THE INTERNATIONAL BEIS HORAA DIN
The Institute for Dayanim
And under the auspices of Beis Horaah in memory of Baruch and Bracha Gross
Our site: www.dinonline.org
TORAH & HORAAH
Mishpatim 5777
348

**Dear Reader,**

*Parashas Mishpatim* opens with the words: "And these are the ordinances that you shall place before them." Noting the adjoining letter *vav* of the word *ve'eleh* (*and these*) Rashi explains: This adds to the former ones: Just as the former ones [the Ten Commandments] were given at Sinai, so these were given at Sinai.

Although some [see the *Sifsei Chachamim*, citing from *Re'em*] write that this means that even the ordinances of *Mishpatim* were given with the thunder and lightning of Mount Sinai, the *Or Hachayim* points out that this is hardly implied by the verses.

Rather, it appears that the connection of the

**This week's article discusses the issue of Torah tort law, and specifically an especially common field: damages resulting from car accidents. How are car damages defined under Torah law? Is there an obligation to fix a dent made in somebody else's car? Does the negligence or otherwise of the driver make any difference? How is the liability evaluated? These questions, and more, are discussed in this week's article.**

**This week's Q & A addresses the question of getting something from a car on Shabbos or Yom Tov.**

# Car Accidents in Halacha
## Classification and Application

The detailed laws of *Parashas Mishpatim* focus, among other things, on Torah civil law. In the present article we will focus on a question concerning tort damages that we received recently on the *dinonline* website.

While driving his well-kept Mazda car, Reuven made a standard stop for a red light. To his great dismay, Shimon, who was driving the car behind him, made his presence more than felt, and crashed his car into Reuven's vehicle from behind.

Thankfully, there were no injuries and, since Shimon was insured, Reuven's expectation was that his insurance would take care of the matter to his satisfaction. However, later that day Shimon called Reuven, protesting that the matter should not be turned over to the insurance companies which do not operate based on Torah law, but rather the damage should be dealt with based on Torah principles.

Based on Torah principles, Shimon said that he had the right to repair the damage at a garage of his choice, rather than the official Mazda garage that Reuven always went to. Moreover, he claimed

➤➤

*Mishpatim* to Sinai teaches us of their great importance *in spite of the fact* that they were not handed over at the great event of Sinai. Although they lacked the fanfare of the Ten Commandments, even the ordinances are essential, an integral part of the "Sinaitic revelation."

After the supernatural event of Sinai, we would expect the teaching that followed it to involve great matters, perhaps deep secrets of the world, or lofty matters of Divine wisdom. Instead, the revelation of Sinai is continued by laws of pits and oxen, of slaves and damages, and so on. This anticlimax comes as something of a surprise. Is this not "small-talk" by comparison with Sinai?

The answer of the verse is that it is not. On the contrary, the only way to appreciate and value the revelation of Sinai is by studying and applying the Mishpatim, the fine details of halachic practice that govern our everyday

that he was really exempt from paying damages because the car was only "drifting" forwards (the car was automatic). The absence of action on his part exempted him, according to Shimon, from damages.

How are car damages classified in Torah law? Does Jewish law recognize an obligation to pay for repairs, and how does this translate into numbers? Does the possible negligence of Shimon figure into the question?

These questions, among others, are addressed below.

## Classifying the Damage

The first question to investigate is the category of damages into which car damages fall. Torah law recognizes four categories of damages (*Bava Kama* 2a), namely *shor* (damages caused by a person's animals or property), *bor* (damages caused by a pit or something comparable to a pit), *hev'er* or *eish* (damage by fire), and *mav'eh* or *adam* (damages caused by a person himself).

Each category is governed by a different set of *halachos*, which are detailed in the first six chapters of *Bava Kama*.

For car damages, the types of damages that seem to be relevant are *adam* (direct human damage) and *eish* (fire).

