

Parsha Insights

The Curious Case of the Karpef

Rabbi Yehuda Spitz

The title of this article will probably engender much inquisitiveness. What exactly is a *karpef*? No, it is not a type of French pastry, nor is it referring to the vegetable dipped into saltwater at the Pesach Seder. Rather, it is a term used to refer to an area not designated for human habitation. Before the colloquial “Huh?” is heard, some explanation is in order.

Tale of Three *Reshuyos*

According to *Tosafos*, the well known *halacha* of not carrying outside on Shabbos (*Hotza'ah*) is based on the episode in *Parashas Beshalach* of several people attempting to gather the *mun* (manna) on Shabbos.^[1] The *Pasuk* states “On the Seventh Day each person should remain where he is and not leave his place”. The main prohibition taught here is to refrain from carrying from one’s house or private enclosed area (known as a *Reshus HaYachid*) to an area available for the entire *Bnei Yisrael* in the Desert to traverse (known as a *Reshus HaRabbim*). *Chazal* further explain that transporting the item in the reverse order (from *Reshus HaRabbim* to *Reshus HaYachid*), or even carrying it 4 Amos (between 6 - 8 feet) in a *Reshus HaRabbim* itself is prohibited as well.^[2]

So, basically, one may carry inside an area that is considered a *Reshus HaYachid* on Shabbos, while one may not carry in an area that is considered a *Reshus HaRabbim*. However, in order to be designated a Biblical *Reshus HaRabbim*, certain specific complex requirements must be met, including: It must be unroofed, meant for public use or thoroughfare, at least 16 *amos* wide, and be used by at least 600,000 residents daily.^[3]

Any area that does not meet the Torah’s definition of a *Reshus HaRabbim*, and yet is not enclosed (and therefore not in the category of a *Reshus HaYachid*), is called a *Karmelis*. A *Karmelis* shares the same basic rules of a *Reshus HaRabbim*, but since the prohibition is only rabbinic in origin, *Chazal* allowed a more lenient method of ‘enclosing’ it. This method is called an *eruv*, which in essence turns a *Karmelis* into a quasi-*Reshus HaYachid*, and therefore allows carrying throughout on Shabbos.

So...What's a *Karpef*?

It is not the author's intent to get involved in the extremely complex and complicated issues involved in what constitutes a proper *eruv*,^[4] but rather to highlight a seldom known related issue: the obscure *halacha* of a *karpef*. As mentioned previously, a *karpef* refers to an area not designated for human habitation. The basic *halacha* is that one may not carry inside of a *karpef* on Shabbos,^[5] even though Biblically a *karpef* is considered a *Reshus HaYachid*! What many do not know^[6] is that its unique *halachic* status is that if there is a *karpef* larger than 5,000 square *amos*^[7]- "*Yosair M'Beis Sa'asayim*" (roughly 1,650 sq. meters or 17,750 – 20,000 sq. feet; approximately the area size of two or three buildings) inside of an *eruv*, it can render the entire *eruv* invalid!^[8]

If so, we must properly identify a *karpef*, as its definition can greatly impact the validity of many an *eruv*, since every city has non-residential areas. The Gemara, as well as the *Shulchan Aruch*, discuss it as place where it's "*nizra ruvo ha'zra'im*", mostly full of plants and shrubbery - meaning not a place where people ordinary would traverse or live.^[9]

Gardens & Parks

Although this ruling holds true, many decisors extend the definition of human habitation (and thus exception to the aforementioned rule) to include a use of the area for regular human needs. For example, many authorities maintain that a *karpef* refers exclusively to a vegetable garden or possibly a place that is overgrown with plants and weeds, which is why people would have no reason to go there. On the other hand they aver, public parks and gardens, which are purposely planted for people's pleasure and enjoyment,^{[10] [11]} would not fall under this category, as they are similar to orchards,^[12] and would not invalidate an *eruv*.

Additionally, since public parks are purposely created by a non-Jewish government, it would not fall into the category of a *karpef* that can be *mevattel* an *eruv*, since our intent is subject to the government's, as well as belonging to non-Jews.^[13] Yet, several others do not agree with this explanation and rule stringently, that even a flower garden would be included in the definition of a *karpef*.^[14] The *halacha pesuka* seems to follow the majority (lenient) opinion, especially as it has support from the *Meiri*, a *Rishon* whose opinion on topic the *machmirim* had not known about.^[15]

Cemeteries, Zoos and Empty Expanses

The *Chazon Ish*^[16] maintains that an empty expanse of land (perhaps a construction site) has the same applicable *halacha* of a *karpof*, since it currently has no residential use and consequentially can also invalidate an *eruv*. Yet, it appears that this is a novel approach, as it does not appear in earlier *halachic* literature.^[17]

A more common issue is how to classify a cemetery. Although some seem hesitant to “zone it” as such, nevertheless, since many come to a cemetery to *daven* on specific days (*Tisha B’Av*, certain *Arvei Rosh Chodesh*, *Yahrtzeits*, etc.), the prevailing opinion is to consider it a residential area,^[18] and not a *karpof*.

Similarly, since many visitors come to a zoo on a regular basis, it has the status of a residential area and would not invalidate an *eruv*.^[19] Other interesting places that one might not think are considered residential, yet are considered so from a *halachic* standpoint, include a *shuk*^[20] (open air marketplace), a prison courtyard,^[21] and an airfield tarmac (runway);^[22] all of which are not considered *karpifiyos*, and do not invalidate an *eruv*.

