Chaim Chizkiyahu Medini, *S'dei Chemed, Ma'arechet Sukkah 2:16*, quotes from R. David Falkun's *P'nei David* that there can be a potential problem if the overhang is above the level of the schach. If we look at the *P'nei David* in the original (*Hilchos Sukkah 4:20*), an expanded explanation appears. *P'nei David* suggests that according to Rabbeinu Nissim, this situation is certainly problematic. However, even according to *Tur* this is problematic because *Tur* only permits a wall of ten *tefachim* to be projected up to the level of the schach. In that case, the wall is a halachically valid wall and it is natural to extend the wall in the same direction. However, in this case, the roof and the schach are on two different levels and there is no natural connection between the roof and the schach. R. Avraham David Wahrman of Buchatch, *Eshel Avraham 632:1*, writes that we can employ *chavot rami* together with *dofen akumah*, and therefore, this does not pose a problem.

*Piskei Teshuvot, 623:4* (note 23), suggests a simple solution for those who want to follow *Sdei Chemed*. We can create an additional "ceiling" on the same level as the schach, by covering the airspace that is under the overhang. This "ceiling" doesn't have to be made of kosher schach and can be made of any material. If we do so, then the wall "bends" at the height level of the schach and the only

leniency necessary is *dofen akumah*.

## Concluding Thought

A rabbi adept in the laws of sukkah should be able to provide a solution in many cases involving overhangs and coverings. These solutions will often be based on the fact that a sukkah only requires three walls and that the third wall does not have to be complete. R. Avraham Mordechai Alter, *Imrei Emet Sukkos 5676* (second night), notes that the shape of the minimal sukkah is the letter ן.<sup>5</sup> He references the Gemara, *Menachot 29b*, that the letter ן has an opening at the bottom to represent the fact that everyone has an option to leave the ways of the Torah, but it also has a door on the left side so that those who want to repent can return. The message he provides is that we spend the High Holidays season knocking on the door of teshuva waiting to be let in, and it is on Sukkot that we enter through the door. May we all merit experiencing a Sukkot that builds off of our spiritual gains of the High Holidays, and opens the door for further growth.

## Endnotes

1. For the purpose of simplicity, this article will follow the measurements of R. Moshe Feinstein, *Igrot Moshe, Orach Chaim 1:136*, that an *amah* is 21.25 inches. As such, a *tefach* is 3.54 inches. Additionally, we will be rounding the numbers to the nearest half inch. It should be noted that there are two other prevalent opinions regarding these measurements — R. Avraham Yeshaya

Karelitz, *Chazon Ish, Orach Chaim* no. 39, who is of the opinion that the *tefach* is 3.8 inches and R. Avraham Chaim Na'eh, *Shiurei Torah*, who is of the opinion that the *tefach* is 3.14 inches.

2. If there are four *tefachim* of invalid schach along the entire length or width of the sukkah, the sukkah is bisected, and if there are only three walls, the sukkah is invalid. If we treat the area under the tree as invalid schach, the tree has the potential to invalidate the sukkah.

3. If the schach covers 51% of the area of the sukkah and a screen is placed on top that is 2/3 open and 1/3 closed, only 34% of the schach can be counted. We must really have greater than 75% coverage without the netting such that reducing the effective halachic coverage by 1/3 will keep the calculation above 50%. Screens have varied "openness ratings." Those meant to prevent bugs and not provide shade are approximately 60% open.

4. Oral ruling communicated to his grandson, R. Yaakov Sasson and relayed in an email to R. David Shabtai on the 13th of Tishrei 5770.

5. R. Chaim Yosef David Azulai (cited in *Bnei Yissachar, Tishrei 10:12*) notes that the three letters of the word sukkah (סכה) have the shape of the three types of valid sukkot. The ס is a four walled sukkah. The כ is a three walled sukkah. The ה is a sukkah with two walls and an incomplete third wall.



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