

If Someone Makes a Short Stop In The Middle of the Road, Is He Liable For The Damages of a Car that Rear-Ends Him?

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**Question:** Someone is driving and suddenly stops in the middle of the road. The driver behind him isn't able to brake in time and hits him from behind, which causes substantial damage to the second driver's car. Is the car that is parked in the middle of the road considered a *bor*, which would mean that he is exempt from damages to *keilim* including the damage to the other car, or is he considered an *odom hamazik*, which would make him liable to pay for the damages?

**Answer:** The Mishnah discusses a case where a potter trips while holding his pots and a person behind him falls over him and gets hurt. The Mishnah says that the first man is *chayav* to pay for the damages. The Rishonim argue whether the man is liable as a *bor* or as an *odom hamazik*, with the practical difference being whether he is liable on *keilim*. The Shulchan Aruch rules that he is *chayav* as a *bor*. This seems to indicate that when someone is in a stationary position, he is classified as a *bor*, not as an *odom hamazik*.

On the other hand, another Mishnah says that if someone is carrying a beam in the street and stops suddenly, causing a barrel moving behind it to collide and break, the person is *chayav* to pay for the barrel. The Rishonim note that this indicates that the person holding the beam is considered to be an *odom hamazik*, who is liable on *keilim*, rather than a *bor*. This seems to contradict the other Mishnah.

Rebenu Peretz and the Tosafos Rid resolve this contradiction by saying that if a person is lying prone on the floor and is not doing any action, he is considered to be a *bor*. Whereas, if he is standing and holding something, even though he isn't moving, holding the item in place is considered to be an action and the person is considered to be an *odom hamazik*.

In our case, it would seem that if the road was inclined and the car would roll down on its own if the driver weren't sitting there and holding the brake, he would be considered to be doing the action of holding the car in place and would be an *odom hamazik*. If the road was flat and the car would be stationary or rolling very slowly even if his foot was not on the brake, the driver would not be considered to be doing any action; therefore, the car would only be a *bor* and the driver would be exempt on damages to the other car. [Of course, the victim may pursue a claim against his insurance. - ed. note]