The Dvar Shmuel’s Approach

The most commonly cited as well as most controversial approach to the *halachos* of *karpof* is that of the great Rav Shmuel Abuhav. In his famous *sefer* of responsa, *Shu”t Dvar Shmuel*,^[23] he raises an interesting point and an exception. He maintains that in an enclosed city (*Ir Mukefes Choma*), even one with a *karpof* inside larger than 5,000 *amos*, the *eruv* is still valid. He explains that the reason a *karpof* normally invalidates an *eruv* is because an *eruv* only helps for places of human habitation, and a *karpof* is not suitable for such. Yet, if the whole city is enclosed, it shows that the whole city is meant for habitation, including the *karpof*; for if it wasn’t, the city’s founding fathers would never have enclosed it. In other words, the *karpof* becomes cancelled out by the city itself!

Many authorities, although several not agreeing with his proofs, nevertheless followed his lenient ruling; chief among them the famed *Chacham Tzvi*, and his son, Rav Yaakov Emden.^[24] A number of other prominent *poskim*, however, vehemently disagreed, maintaining that such a *karpof* would invalidate an *eruv*, even in an enclosed city.^[25] Several decisors ruled that one may only rely on this

hetter under extenuating circumstances[26]. The *Mishna Berura* and the *Chazon Ish*, among other authorities, maintain that one should not rely on this leniency,[27] rather asserting that one should erect an *eruv* around this *karpef*, thereby excluding it from the rest of the city-wide *eruv*, and as a result sparing the city *eruv* from any *karpef* related consequence.[28]

Bottom Line

Many contemporary authorities do take the *Dvar Shmuel's* rationale into account as an additional factor to permit an *eruv* to exist, even with a *karpef* in its midst.[29] It is well known that many cities with a large concentration of observant Jewry in generations past traditionally relied upon the *Dvar Shmuel's* approach[30] in construction of their *Eruvin*, including Yerushalayim in the days of the *Aderes*, Warsaw in its heyday, and Vilna in the days of Rav Chaim Ozer Grodzenski *zt"l*. So, what does your city do? Which opinions does your city's *eruv* follow? One should speak to his Rav and /or *Eruv Vaad* to find out.

However, as stated before, this article was not meant to give a definitive ruling on the complexities of the *karpef*. Rather, its purpose is to highlight a small aspect of the extremely intricate and complicated issues involved in the construction of an *eruv*, and to give the reader an appreciation of those *Rabbanim* who erect and check the *eruv* weekly in rain, sleet, or hail, just to save their fellow Jews from potential *Chillul Shabbos*. [31]

This article was written in appreciation to and in honor of my father, Rabbi Manish Spitz, who has for decades tirelessly worked and continues to do so, to ensure that a proper eruv is up to save the rabbim from nichshal, and was the impetus for my interest and research in this inyan, l'iluy nishmas the Rosh Yeshiva Rav Chonoh Menachem Mendel ben Yechezkel Shraga and R' Chaim Baruch Yehuda ben Dovid Tzvi and l'zechus for R' Yaacov Tzvi ben Rivka and Shira Yaffa bas Rochel Miriam v'chol yotzei chalatzeha for a yeshua teikif umiyad. Thanks are also due to noted author and posek Rabbi Yirmiyohu Kaganoff for graciously allowing me to paraphrase part of his relevant article "Carrying in Public and the Use of an Eruv".

For any questions, comments or for the full *Mareh Mekomos* / sources, please email the author: yspitz@ohr.edu.

**Rabbi Yehuda Spitz serves as the *Sho'el U' Meishiv* and *Rosh Chabura* of the Ohr Lagolah
Halacha Kollel at Yeshivas Ohr Somayach in Yerushalayim.**

[1] *Shemos* (Ch. 16, 25 – 29). Much of the above *eruv* explanation is paraphrased from Rabbi Yirmiyohu Kaganoff's excellent article "*Carrying in Public and the Use of an Eruv*": (accessible at: www.rabbikaganoff.com/carrying-in-public-and-the-use-of-an-eruv).

[2] *Gemara Shabbos* (2a) and *Tosafos* ad loc. (s.v. *yetzios*), *Gemara Eruvin* (17b) and *Tosafos* (ad loc. s.v. *lav*). This *shitta* is in contrast to the opinion of the *Rambam* (*Sefer HaMitzvos, Mitzvos Lo Saaseh* 321) and *Sefer Hachinuch* (*Mitzva* 24), who instead glean from this *Pasuk* the *inyan* of (*Eruvei*) *Techumin* [see also *Shu"t Noda B'Yehuda* (*Tinyana*, O.C. 45)], and not *Eiruvei Chatzeiros*. Indeed, the *Rambam* (*Hilchos Shabbos* Ch. 12, *Halacha* 8) instead derives the prohibition of carrying on Shabbos from the fact that the Torah describes the nation donating items to the *Mishkan* (*haba'ah*) as a '*Melachah*'. See also *Gemara Shabbos* (96b), *Tosafos* ad loc. (s.v. *u'mimai*), and *Yerushalmi* (*Shabbos* Ch. 11, *Halacha* 1). The *Rambam* himself (*Peirush HaMishnayos, Shabbos*, Ch. 1, *Mishna* 1) attributes great importance to this issue, explaining that even though *Hotza'ah* is considered the 39th and therefore last, of the prohibited *Melachos* on Shabbos, it is nonetheless addressed first in *Maseches Shabbos*. Indeed, it is the *Melachah* most extensively addressed throughout *Shas*.

