

TANNAITIC

THE CONCEPT OF MUKTSA IN MISHNAIC AND OTHER SOURCES OF THE SECOND COMMONWEALTHI. Introduction.

In addition to the various categories of labor (*מלאכה*) subsumed under the general prohibition of work on the Sabbath, Jews during the Second Commonwealth observed yet another prohibition, which we shall refer to by the Amoraic name of "Muktsa", although, as we shall later point out, the term is technically more restrictive than the sense in which we shall use it.

An article characterized as Muktsa may not be moved (or touched, *עשה* see later) on the Sabbath. While we cannot find explicit mention of this prohibition in Scripture, we do have some Biblical warrant for it in Exodus XVI, 5 and 23:

... וכל אשר יראה וכל אשר יזכר
... וכל אשר יראה וכל אשר יזכר
... וכל אשר יראה וכל אשר יזכר

sanction ~~origin~~ of the Muktsa concept.

All foods must thus be prepared before the Sabbath - the key word is *וכיני* - and all that is not *וכיני* is frowned upon for use on the Sabbath day. The concept of Muktsa is thus seen to be not explicit, but its ~~converse~~ positive formulation - that food that is used must be prepared - is sufficiently evident to regard these verses as the

II. Main Sources.

A. Talmudic Sources.

1. The bulk of Tractate Bezaḥ
2. Sabbath 42b - 47b
3. Sabbath chapter 17

B. Non-Talmudic Sources.

1. I Maccabees chapter 2
2. Philo, "De Specialibus Legibus", II and "De Vita Mosis" II
3. Josephus, "Wars of the Jews" Bk II, Chap VIII, 9 (on the Essenes)
4. The Book of Jubilees Chapter 50
5. The Zadokite Fragment (Damascus Document), Chapter 13

seems most reasonable. The relation of Tiltul to carrying is further borne out by the practices of other sectaries which are as follows.

3. Non-Talmudic Sources:

a) Book of Jubilees.

וְהָיָה כִּי יִשְׁכַּח אִישׁ אֶת הַמִּטְעָן שֶׁלֹּא יִשְׂרָף אֶת הַמִּטְעָן וְיִשְׂרָף אֶת הַמִּטְעָן
וְיִשְׂרָף אֶת הַמִּטְעָן וְיִשְׂרָף אֶת הַמִּטְעָן

The association of Hachanah to Massa should be noted.

b) Josephus (Wars, II,8,9) describing Essenes:

"Moreover, they are stricter than any other of the Jews in resting from their labors on the 7th day; for they not only get their food ready the day before, that they may not be obliged to kindle a fire on that day, but they will not remove any vessel out of its place, nor go to stool thereon..."

Several things should be noted with regard to this statement by Josephus. First, he speaks about "removing a vessel out of its place", indicating that Tiltul Keilim is not a matter of touching but moving. While the Muktsa of food may conceivably involve a prohibition of touching (the problem is discussed by later Halachic scholars,* see Chidushei Chasam Sofer, Mas. Bezah, Mahadura Tinyana at very beginning), such is not the case with Tiltul Keilim. Second, it is interesting that in describing the Essenes, Josephus is more surprised at the practice of a prohibition on Tiltul Keilim than he is at the practice of Hachanah of food. Unless this "surprise" was in anticipation of the reaction of his gentile readers, it is difficult to understand what Josephus means by this. Certainly from the sources mentioned it seems that the Pharisees regularly observed the Issur Tiltul Keilim, and there was no reason for amazement at a similar practice by the Essenes. In this regard it is also difficult to understand why Josephus chose to mention these prohibitions as Esseneic when they were common to the Pharisees as well. Neither Graetz nor Bentwich nor others make mention of this difficulty.

C. Others.

1. Decorations: These include the various decorations of linens, bottles, foods, fruits etc. used to adorn the Sukkah. In this category we might also mention the wood Sechach, though it is of a different level of severity. See Baraita quoted in Sab. 45a, also in Bezah 30b and Sukkah 10b. ~~See~~ See later on the question of wood in general.
2. Livestock: These might conceivably be included under food. See Mishna in Bezah 40a on slaughtering animals on Festivals and watering them on Sabbaths or Festivals. With regard to fowl, see Sab. 43a and 45b.
3. Corpses: Tosefta quoted in Sab 43b with regard to removing a corpse from a house threatened by fire.
4. Stones, Pebbles, Dust: In this general category are included all articles which generally have no utilitarian value and hence are not prepared before the Sabbath. See for instance Mishna concerning stone cover of wine-barrel quoted in Sab. 125b, and Amoraic story of R. Judah the Prince and stones, ibid.