The category of *shor* does not apply, because one of the primary characteristics of an animal is that it is alive, and moves without external assistance. This does not seem true of a car, which is not alive and cannot move without the application of an external force. The category of *bor* will not apply in this situation, since *bor* refers to passive, rather than active damages.

There are important halachic differences between *adam* and *eish*. Damages caused by fire are exempt from liability where the damaged object is concealed (*tamun*). In addition, *adam* is liable even for damages that were beyond the damager's control (*Bava Kama* 26a; *Choshen Mishpat* 378:1)

## Adam or Eish?

The reason that a car should be classified as *adam* is because the car is controlled by its driver, and is therefore comparable to a stick wielded by a man.

Yet, there is a difference between a stick, whose entire force is the force given it by the hand that wields it (it is considered *kocho*, the

power of the person wielding it; see *Bava Kama* 10b), and a car, in which all man does is push a pedal to cause combustion. The car's force is not the man's own power.

The damage of a car can alternatively be compared to the damage of a fire. Like a fire that is lit by human hand but spreads with the wind (*Bava Kama* 3b), the car is a damaging force initiated by the human driver, which then proceeds to cause damage on its own. As Shimon claimed, a car in gear continues to move, even without human input.

On the other hand, the way of the car is constantly under the control of its driver (providing the driver is in the car) distinguishes it from a fire, whose way is to go forth and damage (*Bava Kama* 10a) uncontrollably. In addition, a fire requires the assistance of the wind to spread and cause damage, which is not true of a car (see *Rashi*, *Bava Kama* 6a).

The damage of a person's arrows is compared to the damage of fire (*Bava Kama* 22a, *Choshen Mishpat* 418:17). In a similar sense a car can be considered an arrow. This form of damage, however (an arrow), is considered an extension of the damager's own person, a case of *adam* rather than *eish*.

The primary source for this question is a responsum of the *Rosh* (101:5), who was asked to classify the damage of a horse being ridden by a rider. The *Rosh* rules that on account of his control over the horse, it is considered as if the rider had damaged with his own person. Although the force of the horse is not his own, the damage is attributed to the rider.

The same is true of a car. We therefore derive that a driven car will have the stringencies of *adam*, meaning that there are no exemptions for damages perpetrated by drivers, and that the driver will be liable even for damages that were beyond the driver's control (see below).

## Circumstances Completely Beyond Control

Does this mean that Shimon will always be liable for the damage? What if Reuven makes a sudden stop, leaving Shimon with no chance of averting collision? And what will be the halacha if Shimon encountered an unavoidable oil spill, which caused him to lose control and skid into Reuven? Will he still be liable? As we will see, the answer to the two questions can in fact be different.

The *Ramban* (*Bava Metzia* 82b) takes the principle of *adam*

living.

If we wish to claim our part in the thunder and lightning of Sinai, in the transcendent revelation of Torah, we must invest our energies in applying the Torah to the fine details of everyday life. This, indeed, is the greatness of Torah: Its ability to uplift our mundane activities to a level of *mitzvos*, to raise our simple human interaction to the level of a Divine revelation.

From Sinai, we thus proceed to "and these are the ordinances." Although all nations have laws, and though their laws might be most effective, the verse states nonetheless that aside from Israel nations "do not know *mishpatim*" (Tehillim 147:20). They do not know them, for they were not at Sinai. They do not know them, for they see them as means for social good, and not for Divine elevation. That level is reserved for Israel.

"For they are our lives, and the longevity of our days."

*mu'ad le-olam* (a person is always liable for his direct damages) at face value, meaning that a person bears liability for all damages he causes, regardless of circumstances. Even if he causes damage due to circumstances entirely beyond his control—even in the case of the oil spill—he is liable.