[3] *Gemara Shabbos* (5a, 6a, 99a), *Eruvin* (59a) and *Rashi's* commentary ad loc (s.v. *ir shel yachid*). Some say that this means there are 600,000 residents in the city, even if they do not use said public thoroughfare daily.

[4] Heated disputes over the status of cities' *eruvim* are by no means recent phenomena; there are recorded *machlokesim* already in the thirteenth century! See *Shu"t HaRosh* (21, 8) and Rabbi Yirmiyohu Kaganoff's article (ibid.), detailing several of these classic controversies.

[5] This holds true even though *M'deoraysa* a *karpef* is considered a *Reshus HaYachid*! See *Gemara Shabbos* (7a) and *Eruvin* (67b), as well as *Shulchan Aruch* (O.C. 346, 3) and *Biur Halacha* (ad loc. s.v. *karpef*).

[6] Indeed, the *Taz* (O.C. 358, end 5) states that “many stumble with this *halacha*”.

[7] “*Yosair M’Beis Sa’asayim*”. To see how to properly measure this, see *Shulchan Aruch* (O.C. 358, 1), *Kitzur Shulchan Aruch* (83, 2), and *Mishna Berura* (ad loc 6). See next footnote.

[8] See *Gemara Eruvin* (23b) and *Shulchan Aruch* (O.C. 358, 9), *Taz* (ad loc. 5), *Mishna Berura* (ad loc. 65 and 66) and *Kaf Hachaim* (ad loc. 74 - 76). See, however, *Pri Megadim* (O.C. 359, M.Z. end s.v. *kasav b’Tur*), based on the *Rosh* (*Eruvin* Ch. 2, 2) who says that this issue is *machmir m’Toras safek* and is not considered a *vaday issur*. However, see also Rav Shlomo Kluger’s *Shu”t Ha’Elef Lecha Shlomo* (O.C. 166), who strongly disagrees with this assessment. The *Mishna Berura* (ad loc. 72) explains that the reason that a *karpef* can be *mevattel* an entire *eruv*, unless it is ‘walled out’ from the rest of it, is that the rest of the *eruv* that is suitable for use is “*pasuach u’parutz l’zra’im shehu makom assur*”. Since it is wide open to a *makom assur* (a place where it is forbidden to carry) it becomes *mevattel* (subservient) to it and shares its *halachic* status, that one may not carry within it.

[9] An additional case of a *karpef* would be a marsh or bog or similar small body of water more than 10 *tefachim* deep that is unfit for drinking or washing. See *Gemara Eruvin* (24a – b), *Rambam* (*Hilchos Eruvin* Ch. 16, 6), *Rashba* (*Avodas HaKodesh*, 3, 3, 124), *Tur* and *Shulchan Aruch* (O.C. 358, 11), *Magen Avraham* (ad loc. 15), *Shulchan Aruch Harav* (ad loc. 19), *Aruch Hashulchan* (ad loc. 23), and *Mishna Berura* (ad loc. 84 – 89; *Biur Halacha* ad loc. s.v. *dinam* and *v’hu*; and *Shaar Hatziyun* 81 and 85). However, the *Mishna Berura* writes that one ought to consider it a problem even if the water is only three *tefachim* deep. The *Chazon Ish* (O.C. 89, 4) is even more stringent, and is of the opinion that even less than three *tefachim* might be problematic. Rav Moshe Heinemann of the Star-K is quoted (*Cincinnati Torah*, vol. 6, #32, *A Timely Halacha*, by his son Rabbi Chaim Heinemann) as stating that Rav Moshe Feinstein *zt”l* told him that, at present, as people do not walk through water even if it is less than ten *tefachim*, we therefore must treat even shallow water as a *karpef*. On the other hand, it must be stated, that this type of *karpef* may not necessarily be *mevattel* an *eruv*; if it is 10 *tefachim* deep within 4 Amos (meaning it does not have a gradual incline) it is considered by many *poskim* to have its own *mechitza* (akin to a *tel hamislaket*), and only carrying through it would be prohibited. There is also a *machlokes* between the *Aruch Hashulchan* [ibid.; based on *Rashi* (*Eruvin* 24b s.v. *chazu* and 18a s.v. *v’chatzer*), *Tosafos* (ad loc.), and the *Ohr Zarua* (ad loc. 4), who rules stringently] and *Mishna Berura* [ibid. 85 & *Shaar Hatziyun*