In this connection too we might mention the statement in the Zadokite Fragment אין יין וכו' אין ליה ארץ (10.16), which R.H. Charles (Apocr. & Pseudepigr. of the Old Test. v. II, p. 826) translates "None shall lift up in his dwelling house rock or earth". The application of Muktsa to such articles was therefore known to other sectaries as well. We shall discuss this verse in more detail later.

5. Wood: The primary reason for categorizing wood as Muktsa would seem to be because it is generally used as a fuel, and hence unprepared for permissible purposes on the Sabbath. (See Sab ____ : wood generally le'hasakah, for fuel). The Talmud in Pes. 47b reads into a law related to R. Yochanan by a Tanna (?) (see Bezah 12a) that wood used for fuel purposes is not only Muktsa, but that it is of Biblical force. The Talmud attributes this proscription to the verse mentioned above, Ve'heichinu etc., and the general verse forbidding all labor on the Sabbath. The Talmudic controversy is not resolved in favor of this strict opinion concerning the Muktsa of wood, but it does serve at least to throw some light on the nature of the prohibition of wood, namely that it is not because of its uselessness, as is the case with Rocks and Dust, but rather that it is regarded as automatically prepared - but for a forbidden purpose.

This would account for the Muktsa quality of any hard material which is usually used for fuel purposes. Thus, see Mishna Sab. 114a on straw used as a mattress.

Intereseting in this regard is the interpretation Philo gives to the Biblical case of the gatherer of sticks (Mekosheish Eitzim). In his Vita Mosis II, 220, he writes:

"...wood is the material of fire, so that if a man is picking up wood, he is committing a crime which is akin to and nearly connected with burning a fire, doubling his transgression partly in the mere act of collecting in defiance of the commandment to rest from work, and partly in that what he was collecting was the material for fire, which is the basis of the arts." In another passage, in De Specialibus Legibus, II, 251 (both above brought by Dr. Samuel Belkin in his "Philo and the Oral Law", p. 198), he writes:

"And therefore, in my opinion, it was not allowed to kindle a fire on the seventh day for the reason for which I have already mentioned, so likewise it was not lawful to collect any fuel for a fire."

How are these passages to be understood? Dr. Belkin evidently gives great weight to the second passage quoted when he writes, "The main principle of Philo's argument is that anything which a person is not allowed to use on the Sabbath he may not collect or move from its place." He then proceeds to demonstrate that the principle of Philo's argument has its background in the Tannaitic Halacha. To prove this, he maintains that in pre-Talmudic times this prohibition was considered Biblical even in Palestine, in agreement with Philo's contention that it is deserving of the death penalty. He discounts the Talmudic statement that Tiltul Keilim stems from Nehemiah's time which had then become successively modified. He maintains, instead, that the earlier Halacha considered our prohibition as Biblical, whereas the later Halacha reduced it to

a Rabbinic prohibition. It was only in Mishnaic times, he maintains, that the 39 categories of labor were classified as Biblically forbidden, but prior to that even Muktsa was regarded as a Biblical prohibition. Dr. Belkin finds support for his contention in I Maccabees II, 33-38 where it is told that those Jews who hid themselves from their attackers in the caves preferred death to the desecration of the Sabbath by ~~ble~~ "blocking up their hiding places with stones or throwing stones at the attackers." Dr. Belkin assumes that their refusal to defend themselves thus was because of their belief that Muktsa was Biblical, and the prohibition in question was one of Muktsa.