The *Ramban* notes that Chazal gave examples such as a stone unknowingly situated in a person's lap that falls and causes damages when he stands (*Bava Kama* 26b), and a person who causes damage when an unusually strong gust of wind blows him off a roof (*Bava Kama* 27a). If the Gemara mentions these cases as instances of inadvertent damage for which an individual bears liability, then "they mentioned all possible cases of *oness*; for an unusually strong wind includes even a wind such as Eliyahu's... which is among the most extreme cases of *oness* in the world."

The Ramban writes that the sole exception to the rule is where the damaged party brought the damage upon himself. For instance, if Reuven suddenly reverses into Shimon, making the otherwise avoidable accident inevitable. If Reuven uses Shimon to cause himself damage, Shimon can hardly be found liable for the damage. Another famous example is found in the Yerushalmi, where a person went to sleep and while he was sleeping someone else placed his wares next to the sleeping individual. The Yerushalmi rules that the sleeping individual is not liable if he damaged while sleeping. The Ramban explains that the reason is because the owner of the wares brought the damage upon himself.

## The Opinion of Tosafos

*Tosafos* (*Bava Kama* 27b) and the *Rosh*, however, opine that a person is only liable for damages in non-extreme cases of inadvertent damages. In a case of an *oness gamur*, where the circumstances were basically out of the individual's control, he bears no liability. Only in cases in which there is at least partial negligence, or cases that are "close to negligence," is the damager liable.

There is a dispute whether the Rambam agrees with Tosafos or the Ramban. The Shach (378, 1) is of the opinion that Rambam agrees with the Ramban. The *Rema* (378:1) rules like *Tosafos* and the *Rosh*.

It follows that the driver can rely on this ruling to exempt himself from liability in circumstances totally beyond his control. Thus, for some cases of an oil spill, Shimon will be able to claim exemption, based on the fact that the accident was totally out of his control. However, in the case of Reuven's sudden stop (even if unjustified), Shimon will not be able to claim an exemption, since according to traffic regulations he was at least partially at fault for not leaving enough distance between himself and Reuven.

In our case, Shimon the driver is liable.

## Paying for Repair or Depreciation

Having decided that the driver is liable, the question of how much he must pay is not as simple as it might seem. In general, the liability for damages is the depreciation in price of the damaged item (*Bava Kama* 55b). Yet, in the case of a dented car, the depreciation in price can be close to zero, whereas fixing the damage is a costly affair. How much then must be paid?

The above question extends to many cases of damages. How much is the depreciation caused by a stain to a second hand suit? What is the devaluation of a house whose window is broken? In both these cases, the answer is probably zero. Shall we then exempt the damaging party (who spilled wine on the suit or broke the window) entirely? How is this difficulty overcome?

The *Chazon Ish* (*Bava Kama* 6:3) explains that the reason why ordinary damages relate to the depreciation in value is because the damaged item stands for sale rather than repair. However, in a case where the damaged item stands for repair, the damage is assessed not by the decreased sale price but rather by the cost of repair.

Among the proofs he cites for this principle is a Gemara in *Niddah* (58a), where we find [according to Tosafos] that one who stains another's garment is responsible for its cleaning. Since the norm is to clean sullied garments, the damager must pay the cleaning bill rather than the depreciation in price.

A similar distinction is already made by the *Nesivos Ha-Mishpat* (340:3). Claiming that it is unreasonable that the damager should not be liable for high costs of repair, the *Nesivos* likewise cites the above Gemara to prove the liability of the damaging party. The practice of batei din is to follow the ruling of the Chazon Ish.

For cases of a dented car, another clause by which to find the damager liable is the paint that was rubbed off. The *Ketzos Ha-Choshen* (396:10, based on *Tosafos*, *Bava Kama* 98a) notes that where there is actual physical loss (part of the damaged item breaks off), rather than deformation alone, the damaging party is liable to repair the damaged property. The *Ketzos* rules that if there is *any* physical loss to a damaged item, the damaging party becomes liable for the entire cost of repair.