81; based on the *Rashba* (ibid.), *Rambam* (ibid.), and *Ritva* (ad loc. s.v. *lo amran*), who rules leniently] whether a water *karpef* that is unfit for human drinking, yet suitable for animals or washing clothes, has the status of a *karpef*. Although a body of water meant for bathing would seem *halachically* more acceptable [as it is considered a basic human need - see *Mishna* in *Nedarim* (79a) that withholding from bathing is considered ‘*inuy nefesh*’, and the *Torah Temima* (*Parshas Masei*, Ch. 35, verse 2, 1) explains that certainly bathing is considered a basic human need, and is indeed more of a priority than washing clothes (which the *Gemara Nedarim* 81a explicitly mentions is considered as such), nevertheless, the *Minchas Yitzchak* (*Shu”t* vol. 6, 32) rules that one may not use an outdoor swimming pool as a men’s *mikvah* on Shabbos, as it maintains a quasi-*karpef* status. [It is important to note that the issue he was addressing was exclusively dealing with entering the swimming pool / *karpef* on Shabbos, and due to various reasons, rules stringently. He does not entertain the possibility that this swimming pool can actually be *mevattel* an *eruv*.] Rav Moshe Heinemann (cited in *Cincinnati Torah* ibid.) is of the opinion that water hazards of a golf course are considered “used” and pose no problem being a *karpef*. He also maintained that the streams which are used for swimming, wading, or catching wild life during the summer are not categorized as *karpifyos* even in the winter. In fact, regarding creeks that are not commonly used, he instructed them “to “use” the water either via canoe or by operating a remote-control boat in that water (or a remote-control truck when iced over) at least once a month!” However, this lenient view is not universally accepted. See, for example, *Shu”t Videbarta Bam* (vol. 1, 119) who cites the *Mishna Berura*’s being *makpid* (*Biur Halacha* 358, 1 s.v. *dirah*; quoting the *Rashba* and *Ritva*) that the use of a *makom dirah* must be constant and not only intermittently, as proof to classify most bodies of water within an *eruv* as true *karpifyos* which can be *mevattel* an *eruv*, adding that a sometime use of water skis or jet skis should not be sufficient to exclude it from being classified as a *karpef*. Additionally, from the *Shaar Hatziyun*’s (ad loc. 16) reticence in accepting the *hetter* of *tiyul* by a land *karpef*, and no mention of such a *hetter* by a water *karpef*, the *Videbarta Bam* quotes Rav Dovid Feinstein as being *choshesh* to *lechatchilla* ‘wall out’ all such potential water *karpifyos*. On the other hand, Rav Menashe Klein (*Shu”t Mishnah Halachos* vol. 18: 249) defends keeping rivers and lakes inside a city’s *eruv*, citing precedent from many *Acharonim* who were not concerned that they might be classified as a *karpifyos*, and giving several potential reasons why, generally speaking, a body of water is not a true *karpef*.

[10] See *Meiri (Eruvin 24a)*, *Shu"t Mahari Halevi* (vol. 1, 202), *Shu"t Pri Tevuah* (43), *Shu"t Ba'er Moshe* (Yerushalamski, O.C. 31), *Shu"t Imrei Yosher* (vol. 1, 170), *Neziros Shimshon* (O.C. 358; cited in *Orchos Chaim* to O.C. 358), *Maharsham* (in his *Daas Torah* glosses ad loc.), *Shu"t Divrei Malkiel* (vol. 4, 3), *Shu"t Melamed L'Hoyeel* (vol. 1 - O.C., end 65), *Shu"t Divrei Yissachar* (29), *Shu"t Har Tzvi* (O.C. vol. 2, *Hararei Basadeh*, pg. 249 s.v. od), Rav Isser Zalman Meltzer's *teshuva* printed in *Shu"t Yaskil Avdi* (vol. 2, *Kuntress Acharon* O.C. 6, pg. 99, s.v. ulf"z), *Shu"t Chelkas Yaakov* (O.C. 181, 4; old print 201), *Shu"t Minchas Yitzchak* (vol. 5, 108, 1 and 3), *Nesivos Shabbos* (Ch. 13, 13, and footnote 44), *Shu"t Sdei Elchonon* (vol. 1, 24, *Birurei Devarim B'Din Ganos Ha'lr U'Zera'im Besocham* s.v. *hinei ganos*; citing a *diyuk* from a *Beraisa* in *Eruvin* 23 and *Bava Basra* 24, as well as the *Kesef Mishneh*, *Hilchos Tumas Meis* Ch. 8, 3; additionally, the expression 'Bin'os Desheh Yarbitzein' from *Tehillim* Ch. 23: 2, implies that *desheh* has 'sheim dirah'), *Birchas Shalom* (cited in *Shu"t Sdei Elchonon* *ibid.*; citing that the *Avnei Nezer* and *Chiddushei HaRim* held this way as well), *Shu"t L'Horos Nossan* (vol. 10, 43), Rav Chaim Kanievsky's letter printed in *Kuntress HaEruv Hamehudar B'London* (pg. 57), Rav Mordechai Eliyahu's *Darchei Halacha* glosses to the *Kitzur Shulchan Aruch* (83, 3) and Rav Asher Weiss's recent *teshuva* (available here: <https://en.tvunah.org/2017/08/25/parks-shabbos-karpef/>), who all conclude that a *karpef* that was planted for beauty and the public's enjoyment will not be *mevattel* an *eruv*. Rav Moshe Heinemann is quoted (*Cincinnati Torah* *ibid.*) as asserting that Rav Moshe Feinstein *zt"l* agreed that recreational parks and the ponds within them are not *karpifiyos*, as they enhance the appearance of the park. See also *Shu"t Videbarta Bam* (vol. 1, 119) who cites Rav Dovid Feinstein as pointing out that these areas must actually be used as such, meaning people actively stroll around there enjoying the beauty, and not simply potentially created for beauty with no one actually going there.