I do not believe that Dr. Belkin's thesis can stand up under criticism. The following should be mentioned:

- a) There is no proof whatever from Philo that the general concept of Muktsa as practiced by the Pharisees and Essenes (as described by Josephus) was known to him. In both passages quoted above, Philo mentions only fire and its fuel, and in both he refers to the fact that fire is in a special class by itself because, as Philo rationalizes, it is the basis of the arts. This would indicate that the concept of Muktsa, if such an idea were known to Philo at all, was restricted to wood for burning.
- b) The story in Macabees need not necessarily be interpreted as a case of Muktsa. The refusal to block the mouth of the cave can easily be understood in Mishnaic terms as the labor of Boneh (building), see Mishna and Talmudic discussion in Sab. 102b. Certainly throwing stones is in the category of Hotzaah (carrying; more specifically, Zoreik), a form of labor mentioned already in the Prophets.
- c) It is very possible that Nehemiah was the author of the prohibition of Tiltul Keilim, or at least that originated in his era, and that this prohibition remained known, practiced and modified in Palestine, but unknown to the Alexandrian courts. We must again distinguish between the prohibition as applied to vessels and as applied to other objects. A vessel is naturally of a lower level of severity, since it is by its nature functional and therefore might be regarded as "Muchan mei'eilav", not requiring special conscious preparation before the Sabbath. An object like rock is, however, of no practical use, ~~or wood~~ and hence does require special preparation, and wood which is generally used for forbidden purposes certainly requires a special act of preparation before the Sabbath for permissible utilization. Dr. Belkin neglects to mention the Amoraic opinion recorded in Pes. 47, which we cited above, that Muktsa-wood is Biblically forbidden. There is an interesting connection between the Philonic and Amoraic opinion on this matter: both relate it to the chief concept of labor as expressed in the Biblical verse,

וְעָבַדְתָּ אֶת ה' אֱלֹהֶיךָ וְעָבַדְתָּ אֶת ה' אֱלֹהֶיךָ

- d) I would therefore prefer to conclude that there is no disruption of continuity between a so-called "earlier" and "later" Halacha. Tiltul Keilim was not known in Alexandria, only in Palestine. The Muktsa of wood is of greater antiquity than other types, to wit the opinion of Philo and that mentioned in the Talmud. Whether neutral objects, such as Rocks and Dust, were regarded as Muktsa in earlier periods, depends on how we wish to interpret the decision of the persecuted Jews in the caves mentioned in Macabees. The only difference between Philo and the Palestinian Halacha would then be either
1. Philo regards "Atzei Muktsa" as of Biblical weight, to the point where it warrants the death penalty, whereas the Palestinian Halacha relegated it to the Rabbinic level, or even if Biblical certainly did not make it punishable by death. or
 2. Philo has no allusion to Muktsa at all. His references to the collecting of wood can easily be interpreted as a view that not only kindling but the entire process, beginning from the collecting of fuel, is included in Mechet Havarah. Philo differs from our Halacha only in defining the limits of this particular Melachah.

IV. The Main Conceptual Subdivisions of the Muktsa Prohibition.

In the Tannaitic literature as such we do not find the Muktsa prohibition divided into different conceptual categories. We have, rather, a record of special applications of the law with regard to different objects under specified conditions. It is only in Amoraic times that we find an attempt to elaborate distinct species of Muktsa on the basis these Tannaitic laws. The Talmud takes the material at hand and reworks it into well-defined generalizations in order to facilitate application of the law to new or previously unexplicated cases. This process of categorization of the legal concept, while first appearing in Talmudic texts, probably began in late Tannaitic times. Thus we find Rabbi Judah, the redactor of the Mishna, defining the Muktsa concept of R. Simeon (bottom of 45a, top 45b of Sab.). Since this is not primarily a concern of the Second Commonwealth academies, we shall not elaborate but merely record some of the classifications set up by the Amoraim:

- A. $\text{לֹא יִשְׂרָף בְּיָדוֹ שֶׁל אִשָּׁה}$ - an object regarded as Muktsa because of ^{an extraneous or prior} a prohibition - i.e. its use on the Sabbath could not be anticipated prior to that day because such use is otherwise circumscribed by the law. Example: moving a lamp which had been used on the Sabbath.
- B. $\text{לֹא יִשְׂרָף בְּיָדוֹ שֶׁל אִשָּׁה}$ - an object regarded as unprepared for Sabbath use because of its unattractive appearance.
- C. $\text{לֹא יִשְׂרָף בְּיָדוֹ שֶׁל אִשָּׁה}$ - foodstuff regarded as unprepared for Sabbath use because it had been set aside before the Sabbath for a lengthy process of some kind of drying or other such procedure.
- D. $\text{לֹא יִשְׂרָף בְּיָדוֹ שֶׁל אִשָּׁה}$ - a vessel regarded as unprepared because its most frequent type of use is of the kind that would require the violation of the Sabbath. Example: a scissors may not be moved even for a permissible purpose.