In the case of a car accident, while the principle damage is the dent, there is some actual loss in the paint that is rubbed off by the impact. Based on this, there is further room to find the driver liable to pay the repair costs.

## Insurance Companies and Garages

Does Shimon have a right to demand that he can fix the car by himself? Can he take it to whichever garage he chooses? Is he within his rights to demand that the Reuven make no claim from the insurance company, but rather close the issue privately with the Shimon?

The answer to some of these questions seems to be in the negative.

Certainly Shimon cannot demand to have the car fixed by an Arab on the West Bank since that is not customary. If Reuven is always careful to use the official Mazda garage for his repairs, perhaps, Shimon must use the same garage. The reason for this is that it can be argued that Reuven's exclusive use of the official garage has financial value: when he sells his car, he will be able to claim that all repairs were executed by the official garage, rather than by some unknown entity. Therefore, even if Shimon claims he can achieve the same effect in a different garage or by doing the repair job, perhaps he must use Reuven's regular garage. Certainly, if the car is under warranty and the warranty will be voided if a non-official garage repairs the damage, Shimon would have to pay the cost of the repair at the official garage.

Shimon cannot prevent Reuven from claiming damages from the insurance company if Reuven stands to gain from this, since this is the universal custom, and anybody driving on the road does so under the understanding that in cases of accidents the claim is made from the insurance. Of course, if Shimon will pay the amount that Reuven would receive from the insurance company, Reuven would have no right to claim from the insurance company since he is merely damaging Shimon for no reason.

# Halachic Responsa

## to Questions that have been asked on our website dinonline.org

### The Question:

Can someone get something from the car on Shabbos or Yom Tov, i.e. food or a sefer or key which is required for that day? Of course no lights will turn on when door or trunk is opened? Can the door or trunk be closed as well?

### Answer:

It is permitted to open the door or trunk to get things out, provided of course that the area has a reliable eruv.

Concerning closing the trunk, it is certainly permitted if there is a permitted item inside that needs to be looked after by closing the trunk. If there is no permitted item inside, some prohibit closing the door, yet there is some room for leniency where the situation requires it (see sources).

This should preferably not be done in public.

### Sources:

It is forbidden to move even part of a muktzeh item, as we find concerning closing the eyes of the dead (Beis Yosef and Shulchan Aruch 208:42, citing from the Ran). See also Magen Avraham 305:9; Darkei Moshe 311:7; Shulchan Aruch 311:7. The Rema (308:3) likewise states that any movement is forbidden.

However, a car has two distinct usages. One use is for driving, and the other is for sitting inside or for storing items. Concerning the use of the car for driving, the car is muktzeh. However, for use as storage it is not muktzeh, and it is therefore permitted to open the trunk.

This is similar to a fridge. Although the fridge itself is muktzeh (machmas chisaron kis), and it is forbidden to move it on Shabbos, it is nonetheless permitted to open the door of the fridge. The reason for this is that concerning the use of the fridge the fridge is not muktzeh.

The same idea applies to a car. Although it is not permitted to move the car, it is permitted to open its doors or trunk (provided of course that no light goes on).

I heard this idea in the name of Rav Yashiv Ber of Brisk.

Another point is that it is not clear that a car is muktzeh machmas chisaron kis, and it is possible that the car is only a keli she-melachto le-issur, in which case it is permitted to open the doors for a legitimate need (of taking something out). This is the approach taken by the Shemiras Shabbos Kehilchasa (15:25; 20:80) concerning the door to a washing machine, and also concerning a car door.

The difference between the two approaches is closing the car door afterwards. According to the first approach, the door to the car or trunk is simply not muktzeh, and it can be closed as usual. According to the second approach, it is only permitted to close the door of the car or trunk for a need of something permitted, for instance to ensure the safekeeping of permitted items in the trunk – but not for the purpose of looking after the car itself.

This should not be done in front of an am-ha'aretz, who will not understand the distinction, and in general one should avoid doing this in public because it looks strange.