[11] There is however, a middle ground. See the *Teshuva B'Din Karpifiyos Shel Zera'im B'chlal* from three renowned *eruv* experts in Yerushalayim – Rav Moshe Berlin, Rav Yaakov Rochman, and Rav Dovid Eisenstein (printed in *Kuntress HaEruv Hamehudar B'London* pg. 60 – 65) who are *medayek* from the words of many *poskim*, [including *Rashi (Eruvin 23b s.v. nizra ruvo)*, the *Maharsham (Daas Torah* O.C. 358), the *Imrei Yosher (Shu"t* vol. 1, 170), and the *Shoel U'Meishiv (Shu"t Mahadura Kamma* vol. 1, 88, last s.v. *v'hinei*); essentially based on the *Yerushalmi (Maaseros 17b)*] that a *karpef* only has the ability to be *mevattel* an *eruv* when it is '*nizrazerai'm*' meaning purposefully planted for non-residential purposes; ex. a vegetable garden. The *Minchas Yitzchak (Shu"t* vol. 5, 108, 3) gives a similar assessment. They conclude that certainly regarding potential *karpifiyos* that

are just outlying overgrown areas, we may be *metzaref* this *shitta* with the *Dvar Shmuel's hetter* (discussed at length further on in the article; see footnote 27) to allow leniency. On the other hand, this rationale is considered a *chiddush*, and other *poskim*, most notably Rav Yosef Shalom Elyashiv *zt"l* (cited in *Sefer Kovetz Gilyonos Tikkunei Eruvin* pg. 131 s.v. *din karpef*, pg. 146 s.v. *b'karpifiyos*, and pg. 188 s.v. *v'hinei*) argue that it should not make a difference how the *zera'im* came about, rather exclusively the fact that people cannot go there. He proves this from the wording of the *Shulchan Aruch* (O.C. 358, 11; see footnote 9) regarding a water *karpef*, that once the water reaches the height of ten *tefachim* it is classified as a *karpef*, with no distinction being given how the water got there. Hence, in Rav Elyashiv's opinion, an overgrown thicket larger than *beis sa'asayim* will invalidate an *eruv*. Additionally, the *Chazon Ish* (*Maaseros* 5, 5) asserts that one may not compare the *Halachos* of *Maaseros* to *Eruvin* to draw parallels for potential leniency. Similarly, Rav Asher Weiss (in an as-yet unpublished *teshuva* available here: <https://en.tvunah.org/2017/08/25/parks-shabbos-karpef/>) is also unconvinced by this argument.

[12] As an orchard, even greater than 5,000 *amos*, is not considered a *karpef*. See *Gemara Eruvin* (ibid.), *Rashi* (ad loc. s.v. *nizra ruvo*), *Shulchan Aruch* (ibid), *Shu"t Maharsham* (vol. 6, 48), *Kitzur Shulchan Aruch* (83, 5), *Aruch Hashulchan* (O.C. 358, 16), and *Mishna Beru ra* (358, 65).

[13] See *Pri Megadim* (O.C. E.A. 360, 1), *Tikkun Eruvin* (1, 4), *Shu"t Ha'Elef Lecha Shlomo* (O.C. 166), *Birchas Shalom* (cited in *Shu"t Chelkas Yaakov* and *Shu"t Sdei Elchonon* ibid., 3), *Shu"t Chelkas Yaakov* (ibid. 2; based on the *Shu"t Imrei Yosher* 101, 1, who is *medayek* this from *Rashi*), and *Nesivos Shabbos* (Ch. 13, end footnote 50).

[14] *Shu"t Divrei Chaim* (vol. 2, O.C. 28; based on a *diyuk* in the *Ritva's* commentary to *Eruvin* 23b), *Shu"t Shoel U'Meishiv* (*Mahadura Kamma*, vol. 3, 131), and *Maamar Mordechai* (O.C. 358, 14, based on the *Taz* ibid). However, see *Shu"t Sdei Elchonon* (ibid.) who maintains that the *Divrei Chaim* did not mean to actually argue that "*desheh, perachim, and illanos*" would be *mevattel* an *eruv*, but rather that *Zera'im*, even those that were planted for beauty would do so. See next footnote.

[15] It has been hypothesized [see *Nesivos Shabbos* (ad loc. footnote 44), *Shu"t L'Horos Nossan* (vol. 10, 43, 4), and *Kovetz Noam* (vol. 1, 231, 3)] that had these *poskim* seen the explicit words of

the *Meiri* (it hadn't yet been published), they probably would have conceded and ruled leniently as well.

[16] *Chazon Ish* (O.C. 89, 7 s.v. *v'im* and 156, *hashmatos* to O.C. 358 s.v. *shtachim*), *Teshuvos U'Ksavim Chazon Ish* (94), *Shoneh Halachos* (358, 7), based on the *Rashba* in *Eruvin* 24b. This author has heard from Rav Chaim Meir Horowitz of Jikov in Givat Zev, citing Rav Nissim Karelitz (also cited in the *Dirshu Mishna Berura*, *Mahadura Hachadasha* vol. 4, 358, *Biurim U'Musafim* 13, quoting the *Rivon Kiryat Sefer* vol. 16, pg. 79), that the *Chazon Ish* did not mean to consider a construction site of new residences within a neighborhood as a potential *karpef*, as that is considered a residential use and does not need to be "walled out"; rather, he was referring to such in outlying areas.

[17] See *Nesivos Shabbos* (Ch. 13, footnote 41; he also points out that the two statements of the *Chazon Ish* seem to be contradicting each other), *Shu"t Kinyan Torah B'Halacha* (vol. 1, 107; quoting the *Chiddushei HaRim*), *Shu"t L'Horos Nosson* (vol. 10, end 44, postscript s.v. *shuv*), and *Zera Yaakov* (1995, pg. 54). Additionally, this *shitta* of the *Chazon Ish* would certainly run contrary to those [including the *Imrei Yosher*, *Maharsham*, *Shoel U'Meishiv*, and *Minchas Yitzchak* (ibid.)] who hold a *karpef* must be planted with intent to be considered as such (see footnote 11).

