

## Swing and a Hit

*Adapted from a shiur by Dayan Daniel Dombroff*

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**Q:** I parked my car legally on the side of the street. Without checking for oncoming traffic, I opened my door, whereupon it was immediately struck by a vehicle. My door was destroyed and my opponent's front end was damaged. Which of us is liable for the other's loss?

**A:** The other driver isn't responsible. According to Tosafos (Bava Kama 27b), whenever a damager couldn't have been expected to avoid causing the damage, it is considered completely out of his control, an *oness gamur*, and he is exempt. Even the Ramban (Bava Metzia 82b)—who holds a damager is liable even for *oness gamur*—agrees in cases where the victim was negligent, which you clearly were. But how would we categorize your tort against him? The car door would appear to be like a *bor birshus harabim*, a pit dug in the public domain. If so, you would be exempt, because one who digs such a pit is liable only for personal injury and not for property damage.

This case appears analogous to one in the Gemara in Bava Kama 31b: One man is carrying a wooden beam through *reshus harabim* while another man carries a barrel behind him. The first man stops suddenly, causing the barrel to break against the beam. The Gemara says the beam-bearer must pay.

The Nimukei Yosef asks, isn't a person not liable for property damage caused by a *bor*? He answers that the beam is an extension of the carrier's body, so this isn't a pit damaging property but a man damaging property. If you were still holding the car door at the time of the collision in a position where, had you let go, it would have swung open or closed, it would quite possibly be similar. Once you let go, it would become a *bor*. However, some *Acharonim* maintain that when one's *bor* damages property, though Bais Din cannot make

him pay, he is still held responsible in the Heavenly Court.