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סימן ת"ב סעיף א'

# Halacha Highlight

## A ditch filled with water shared by two cities

Shulchan Aruch Siman 402 Seif 1

**חריץ מלא מים**

**A ditch filled with water**

Shulchan Aruch discusses a ditch of stagnant water that is located between two cities and some of the ditch is within the *techum* of one city and another part of the ditch is within the *techum* of the second city. The difficulty this raises is that each city intends to use the water that is within their *techum* and thus that water is confined to where they may walk. However, since the water moves around within the ditch, we are concerned that someone from one city will draw water that belongs to the residents of the other city and it may not be transported out of the *techum* of that city any more than four *amos*. In order to avoid this issue, each city must construct a partition at the end of their *techum*. Even if the partition is suspended and does not actually prevent the water from each side to reach the other side, it is permitted. The reason *halacha* adopts such a lenient approach to these matters is that water is an essential need and this represents one of many leniencies that Chazal put in place to permit people to access water on Shabbos.

Biur Halacha (ד"ה וצריך לעשות) instructs us to look into Magen Avrohom who questions this ruling from the Gemara. Bais Yosef (ד"ה חריץ) wonders why there is any issue with this scenario when the water is ownerless and should not be confined to any *techum* until after it is drawn from the ditch. He answers that since part of the ditch is within each city's *techum,* they intended to use the water and thus it is considered theirs and consequently we have the issue of taking water that belongs to the other city out of that *techum*. Magen Avrohom (סק"א) demonstrates that the Gemara's discussion of this matter was in the context of the opinion that maintains that ownerless objects acquire residence in their place and from that perspective the water would be confined to a *techum*. However, according to the majority opinion ownerless objects do not acquire residence and adopt the *techum* restrictions of the one who acquires it, the question does not apply and there is no issue whatsoever.

# Overview

Siman 402 Seif 1:

**If there is a ditch full of stagnant water located between two *techumin* so that part of it is in the *techum* of one city and part in the *techum* of another, neither city may draw water on Shabbos, even from the part within their *techum*. The reason is that the water within the *techum* acquires residence of the people in the city and the waters subsequently mix together. Therefore, a wall must be constructed at the end of their respective *techumin*, even if it is suspended so that it does not reach the bottom of the ditch. It may even be constructed with reeds.** If there is a pit filled with straw between two *techumin* each one may use straw from its *techum* without concern that one will take straw that belongs to the other. **If the water is running it is not necessary to make any repairs since the water does not acquire residence and is treated like the feet of the one who draws it.**

- Since it is near the city the citizens intend to use it and thus it is not considered ownerless. This applies when it is located between two cities but if there is a city on only one side it is permitted to draw water within the *techum* since the water that began Shabbos beyond the *techum* is ownerless and does not acquire its own residence. Biur Halacha cites authorities who fundamentally reject this ruling. (M.B. 2)
- If the ditch is between two cities that are only 3000 *amos* apart residents of both cities may draw water on Shabbos since *bereirah* indicates that each one draw water that was his. (M.B. 3)
- Pri Megadim writes that a partition is necessary even if the other city is inhabited by gentiles. (M.B. 4)
- At least a *tefach* of the partition must be in the water. (M.B. 5)