

Is a Person Who Removes a Railing From a Balcony Considered to Have Created a Bor in Reshus Harabbim?

Rav Aryeh Finkel

**Question:** Someone removed a railing from a second-floor balcony and someone else fell and got hurt. Is he liable as a *mazik*?

Similarly, someone opened a safety gate on top of the stairs and a child fell and got hurt. Is the one who opened the gate liable?

**Answer:** The *chiyuv* of *bor* is not only when one digs a pit; it is also when someone removes a covering from a pit. So too, it would seem that if there is a dangerous place that has protection in place, and someone comes along and removes the protection, he would be liable for uncovering this *bor*.

However, the Mishnah says that if an ox trips over the edge of a pit and lands on the other side, rather than inside the pit, the one who dug it is not liable. The Acharonim explain that one is only liable for creating a *bor* if the damage occurs inside the actual *bor*. If the damage occurs outside the *bor*, the one who created it is exempt from liability. Similarly, the Gemara also speaks about a case where someone builds an incline in a public area and people walk up this ramp unaware and fall off and get hurt. Tosafos write that the one who built the ramp is only liable if he also dug a ditch next to it that the damaged people fell into. If they just fell onto the street, he would be exempt because the damage did not occur inside his *bor*.

In the case of the railing that is removed from a balcony, the damage occurs when the person hits the street below, which is not inside the *bor*; therefore, it would seem that the one who removed the balcony cannot be held liable. The case of the safety gate however, may be different. The Chazon Ish describes a *bor* as something that is “*meshuna m’tivo shel olam*”, it is not the regular surface of the ground. Stairs may fall under the category of *meshuna m’tivo shel olam*, as they are different than the regular surface of the floor. If a person removes a baby gate, he is uncovering the stairs, which are dangerous for babies. Thus, the stairs are the *bor* that he created and if the damage occurs on the stairs, he may be held liable.