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FINE CHINA? A PERPETRATOR PAYMENT PLAN, PART II

Adapted from a shiur by Dayan Yosef Greenwald

We established last week in Part I of this series (tinyurl.com/y87ua89o) that according to the Hagahos Ashri, although there is nothing that the earthly Bais Din can do today to impose punishment on a murderer, whether intentional or unintentional, if the heirs of the victim impounded money from the killer—by seizing his property or by withholding monies owed him by the victim—they would be allowed to keep it.

The Ketzos Hachoshen (C.M. 410) observes that Rashi in Sanhedrin 87b seems to disagree with the Hagahos Ashri, as Rashi there explains that the dispute between Rebbi and the Chachamim—whether one who intended to kill

one person and mistakenly killed another must pay money—comes down to the question of *damim l'ven chorin*, whether the value of a free person can be assessed in monetary terms. According to Rebbi, it can, while according to the Chachamim, it can't, so no monetary obligation is possible. The Hagahos Ashri seems to hold that all agree that a *ben chorin* can be assigned a monetary value.

Thus the Hagahos Ashri and Rashi in Bava Metzia appear to be of the view that in any case of homicide, such as a car accident, *tefishah* (asset seizure) would be valid, and the victim's heirs could impound the perpetrator's property or withhold payment of money owed

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Excerpted and adapted from a shiur by
 Harav Chaim Weg

PARSHAS BEMIDBAR

COUNT INDICTMENT

You shall count them by their legions,
 you and Aharon. (Bemidbar 1:3)

According to the Ramban, the Torah here uses the term "*pekidah*" for counting rather than "*sefirah*" to indicate that B'nei Yisrael should not be counted directly but through *machatzis hashekel* coins. It seems that the Ramban holds it is Biblically prohibited to count the Jewish People directly. The Gemara in Berachos 62b also implies it's *assur mid'Oraisa* when it says that David Hamelech erred in counting the people (in Shmuel Bais 24:1-2), something even schoolchildren know is forbidden. This is the opinion of a number of *mefarshim*, including Tosfos Rid (Yoma 22b) and Rashi (Ki Sisa).

But the Gemara in Yoma 22b quotes a number of *pesukim* in Navi to prove that it is forbidden, which indicates that it is only prohibited *midivrei kabbalah*

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Q&A from the
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Swing and a Hit

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)—

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him, in compensation for the loss. If so, if the government of China is found to be responsible for the release of the virus, it could theoretically be held accountable for the loss of life across the world, and monies owed to it by other countries could be withheld to satisfy that debt. But per Rashi in Sanhedrin, this would be true only according to Rebbi, but not according to the Chachamim.

There are additional liabilities occasioned by this tort. One who injures another person (*chovel b'chaveiro*) is responsible for five categories of remuneration (Bava Kama 83a): *nezek* (damage), *tza'ar* (pain), *ripui* (medical expenses), *sheves* (loss of work), and *boshes* (embarrassment). Although *tza'ar* and *boshes* are considered to be a *knas* (penalty) and cannot be imposed today, *nezek*, *ripui*, and *sheves* are all pertinent. Thus, it would seem that halacha would require China to compensate all the people who lost their jobs as a direct result of contracting the virus and to reimburse their medical expenses. But there would seem to be no liability for jobs lost due to precautions imposed by the authorities, which would be classified as *grama* (indirect causation), for which one is not liable in Bais Din (though they would be responsible *b'dinei shamayim*, by the standards of the Heavenly Court).

But even with regard to those who became sick, it is not clear that *ripui* and *sheves* must

be paid. The Ketzos (C.M. 308:2, 333:2) says in the name of the Ramah that in cases of *garmi*, where there may be negligence but no direct act of injury, one need only pay for *nezek*, but not *ripui* or *sheves*. The Nesivos (C.M. 333:3) offers the example of a person who hired a worker and sent him off to perform some task but then didn't pay him. This may be a case of *garmi*, because the loss did not result from a direct act of injury. In such a case, the perpetrator would pay for *nezek*, but not for *sheves* and *ripui*.

But this case is different. All the above applies to a *Yisrael*, but a *ben Noach* is halachically accountable for all damage, including *grama* and *garmi*. In addition, there is no exemption of *kam lei bid'rabba minei* for a *ben Noach*. This is because a *ben Noach's* liability is not for the injurious act itself but for the underlying negligence, so it doesn't matter if the injury is indirect as in *grama* and *garmi*, and there aren't two punishments arising from a single act to create an issue of *kam lei bid'rabba minei*. If so, halacha might accept the possibility of suing a *ben Noach* for monetary compensation in cases of manslaughter, as is done in secular courts. In addition, as above, *tefishah* of the perpetrator's assets should certainly be effective.

May we soon see the end of the plague and the downfall of the wicked.

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who holds a damager is liable even for *oneses gamur*—agrees in cases where the victim was negligent, which you clearly were.



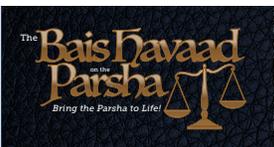
DAYAN DANIEL
DOMBROFF

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.

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(based on the *Nevi'im*). The Rambam (*Hilchos Temidin*

Umusafin 4:4) also says it is forbidden to count Jews directly based on *pesukim* in *Navi*, and it is only permitted if done indirectly, such as when the kohanim extended their fingers for the daily lottery.

Either way, how did David Hamelech

rationalize counting the people? The Ramban explains (in *Ki Sisa*) that David thought the mitzvah did not apply to future generations. The Ramban (here) suggests alternatively that either David used *shekalim* for the count but counted unnecessarily, which is also forbidden, or he only counted those over twenty, whereas the prohibition only applies when counting all Jews. According to *Tosfos Rid* (*Yoma* 22b), the prohibition applies even when counting with *shekalim* unless it is done for a *d'var mitzvah*.



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