- E. ³¹¹ - this term refers to objects which came into visible being during the holy day itself (Sabbath or Festival) and not before. Example: an egg laid after nightfall, or rainwater which fell during the day. The Talmud in the beginning of tractate Bezah discusses the relationship of this concept to that of Muktsa.
- F. ^{וְכֵן הָיוּ הַמִּשְׁכָּן וְהַמִּזְבֵּחַ וְהַמִּשְׁכָּן} - an object regarded as unprepared because of its great value, i.e. its use would entail risk of its damage and a high loss, hence it is probable that the owner never intended to use it for functional purposes on the Sabbath.

These are some of the main categories developed in the post-Tannaitic literature. Post-Talmudic authorities have gone into more systematic detail in this process of categorization (see for instance Responsa R. Asher, no. and Beis Yossef of R. Joseph Karo on Tur Orach Chayyim, no.).

V. The Controversy Between R. Simeon and R. Judah.

There are a number of differing opinions recorded in the Tannaitic literature concerning various phases of the Muktsa prohibition. Thus, in addition to a number of anonymous controversial opinions, we have records of controversies entered into by R. Judah b. Lakish (Tosefta Sab. ch. XIV, Sab. 43b); R. Meir, R. Judah, R. Simeon and his son R. Eliezer (Sab. 44a); R. Jose (Sab. 123b); R. Nachman (Sab. 124a) and others.

The two most important controversialists, however, are R. Simeon and R. Judah. The following ^{cheit} are several of the instances where they differ in their opinions on Muktsa:

1. R. Judah forbids the moving of any used lamp, while R. Simeon forbids only a lamp in which a wick is presently burning (Baraith quoted in Sab. 44a)

There are a number of Baraithot where a prohibitive opinion is mentioned anonymously and a more permissive one recorded in the name of R. Simeon. Thus, the problem of the oil remaining in a lamp (Sab. 44a), moving the wood of the covering of the Sukkah (Bezah 30b), entail such a disagreement between R. Simeon and an anonymous authority. The Talmud assumes, in both cases, that R. Judah is that anonymous Tanna. The Talmud gives great importance to this controversy and, especially in Sab. 44a-47b, attempts to define the area of disagreement more precisely on the basis of the several opinions recorded. The Amoraic formulation of this controversy is one of deceiving simplicity: R. Judah accepts the prohibition of Muktsa, R. Simeon rejects it. It is deceiving because R. Simeon in many cases affirms his belief in the principle of Muktsa. Thus, in the Baraitha cited above, R. Simeon forbids the handling of a burning lamp; on the question of the wood Sechach, R. Simeon agrees that it is forbidden to remove the covering of the ritual booth on the festival of Sukkoth itself; R. Judah the Prince (Sab. 45b) affirms that R. Simeon forbade the use of raisins and other dried fruits whose processing had begun before the Sabbath; R. Simeon regards a first-born animal on whom an invalidating blemish was discovered during the festival as "unprepared" (Mishna Bezah 26a). The most succinct formulation of the problem of R. Simeon's espousal of the main principles

of the Muktsa prohibition is stated in Sab, 45a in a colloquium between the early Palestinian Amoraim, R.Jochanan and Resh Lakish. There Resh Lakish poses the question to R.Jochanan: Does R.Simeon reject Muktsa only in such cases where the object was not physically set aside before the Sabbath (example: seeds planted before the Sabbath, grapes spread for drying etc.), or does he ^{maintain} have a more general rejection of the whole idea of Muktsa, save the one case of the oil of a lamp while it is burning ~~where~~, since it is set aside for the purpose of Mitzvah, we may assume it is also set aside because of the extraneous prohibition of extinguishing on the Sabbath? R.Jochanan tended to the latter view, thus attributing to R.Simeon a most restricted Muktsa concept. The opinion of R.Judah the Prince is, however, that of the first alternative mentioned above, according to which Muktsa is defined as the physical setting aside of an object. Even then certain discrepancies remain. See for instance the commentary of R.Solomon Ibn Aderet on Sab.45a and Tosafot ibid s.v."heicha" and s.v. "ela", ibid. In general, we may accept the definition of the controversy between R.Simeon and R.Judah as follows: there where the intention was to set the object aside so as not to use it on the Sabbath, but where no physical act was present to indicate this setting-aside, R.Judah regards the object as Muktsa and R. Simeon does not. The principle of Muktsa as such, however, is universally accepted.

