



Overview

Halacha Highlight

Transporting water from a pit through a *karmelis*

Shulchan Aruch Siman 354 Seif 1
בזבז ברשות הרבים
A pit in the public domain

Shulchan Aruch (סעי' א') discusses a pit located in the public domain that is surrounded by a ledge. He rules that when the pit is located within four *tefachim* of a private domain it is permitted to transport water from the pit to the nearby private domain, even if the ridge around the pit is not four *tefachim* tall. If there is a distance of four *tefachim* or more between the pit and the nearby private domain one may not transport water from the pit to the private domain unless the ridge surrounding the pit is ten *tefachim* high so that the water will go from a private domain (the pit), to *makom patur* (the airspace more than ten *tefachim* above the street) to another private domain. If the ridge is not ten *tefachim* tall, transporting the water involves moving it from a private domain into a public domain which is prohibited.

Sha'ar HaTziyun (סק"ה) directs us to look in the Pri Megadim who discusses the *halacha* if the pit is located in a *karmelis* rather than a public domain. Pri Megadim (משב"ז ס"ק א' ובי) cites Bais Yosef and Taz who prove from Ritva's comments that it is also prohibited to transport water from the pit if it is located in a *karmelis*. Pri Megadim challenges this conclusion. The Gemara explains that the reason the water may not be transported through the airspace of the public domain, even though the water does not "rest" in the public domain is out of concern that it may lead to transporting things from a private domain to a public domain. Consequently, prohibiting transporting water from a pit located in a *karmelis* would constitute a decree upon a decree (גזירה לגזירה) and he leaves this challenge unresolved. He does not note, however, that according to Magen Avrohom (מג"א במ"ב ס"י שנ"ב ס"ק ט"ו) when there are three reasons to permit transporting items, it is permitted to transport items. Accordingly, in this case since 1) the surrounding area is only a *karmelis*, 2) the item remains in his hand and 3) it never "rests," it is permitted to transport the water from the pit to a private domain even though it goes through a *karmelis*.

- ❖ The window must be more than ten *tefachim* above the street so that the garbage is going from one private domain to another via *makom patur*. (M.B. 12)

Siman 354 Seif 1:

If there is a pit in the public domain that has a ridge around it, if it is located within four *tefachim* of a private domain it is permitted to draw water from it to the private domain, even if the ridge is not ten *tefachim* high. If it is located more than four *tefachim* from the private domain one may not draw water from it unless the ridge is ten *tefachim* high.

- ❖ Since there is less than four *tefachim*, people do not walk there and it is considered a *makom patur*. (M.B. 3)
- ❖ It doesn't matter whether he is standing between the pit and the private domain or whether he is standing in the house since in both cases the water is going from one private domain to another via *makom patur*. (M.B. 4)
- ❖ The pit and the ridge combine to make a height of ten *tefachim*. The same is true if the pit is ten *tefachim* deep and there is no ridge surrounding it. (M.B. 5)
- ❖ This would involve transporting from one private domain to another via a public domain despite the fact that it remains in one's hand. (M.B. 7)
- ❖ This way the bucket will never enter the airspace of the public domain. One who stands in the public domain and draws water from a pit that is ten *tefachim* deep is liable for transporting the water even though he is not liable for transporting the bucket since it never came to rest in the pit. (M.B. 8)

Siman 354 Seif 2:

If there is a garbage heap in the public domain that is ten *tefachim* high and four *tefachim* wide and belongs to the community, it is permitted to throw garbage from a nearby private domain onto the garbage heap without concern that it will roll from the heap to the public domain and one will then transport it since people only discard repulsive items. If the garbage heap belongs to an individual, it is prohibited since individuals will, at times clear the garbage heap but he will continue to throw things there even though after being cleared it is considered part of the public domain.

- ❖ If it has the dimensions of a *karmelis* it is prohibited to throw things from a private domain onto it. (M.B. 10)