

On Negotiating For the Release of Hostages

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I. Mitzvat Pidion Shvuyim

שולחן ערוך יורה דעה סימן רנב

סעיף א

(א) פדיון שבויים קודם לפרנסת עניים ולכסותן. א (ב) א] ואין מצוה גדולה כפדיון שבויים. הילכך לכל דבר מצוה שגבו מעות בשבילו, יכולים לשנותן לפדיון שבויים. ואפילו אם גבו לצורך בנין ב"ה, ואפילו אם קנו העצים והאבנים והקצום לצורך הבנין, ב] שאסור למכרם בשביל מצוה אחרת, מותר למכרם לצורך פדיון שבויים. (ג) ג] אבל אם בנאוהו כבר, לא ימכרו אותו. ב (ד) ומ"מ הנודר סלע לצדקה, אין פדיון שבויים בכלל ואין לפדות בסלע זו ג רק מדעת בני העיר (מהרי"ק שורש ז') כדלקמן סימן רנ"ו סעיף ד'.

סעיף ב

ה] המעלים עניו מפדיון שבויים, עובר על לא תאמץ את לבבך (דברים טו, ז). ועל לא תקפוץ את ידך (דברים טו, ז). ועל לא תעמוד על דם רעך (ויקרא יט, טז). ועל לא ירדנו בפרך לעיניך (ויקרא כה, נג). ובטל מצות פתוח תפתח את ידך לו (דברים טו, ח). ומצות וחי אחיך עמך (ויקרא כה, לו). ואהבת לרעך כמוך (ויקרא יט, יח). והצל לקוחים למות (משלי כד, יא). והרבה דברים כאלו.

סעיף ג

כל רגע שמאחר לפדות השבויים, היכא דאפשר להקדים, הוי כאילו שופך דמים.

II. How Much to Pay

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סעיף ד

ד אין פודין השבויים (ד) יותר (ה) מכדי דמיהם, מפני תיקון העולם, ה ו] שלא יהיו האויבים מוסרים עצמם עליהם לשבותם. ז] אבל אדם יכול לפדות את עצמו בכל מה שירצה. ח] וכן לת"ח, או אפילו אינו ת"ח אלא שהוא תלמיד חריף ואפשר שיהיה אדם גדול, פודים אותו בדמים מרובים. (ואם אשתו כאחר דמי או לא, עיין בטור אבן העזר סי' ע"ח).

From R. Blicch, Contemporary Halakhic Problems I, p.18-

Mishna Gittin 45a – no ransom greater than their value (i.e., if sold as slave). Higher values were thought to then spur more abductions.

Tosafot Gittin 58b – no payment limitation if person's life in danger.

Tosafot Gittin 54a – (a) no payment limitation if person is a renowned scholar.

(b) no payment limitation after hurban since enemies of the Jews get no more encouragement from receiving higher ransom than if they received a lower ransom (i.e., they kidnap Jews just to victimize).

Rambam & Shul" A don't quote Tosafot and so apparently don't hold like them.

Pitchei Tshuva YD 252:4 cite many opinions on both sides.

From Torah Mitzion

Eruvin 52a - There is no limit on redeeming oneself – learned from the requirement to pay 10x value to redeem wife. – This paralleled to taking an insurance policy that will pay any amount in the event one needs to be redeemed – joining the Army is like having such a policy where they insure they will protect you. T'zahal has unwritten rule that motivates every soldier to give his all, and that is that the army will not abandon you.

III. Payment Concerns

From R. Blicch, Contemporary Halakhic Problems I, p.18-

Two factors on hostage bargaining

- 1) dangerous precedent – terrorists will be spurred in the future to use hostages to get demands met.
- 2) Release of terrorists means their return to possible further terror acts.

JPOST, June 29, 2006

Former US envoy to the Middle East Dennis Ross said on Thursday that Israel mustn't negotiate for the release of Cpl. Gilad Shalit, who was kidnapped on Sunday and whose release was the main objective behind the recent IDF incursion into the Gaza Strip.

He asserted that negotiations would only bring about more kidnappings.