[18] This reasoning is that of Rav Yosef Shalom Elyashiv *zt"l*. See *Kovetz Teshuvos* (vol. 1, 45; who allays the *Shevet Halevi's* concerns). Although *mv"r* Rav Yaakov Blau [*zt"l*] (*Nesivos Shabbos* ibid. end s.v. *v'nistapakti*) is undecided (*tzarich iyun*) about whether a cemetery can be considered a residential area, and it is rumored that Rav Moshe Feinstein *zt"l* was hesitant to consider it as such, nevertheless, most *poskim* do indeed conclude that it is, although their reasoning varies. See *Shu"t Dovev Meisharim* (vol. 1, 65), *Shu"t Machaneh Chaim* (vol. 3, Y"D 41), and *Shu"t Minchas Chein* (vol. 2, O.C. 22).

[19] Although *mv"r* Rav Yaakov Blau [*zt"l*] (*Nesivos Shabbos* ibid. end s.v. *v'nistapakti*) seems undecided whether a zoo is considered a *karpef*, nonetheless, Rav Yosef Shalom Elyashiv *zt"l* (*Kovetz Teshuvos* vol. 1, 45, in the brackets) and Rav Noach Isaac Oelbaum (*Shu"t Minchas Chein* vol. 2, O.C. 22), distinguish between the zoos we have nowadays and the animal menageries common at the time of the *Noda B'Yehuda* (*Shu"t Tinyana* O.C. 47). Although the *Noda B'Yehuda* ruled stringently (due to the fact that no one would ever enter these wild animal's cages on fear of

death, and hence, they should be considered worse than *nizra zra'im*), he also cited the opinion of the *Ohr Chodosh* (the *Shoel*; his *Mechutan*, Rav Elazar, *Av Beis Din* of Kellin), who was lenient for a different reason, that animals' homes are considered *mukaf l'dira*. This rationale would certainly seem to apply to our modern zoos, where each animal species has its own fully enclosed habitat. These contemporary *poskim* conclude that practically, our zoos are not considered a *karpifiyos*, due to the many visitors, who change the zoo's status to that of a residential area.

[20] *Chazon Ish* (O.C. 112, *michtav*), *Nesivos Shabbos* (Ch. 12, end footnote 34). This is because nowadays people don't just come in, purchase items and immediately leave; rather it is common to 'hang-out' in the *shuk*, eating, drinking and overall spending time there.

[21] *Aruch Hashulchan* (O.C. 358, 6). Although the 'residents' are 'living' in prison (rent-free!) against their will, nonetheless, since if one is 'staying' there more than 3 days he would be obligated to put up a *mezuzah* (see *Chovas HaDar* Ch. 3, 8), the *halacha* is that any place obligated in *mezuzah* would also be considered a residential area regarding the din of a *karpef*. See *Nesivos Shabbos* (Ch. 12, end footnote 34).

[22] *Psak* of the Steipler Gaon (cited in *Orchos Rabbeinu* vol. 1, pg. 171, 4). Although the author of the *sefer*, Rav Avraham *Halevi* Horvitz, questions how this fits in with the Steipler's brother-in-law, the *Chazon Ish's psak*, see Rav Moishe Dovid Spiro's *Kuntress B'Din Karpifiyos* (pg. 3, 3, s.v. *sdei*), who explains that a runway should not be considered any different than a street that is only meant for cars, and yet is still considered meant for residential use.

[23] *Shu"t Dvar Shmuel* (259).

[24] *Shu"t Chacham Tzvi* (59; who does not agree with the *Dvar Shmuel's* second proof), *Yaavetz* (*Mor U'Ketzia* O.C. 358 s.v. *devarim and ulfa"d*; who attempts to answer up his father's claims on the *Dvar Shmuel*). Others who rule this way include the *Pri Tevuah* (*Shu"t* 9; who says the same *sevara* but does not actually quote the *Dvar Shmuel* by name), *Shu"t Divrei Malkiel* (*ibid.*; who although not exactly agreeing, nevertheless adds several other reasons to be lenient; see also *Shu"t Tzitz Eliezer* vol. 13, 41 as explaining the *Divrei Malkiel's* intent on relying on the *Dvar Shmuel's hetter* exclusively if the *zera'im* were planted first and later a wall erected around the city; however in the reverse case, he argues that everyone would agree that the newly planted *zera'im* would *mevattel* the *eruv*), *Shu"t*

Avnei Nezer (O.C. end 298; who qualifies it that one can't carry through the *karpof*), *Ikrei HaDa"t* (O.C. 15, 31), *Shu"t Mayim Rabbim* (vol. 1, 38), *Shulchan Shlomo* (brought in *Shu"t Mayim Rabbim* *ibid.*), *Shu"t Chomer B'Kodesh* (2; quoting the *Shev Yaakov*), *Shu"t Zera Emes* (vol. 3, 41), *Shu"t Maharam Brisk* (vol. 1, 24), *Daas Torah* (O.C. 358, 9), *Shu"t Dovev Meisharim* (vol. 1, 2). Some say that the *Pri Megadim* (O.C. 366, E.A. 10) implies this way as well - see *Zera Yaakov* (1995, pg. 56). See also *Yesodei Yeshurun* (vol. 5, *Maareches* 39 *Melachos* pg. 254) and *Shaarim Metzuyanim B'Halacha* (vol. 2, 83, 6), who seem to cite this as the main *shitta*. See also *Shu"t Yaskil Avdi* (vol. 2, *Kuntress Acharon* O.C. 6), who printed *teshuvos* on topic from Rav Yaakov Chai Zerihen (the Rav of Teverya) and Rav Isser Zalman Meltzer, as well as his own; all were *maskim* to rely on the *Dvar Shmuel's hetter l'maaseh*.

