

## **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 karpef, 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, Yahrzeits, etc.), the prevailing opinion is to consider it a residential area,[18] and not a karpef.

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 karpef 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 karpef inside larger than 5,000 amos, the eruv is still valid. He explains that the reason a karpef normally invalidates an eruv is because an eruv only helps for places of human habitation, and a karpef is not suitable for such. Yet, if the whole city is enclosed, it shows that the whole city is meant for habitation, including the karpef; for if it wasn't, the city's founding fathers would never have enclosed it. In other words, the karpef 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 karpef 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](mailto:yspitz@ohr.edu).

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[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](http://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 Masseches 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 karpifiyos 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 Yarbitzeini' 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 Nosson (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 karpifyos, 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 Karpifyos 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 karpof 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 karpof, 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 karpof, that once the water reaches the height of ten tefachim it is classified as a karpof, 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-karpof/>) is also unconvinced by this argument.

[12] As an orchard, even greater than 5,000 amos, is not considered a karpof. 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 Nosson (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 karpof, 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 karpof 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 karpof, 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 karpaf. 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"ד; 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 karpaf), 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'linyān). 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 Nosson (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 lehakel'. 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'linyan), 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 Nosson 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 Nosson, 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 Metzuyananim 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 metzaref 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 Nosson 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’Ichora), 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.