JPOST, July 3, 2006

"Everyone knows that **capitulating to terrorism today means inviting the next act** of terrorism," he told the cabinet Sunday. "We will not do this."

And he has received backing for this position by Chief of General Staff Lt.-Gen. Dan Halutz, by the head of Military Intelligence Maj.-Gen. Amos Yadlin and by the head of the Shin Bet (Israel Security Agency) Yuval Diskin.

JPOST, July 1, 2006

Hamas spokesman Mushir al-Masri said on Saturday that his movement wanted a prisoner swap similar to the one that was reached in January 2004, when Israel released senior Hizbullah members and 400 Palestinian prisoners in exchange for kidnapped Elhanan Tannenbaum and the bodies of three Israeli soldiers.

"There will be no solution for this case without the release of Palestinian prisoners," he said. **"We want a prisoner exchange like Hizbullah**, which swapped the bodies of three Israeli soldiers for hundreds of Arab prisoners held in Israel."

From R. Blicch, Contemporary Halakhic Problems II, p.222-6

If you release terrorists the MAY go out and kill (again).

Hagahot Maymoniot – One must place himself at risk (i.e., DOUBTFUL status) in order to prevent CERTAIN death of his fellow.

R. Yosef parallels to releasing terrorists in exchange for hostages; the terrorists are only possible risk (i.e., DOUBTFUL) whereas the hostages will CERTAINLY be killed.

Furthermore, here a third party (govt/army) is going to release terrorists (i.e., they are not like involved individual who believes risk to be great and may balk based on this concern); thus that case is "safek" (terrorists will kill again) v. "Vadai" (hostage will be killed now), and so we poskin "vadai".

R. Blicch rejects this application to Israel because the army/govt is NOT a third party but is in fact a direct party, being that they too may be at the brunt of a released terrorist's act. Thus they may reject release of terrorists in that the risk involved is too high. [I would argue also, that the risk is NOT ONLY what the released terrorists might do, but what all the other potential terrorists might do, now having seen that they will evade punishment even if caught!! (i.e., by being let out). – this point is made, essentially by R. Gershuni <see next source>]

From R. Blicch, Contemporary Halakhic Problems I, p.18-

Maintaining Law and Order

Judges 19:25-29 – tribe of Benjamin went to battle against rest of Israel to preserve law and order. Some of tribe of Benjamin raped to death a concubine "pilagesh ba'givah".

The Tribe of Benjamin then went to war in order to stop the other tribes from

summarily executing the perpetrators. R. Yaakov Emden explains that each tribe was responsible to judge its members, and so the tribe defended its right in the face of anarchy.

Based on this R. Gershuni argues one is obligated to risk one's life (like going to war) to preserve law and order – he argues that releasing terrorists undermines law and order and it is justified to not release terrorists in spite of the fact that this endangers innocent people (ie., hostages).

IV. Force

בראשית פרק יז

(יד) וישמע אברם כי נשבה אחיו וירק את חניכיו ילידי ביתו שמנה עשר ושלש מאות וירדף עד דן :

As said, Tzahal has unwritten rule that motivates every soldier to give his all, and that is that the army will not abandon you. Very important, but doesn't contradict that we don't negotiate – just means that we must use military action to retrieve and furthermore that we must use massive punitive action (nekama) as further deterrent.

(How much Risk:

Risk to oneself must be significant to mitigate the obligation of saving one's fellow.

R. Unterman, "A person is obligated to place himself at risk in order to save the life of his fellow if assumption of such risk would not deter a prudent individual from acting in order to save his own precious material possessions).

Exposing oneself to danger to save another

BY, Hoshen Mish. 426

Military action in rescuing hostages

Gemara Eruvin 45a – an invading army seeking to seize a border town may be fought even on Shabbat. This because such conquest would facilitate further enemy activity and loss of life.

Rambam Hil. Shabbat 2:33 – ALL Jews are obligated to aid in the fight if so capable.

R. Yosef applies this to Entebbe where one "successful" hijacking would spur terrorists to further activity and loss of life. Thus military action may be taken against the enemy EVEN on Shabbat.