[25] Including the *Beis Meir* (O.C. 358, s.v. *l'seif*), the *Korban Nesanel* (*Eruvin* Ch. 2, 4, who argues on the *Chacham Tzvi's* logic), the *Maamar Mordechai* (O.C. 358, 14), the *Mishna Berura* (*Biur Halacha* 358 s.v. *aval*), and *Chazon Ish* (O.C. 88, 25 s.v. *u'linyan*). Interestingly, and although in his *Machzik Bracha* (ad loc. 2) the *Chida* implies that one may follow the *Dvar Shmuel*, writing that the *Yaavetz* '*himlitz tov baado*', nevertheless, in his later *Shiyurei Bracha Hamelukat* (ad loc. 1), he writes very strongly and succinctly against relying on this *hetter*, ruling that the *zera'im* will be *mevattel* the *eruv*, even if the city is completely walled in, with doors that are closed at night. The *Dvar Shmuel's hetter* is also *k'negged* the *pashut pshat* of the *Shulchan Aruch*, who makes no mention of such a *chiddush*. It is well known that Rav Shmuel Salant was uneasy relying on the *Dvar Shmuel's hetter* (see *Aderes Shmuel, Hanhagos U'Psakim Rav Shmuel Salant zt"l*, 95, pg. 98), and after the *Aderes's* passing, 'walled in' all problematic *karpifiyos* inside *Yerushalayim*. Rav Yaakov Kamenetsky as well, was not comfortable relying on this *shitta* (*Emes L'Yaakov* on *Tur* and *Shulchan Aruch*, O.C. 358, footnote 402), and being *meikel* for a city-wide *eruv*. He added that nowadays, when we no longer have a communal oven that everyone needs to get their hot food from and bring it home, it is preferable not to have a city-wide *eruv* at all, as it leads to *Bittul Torah* and other problems. See next several footnotes.

[26] Although the *Chacham Tzvi* (*ibid.*) is widely quoted as relying on the *Dvar Shmuel*, however, his actual words imply that he would only rely on his *hetter b'shaas hadchak*. Others who rule this way include *Shu"t Even Yikreh* (vol. 1, 66), *Shu"t Eretz Tzvi* (69), *Shu"t Machazeh Avraham* (O.C. vol. 1, 64 s.v. *v'im*), *Shu"t Kinyan Torah B'Halacha* (vol. 1, 11), and *Shu"t L'Horos Nossan* (vol. 10, 44) - see

also *Zera Yaakov* (ibid). Rav Yosef Shalom Elyashiv and Rav Shmuel Halevi Vosner (*Kovetz Teshuvos* ibid) are also uneasy relying on the *Dvar Shmuel's hetter* alone. This author has heard that Rav Moshe Feinstein was also reluctant to rely exclusively on the *Dvar Shmuel's hetter*. See also *Shu"t Videbarta Bam* (vol. 1, 119) who quotes his son, Rav Dovid Feinstein, as refraining from relying on the *Dvar Shmuel's hetter*, even according to the *Divrei Malkiel's* understanding. See next footnote. In the words of *mv"r* Rav Yaakov Blau *shlit"a [zt"l]* (*Nesivos Shabbos* Ch. 13, footnote 50) '*nireh daas rov ha'Acharonim lehachmir, ki im b'shaas hadchak u'vtziruf ode sibos lehake'*. Interestingly, Rav Tzvi Pesach Frank (*Shu"t Har Tzvi* O.C. vol. 2, *Hararei Basadeh*, pg. 248 – 249) cites both sides of this debate with no clear ruling or seeming preference one way or the other.

[27] See *Mishna Berura* (*Biur Halacha* 358 s.v. *aval*), *Chazon Ish* (O.C. 88, 25 s.v. *u'linyana*), *Shu"t Shoel U'Meishiv* (*Mahadura Kamma*, vol. 1, 88), *Shu"t Beis Shlomo* (vol. 1, 51), and *Shu"t Ha'Elef Lecha Shlomo* (ibid). The *Haghos HaAshri* (on the *Rosh*, Ch. 2, 2) implies this way as well, as he maintains the *hetter* has to be '*krova l'baiso*' and therefore '*daato aleha*'. The *Divrei Chaim* (ibid) rejects this *hetter* entirely, even maintaining that if there already was a protecting wall around the *karpef*, another one needs to be built exclusively to exclude the *karpef*!