VI. The Muktsa Prohibition Amongst Non-Pharisees during the Second Commonwealth.

- A. Alexandrian Jewry. The references in Philo were previously discussed.
- B. The Essense. The pertinent passages concerning Essene practice in Josephus were previously quoted and discussed.
- C. The Zadokites. We know of this group from the Zadokite Fragment, also called the Damascus Document, which Schechter discovered in the Cairo Genizah. This group is supposed to have been a "reformed Sadducee" sect, as Charles calls them. They regarded themselves as the "true sons of Zadok", and their practices bear strong resemblances to those of the Essenes. A document similar to the Fragment was discovered in the Qumran library near the Dead Sea. The references to the Sabbath-Muktsa prohibition are found in Chapter XIII of the Fragment. Translations are those of R.H.Charles.
 1. verse 8: "No man shall eat on the Sabbath day aught save that which is prepared or perishing (in the field)." The Hebrew text which I have seen makes no mention of that which is perishing in the field. The first part, about not eating the unprepared food, agrees with the main principle of Muktsa. It seems to be a simple paraphrase of the Biblical verse, and lacks the subtle qualifications of the Pharisaic Tradition.
 2. verses 9 & 10: "Nor shall one eat or drink unless in the camp." It is difficult to determine the origin of this rule. If prepared, why not even out of the camp, and if unprepared, why is it permissible in the camp? Perhaps this rule was promulgated in order to enforce the Biblical law (Ex.XVI,29) restricting journeying on the Sabbath. It is significant that this Biblical commandment is mentioned in the same paragraph as that requiring the preparation of food before the Sabbath.

Also of significance is the fact the law of Eiruvei Techumin is achieved through through the use of foodstuffs, see 3rd and 8th chapters of ^Erubin, esp. Erubin 48a, thus indicating that the Pharisaic tradition also recognized a relationship between food and the restriction of travel, though in a completely different way.

3. verse 10: "If he was) on the way and went down to wash he may drink where he stands, but he shall not draw into any vessel." Whether or not any Muktsa concept is involved here we shall discuss later under the Book of Jubilees.
4. verse 19: The Hebrew text reads: וְלֹא יִשָּׁאֵף בְּבֵיתוֹ אֶבֶן אֹרֶץ. Charles translates: "None shall lift up in his dwelling house rock or earth". He suspects that the word אֶבֶן is a corruption of אֶלֶן, which is similar to the Biblical term found in Lev. XXV-29. Schechter emends the text to read וְלֹא יִשָּׁאֵף בְּבֵיתוֹ אֶלֶן אֹרֶץ. In any case, Schechter and Charles agree as to the meaning of the verse. And there can be no doubt that, according to their translation, we have here a reference to the law of Muktsa. Rock and "earth is in the category of "neutral" objects, discussed above, those which have no practical function and are hence regarded as automatically unprepared for sabbath use. If, as we shall later attempt to prove, verse 10 implies Tiltul ^{ke}eilim, then the Zadokite group knew of the Muktsa prohibition as applied to all three categories, as did the Pharisees.

I believe, however, that it is possible that this verse has a more definite meaning than a general Muktsa-prohibition. I believe that the three nouns in this verse - מְלִיץ, גִּסּוֹ and רֶפֶח, - have technical connotations, referring to what were then well-known hygienic terms.

The Bible in Deuteronomy (XXIII, 13-15) legislates concerning the holiness of the camp in regard to ^{men's} ~~the private needs of those confined to the outside of the camp for ritual purposes.~~

[illegible]

"Thou shalt have a place also without the camp, whither thou shalt go forth abroad. And thou shalt have a paddle among thy weapons; and it shall be, when thou sittest down abroad, thou shalt dig therewith, and shalt turn back and cover that which cometh from thee. For the Lord thy G-d walketh in the midst of thy camp, to deliver thee, and to give up thine enemies before thee; therefore shall thy camp be holy; that He see no unseemly thing in thee, and turn away from thee." Note the Biblical expression for going to stool: 9/11 7-22-22

The Zadokite term מבדק might be based on that verb, thus corresponding to the similar term in Tannaitic Hebrew מבדק, and the term would therefore be rendered not "dwelling house" but "privy house". The "rock" mentioned in the Fragment would refer to the object used for ^{hygienic} sanitary purposes. Cf. Sab. 81a where מבדק are mentioned for this purpose, also Sab. 82a and Jerusalem Talmud, Sab. end chap. VIII, where the term מבדק is used. The three words מבדק, מבדק and מבדק, are equivalent and used in the same sense.

