

Is a Homeowner Liable For Damages He Caused by Leaving His Hose Running?

Rav Aryeh Finkel

Question: Reuven's neighbor went away for Shabbos. Before he left, he forgot to shut the hose that was running in his backyard. Over Shabbos, the water flowed into Reuven's property and flooded his basement. Is the neighbor liable as an *odom hamazik*?

Answer: He definitely could be *chayav* because of the rule of *garmi*, which is a form of direct causation of damage; however, there are some limitations to the halachos of *garmi*. For example, there is the opinion of the Shach who says that *garmi* is only a *chiyuv d'rabanan*, which allows for leniency in some cases.

Odom hamazik, however, is a *chiyuv d'oharaysa*. A person is biblically liable for damages that he does through his actions. In this case, the neighbor just turned on the water. He did not actually cause the flooding by pouring water into Reuven's basement. Is what he did enough of an action to hold him liable as an *odom hamazik*?

The Gemara in Bava Kama speaks about a case where someone releases water out of a pipe, which flows out and causes damage. It says that if the water strikes something in the first burst as it is running out of the pipe, it is called "*kocho*" – a damaging force caused by the person. Although he didn't touch the water and merely allowed it to come out of the pipe, it is considered as if he did the damage and he is liable as an *odom hamazik*.

The Gemara in Sanhedrin discusses a similar case where someone opened a dam and cause the water to be diverted in a certain direction, thereby killing a person. The Rishonim use this Gemara to discern the halacha regarding damages. There, the Gemara says that only the initial spurt of water, known as "*koach rishon*", is considered *odom hamazik*. The subsequent flow of water is called "*koach sheni*", and is not considered *odom hamazik*.

In the case in question, the flow from the hose would be considered *koach sheni* since it takes time for it to cause damage; therefore, it is not *odom hamazik*. Furthermore, even if a person would actually spray the hose directly into the basement, it might only be *odom hamazik* if he sprayed things like books, which get ruined right away. Whereas, if it hit hardwood furniture, which only gets damaged after it is saturated with water, it may not be considered active damage. Since such furniture is not damaged on contact, it is only destroyed by the *koach shnei* and, thus, is not *odom hamazik*.

The Gemara discusses another case where a trespassing cow falls into a pit of water and ruins the water by dirtying it. It says that if the cow was dirty and ruined the water on contact, the owner has to pay for the damage. If, however, the cow was clean and only ruined the water by staying in it for an extended period of time, the damage is not considered to be a result of the cow's action; rather, it was damaged while the cow was stationary. Damage by a stationary object falls under the category of "*bor*", which is only liable

for damaging people or animals and not for damages to *keilim* (inanimate objects). Similarly, perhaps when one damages furniture by spraying it with water, the damage occurs while the water is stationary in the furniture. Thus, the water is akin to a *bor* and the owner would not be liable to pay for *keilim* - meaning he is exempt from paying for the furniture as an *odom hamazik*.

According to all of this, the neighbor would not be liable in this story as an *odom hamazik*; however, as we started off by saying, he may be *chayav* because of the rule of *garmi*.