[28] Another issue is whether for all these *inyanim* would we be lenient with "walls" made of *Tzuros HaPesach*. The *Chacham Tzvi*, *Maharshak*, *Maharsham* (ibid.), and *Divrei Chaim* (*Shu"t* O.C. 33) rule that these are considered walls [see *Taz* (O.C. 401, 2)], while the *Divrei Malkiel*, *Shoel U'Meishiv* (who concludes not to rely on telegraph wires to "wall out" a *karpef*), *Beis Shlomo*, and *Machazeh Avraham* (ibid.; he opines not to, but due to a combination of factors accedes that one may rely upon it), among others, maintain that only real walls are considered *halachic* walls regarding a *karpef*. The *Even Yikreh* (*Shu"t* vol. 1, O.C. 15; cited in *Shu"t L'Horos Nossan* vol. 10, 44, 10) writes a related *chiddush*: he argues that regarding a *karpef*, having a wall made from *Tzuros HaPesach* is actually superior to a real wall. He explains that the reason a *karpef* can invalidate an *eruv* is because it proves that the area is not meant for habitation. Ergo, a wall around a *karpef* reinforces this notion, as it seems that it is meant strictly to protect the plants etc. and not a living space. Yet, a 'wall' made out of *Tzuros HaPesach* proves that it is not meant to protect any plants. The *Machazeh Avraham* (ibid.) and *L'Horos Nossan*, however, remain skeptical of this *chiddush*. It is also certainly not in accordance with the *psak* of the *Shoel U'Meishiv* (ibid.) who ruled not to rely on telegraph wires. On the other hand, Rav Tzvi Pesach Frank (*Shu"t Har Tzvi* O.C. vol. 2, *Hararei Basadeh*, pg. 249, s.v.

v'im kein), cites the *chiddush* of the *Even Yikreh* approvingly, concluding that such an *eruv* proves that it is meant for habitation and “*v'im kein, lo shayach b'zeh hadin she'zra'im mevattlim hadira*”.

[29] Including *Tikun Eruvin* (ibid), *Shu"t Bar Livuy* (O.C. 18), *Shu"t Maharsham* (vol. 1, 206), *Shu"t Melamed L'Hoyeel* (ibid), *Shu"t Chelkas Yaakov* (ibid), *Shu"t Tzitz Eliezer* (vol. 13, 41), *Shu"t Sdei Elchonon* (ibid.; that certainly in a place where it would be difficult to “wall out” all potential *Karpifiyos*, that due to the many *tzirufim lehakel* one may rely on the *Dvar Shmuel's hetter* and ‘*ein la'asor hatiltul b'Shabbos Kodesh*’) and *Shaarim Metzuyanim B'Halacha* (83, 4 - 6). See also *Kovetz Noam* (ibid), *Zera Yaakov* (ibid.), *The Contemporary Eruv* (pg. 96 - 98), and the *Teshuva B'Din Karpifiyos Shel Zera'im B'chlal* from three renowned *eruv* experts in Yerushalayim – Rav Moshe Berlin, Rav Yaakov Rochman, and Rav Dovid Eisenstein (printed in *Kuntress HaEruv Hamehudar B'London* pg. 60 – 65), who maintain that certainly regarding potential *karpifiyos* that are just outlying overgrown areas we may be *metzoref* the *shitta* of the *Dvar Shmuel*; see footnote 11.

[30] It is well known that many cities traditionally relied upon the *Dvar Shmuel's* approach, including Yerushalayim in the days of the *Aderes* (cited in *Nesivos Shabbos* ad loc.; however, he notes that after the *Aderes's petira*, Rav Shmuel Salant ‘walled out’ the problematic *karpifiyos*, as he did not want to rely on this *shitta* [for more on this see *Aderes Shmuel, Hanhagos U'Psakim Rav Shmuel Salant zt"l*, 95, pg. 98]), Warsaw (cited in *Shu"t Meoros Nossan* 8, 19) and Vilna in the days of Rav Chaim Ozer Grodzenski (cited in Rav Moishe Dovid Spiro's *Kuntress B'Din Karpifiyos*, 19*, quoting Rav Yisrael Zev Gustman *zt"l*; Rav Chaim Ozer *zt"l* maintained that the lake in the middle of the city was placed there for beauty).

[31] On the importance of this, see *Shu"t HaRosh* (21, 8), *Shu"t Tashbetz* (vol. 2, 37; based on Gemara *Eruvin* 68a), *Birkei Yosef* (O.C. 363, 2), *Shu"t Chasam Sofer* (O.C. 99), *Shu"t Avnei Nezer* (O.C. 266, 4), *Shu"t Levushei Mordechai* (O.C. 4), *Shu"t Igros Moshe* (O.C. vol. 1, 139, 5 s.v. *v'lchora*), *Shu"t Chelkas Yaakov* (O.C., *Pesicha* to *Hilchos Eruvin*), *Shu"t Tzitz Eliezer* (vol. 19, 17), and *Shu"t Mishna Halachos* (vol. 11, 311). See also *Aruch Hashulchan* (O.C. 345, 17 – 18,) whom after citing the various *shittos* of constructing *Eruvin*, comments the common practice of constructing community *Eruvin* as being so near universal, it is “as if a *bas kol* came down and permitted them”. Even so, and as mentioned previously, Rav Yaakov Kamenetsky (*Emes L'Yaakov* on *Tur* and *Shulchan Aruch*, O.C. 358, footnote 402) viewed this a bit differently, and was not in favor of building a city-wide *eruv*, explaining that nowadays, when we no longer have a communal oven that

everyone needs to get their hot food from and bring it home, it is preferable not to have a city-wide *eruv* at all, as it leads to *Bittul Torah* and other problems. For more on the topic of the significance of constructing an *eruv*, see Rabbi Yirmiyohu Kaganoff's aforementioned article.

Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.

L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel *ben* R' Yechezkel Shraga, Rav Yaakov Yeshaya *ben* R' Boruch Yehuda.