The final term, $\gamma\delta\gamma$ or earth, is the material used for covering the pit, and is in line with the Biblical passage mentioned, $\gamma\delta\gamma \text{ } \alpha\kappa \text{ } \alpha\iota\sigma\iota \text{ } \alpha\lambda\epsilon\iota \text{ } \delta\epsilon \text{ } \alpha\delta\alpha\iota\iota$. The Zadokites thus proscribed the most elementary hygienic procedures on the Sabbath because of Muktsa.

In this, if our interpretation be correct, the Zadokites adopted Essene practice as against the Pharisaic practice. Josephus writes as follows (Wars, II, VIII, 9) of the Essenes:

"...they will not remove any vessel out of its place (i.e. on the Sabbath) nor go to stool thereon. Nay, on other days they dig a small pit, a foot deep, with a paddle, (which kind of hatchet is given them when they are first admitted among them) and covering themselves round with their garment, that they may not affront the Divine rays of light, they ease themselves into that pit after which they put the earth that was dug out again into the pit, and even this they do in the more lonely places, which they choose out for this purpose..."

The Essenes, according to Josephus, were thus different from others in two ways: in the primitive method of sanitation, and in their extremely restrictive laws concerning this personal hygiene on the Sabbath. That the Pharisees did not practice this Biblical mode of sanitation we know from many sources. The very term $\alpha\iota\sigma\iota \text{ } \alpha\lambda\epsilon\iota$ indicates as much, v. Baraita quoted in Sab. 25b and the answer of R. Judah b. Ilai in Taanith 23b. Cf. too Tamid 26a where we are told of the existence of such a structure near the Temple site, and the Amoraic discussion in Beza 36b where specific sanitary vessels are mentioned. In the latter passage specific mention is made of the permissibility of the use of such sanitary facilities on the Sabbath. A Baraita quoted in Taanith 23b refers to the type of procedure Josephus characterizes as Essenic. So strange was this behavior regarded by the Pharisees that they gave a special name to the grandson of the famed Choni Hamaagal who practiced it; they called him "Chanan the Hidden". ($\alpha\iota\sigma\iota \text{ } \alpha\lambda\epsilon\iota$)

We thus see that the Pharisees did not object to progress in sanitary techniques and that there was no question of permissibility of hygienic facilities on the Sabbath because of Muktsa. The Essenes, on the other hand, preserved the primitive sanitary methods and enforced the laws of Muktsa with regard to such methods on the Sabbath. In later eras we find the Karaites practicing the same primitive manners and legislating concerning them (see the "Sefer Ha'Mitzvot" of the Karaite Anan Ha'Nasi in "Likutei Kadmon Kadmoniot Le'korot Dat Bnei Mikra Ve'sifrutam", vol. II pp. 26-35 by Abraham E. Harkavi).

Considering, then, that the entire matter was in issue between the Pharisees and Essenes during the Second Commonwealth, and between the Rabbinites and Karaites later on, it is not unreasonable to assume that this passage in the Damascus Document refers precisely to this matter and aligns the Zadokite group with the Essene-Karaite procedure and ritual.

- D. The Book of Jubilees. The following three passages are the most pertinent of those mentioned in the ~~50th~~ chapter of Jubilees concerning Sabbath law which might have some reference to Muktsa:

be regarded as Muktsa. The text, according to Zahavy, is not corrupt, and the prohibition of drawing water is unrelated to Muktsa, but refers rather to the labor of carrying. Indeed, both references to drawing water are followed by warnings against carrying on the Sabbath. Zahavy mentions Dr. Hoenig's objection to this interpretation: if it is only a matter of carrying, then why is it not permissible to draw the water if the well is inside the house? Dr. Hoenig suggests that this too may be forbidden because the water comes from an underground source distant from the house.

