

Is a Driver Liable For Striking a Scooter in The Road In The Middle of The Night?

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Question: Reuven is driving around at 4 am. He comes to a red light and stops. He doesn't see anyone around, so he goes through the red. Unfortunately, a kid on a scooter comes flying out of nowhere and is struck by Reuven's car. *Boruch Hashem*, the boy is unhurt. The scooter, however, is destroyed. Is Reuven liable to pay for the scooter?

Answer: This case has to be broken down into two aspects. Firstly, a kid riding around on a scooter in the middle of the night is an unexpected occurrence; consequently, we have to determine whether this qualifies as an "*oness*". Secondly, we have to determine whether the fact that Reuven ran a red light can be held against him.

Had it been the middle of the day, perhaps it would be Reuven's responsibility to reasonably ensure that no pedestrians are approaching the intersection. At 4am, however, there is no reason to expect that a kid would be riding around on a scooter. Accordingly, if the light had been green Reuven would definitely be *patur*. While it is true that there is a general rule of "*odom mu'ad l'olam*" (a person is always held accountable for damages he causes through his actions), Tosafos and other Rishonim clarify that one is exempt in cases of "*oness gamur*", when it was clearly unavoidable. Furthermore, the Rambam states that the rule of *odom mu'ad l'olam* only applies if the incident occurred on the property of the victim. If it happened on the property of the damager, or even on public property, this rule does not apply. Accordingly, if the light was green, the roadway is considered to be "the property of the damager" because he has the right of way, while the one who was damaged does not. It should be noted that the Chazon Ish says that the Rambam is only referring to cases where the damager was doing a normal action, such as walking or driving, and he hits someone on his property or on public property. Otherwise, for example, if a person were to trip and fall and break something on his way down, that would not be considered a normal course of action and the rule of *odom mu'ad l'olam* would apply even according to the Rambam.