Now while Dr. Hoenig's solution is reasonable - we find many references in rabbinic literature to the problem of material which comes "mi'chutz le'techum" on the Sabbath, his original objection is open to question. How do we know that this Damascus group of exiles had any wells in their houses? On the contrary, from a reading of both references to drawing water in context, it would seem that the wells were distant from the houses and therefore the author had to generalize the prohibition to include all kinds of carrying.

I do not believe that Albeck's objection carries much weight. One need not make a major Melachah out of drawing water, as Albeck and Zahavy do, in order to understand the text. I would attribute the difficulty in the first passage to poor style; the second passage corrects the mistake. The matter of ~~"hachanah"~~ "hachanah" refers only to foodstuffs and water, not to carrying burdens. This is clear from the second passage, where the order is: water- preparing- carrying. The first passage's order should have been the same, not water-carrying-preparing. This is too big an error to attribute to a copyist. It probably is, as stated, a matter of bad style. At any rate, both Albeck and Zahavy would have trouble with the second passage, which refers preparing to water and not to carrying, without a major editing job on the text proper.

Zahavy's objection to Finkelstien's theory, while it may carry some weight, is not fatal. We do find references to a prohibition on the use of water on holy days because of lack of preparation. ~~While~~ See Erubin 45b and 46a, where rain water which had been in the clouds before the holy day is forbidden. While the reason for the prohibition is not Muktsa, it is because of the closely related concept of Nolad. A more serious objection, it would seem, is the question why water was singled out for special mention above all other kinds of foodstuff. In the first passage especially, the text mentions all foods and all liquids - does not that include water? Furthermore, if it is only a matter of Muktsa of the water itself, why does the author repeat the relationship of drawing water to carrying?

I believe that the prohibition of drawing water in our text is not based on the prohibition of carrying per se, nor on that of the Muktsa of the water as such. I believe, rather, that the author forbade the drawing of the water because of the Muktsa of the pail with which the drawing was accomplished. We are dealing here with what the Talmud calls Tiltul eilim - the Muktsa of vessels. Remembering what we wrote at the outset, that the prohibition of vessels was primarily instituted as a "fence" about the prohibition of carrying, the sequence of laws in our text is a logical one. The Muktsa of foodstuffs is followed by another Muktsa - that of vessels, which is followed by the general law for which this latter Muktsa is the

"fence" - namely the prohibition of carrying on the Sabbath.

Proof for this interpretation can be found in the reference to the drawing of water found in the Zadokite Fragment which we previously quoted. We should recall that the author of the Fragment knew the Book of Jubilees; in the closing verses of the Fragment he refers to Jubilees and accepts it as authoritative. We may therefore make use of the Fragment for purposes of elucidating the meaning of the text of Jubilees. In Chapter XIII, verses 8-10 of the Fragment, we read as follows:

וְיֵשׁוּעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ
(כ"ד) וְיֵשׁוּעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ בְּנֵי יְהוֹשֻעַ

The key to our solution lies in the last ~~verse~~ which qualifies the prohibition against drawing water: that "if he was on the way and went down to wash, he may drink where he stands, but he shall not draw into any vessel." This cannot be interpreted on the basis of the Muktsa of the water itself, for then why may one drink ^{it} if he is on the way? It cannot refer to the prohibition of carrying for the following two reasons:

- a) if it is a matter of carrying, then even without a vessel, he carries from the well to his mouth. If it should be argued that the distance is so small that this cannot be regarded as carrying, then the same holds true for a vessel moved the same distance.
- b) the context of this particular phrase is not that of the act of carrying, which is first mentioned seven verses later, after a series of other and unrelated laws are dealt with.

Hence the author of the Zadokite Fragment, who came from Palestine before going into exile in Damascus, knew of the law of Tiltul ^{Keilim} which the Talmud ascribes to the era of ^{the} Jeremiah. And if this law accounts for the legislation in the Zadokite Fragment, we may feel justified in attributing the same thinking to the Book of Jubilees, whose practice and thinking was subscribed to by the Damascus group. The Essenes, too, as we learn from Josephus, knew of Tiltul Keilim. And we thus understand the context in which this law is mentioned in Jubilees, both that of Hachana and that of carrying.