

[The Gemara attempts to answer its question:] Come and learn from the following story: Levi the son of Darga redeemed his daughter for 12,000 golden dinar coins. [This story shows that an individual **may** choose to pay such a sum, and we are not concerned about encouraging future kidnappings!]

Abaye [rejects this proof, saying]: “Who said that he acted in accordance with the will of the Rabbis of his time? **Maybe he acted against halachah** in redeeming his daughter, since such payments encourage future kidnappings!”

ת"ש: דלוי בר דרגא פרקא לברתיה בתליסר אלפי דינרי זהב.
אמר אביי: ומאן לימא לן דברצון חכמים עבד? דילמא שלא ברצון חכמים עבד.

SEE THIS ORIGINAL PAGE OF TALMUD ON THE NEXT PAGE

The Mishna forbids ransoming captives “for more than their value” – because of *tikkun ha’olam* – promoting public welfare. The above Gemara proposes two possible explanations for what *tikkun ha’olam* means in this context:

- The first possibility is that such redemptions impose too heavy a **financial burden** upon the Jewish community. In other words, there is a limit to the expense the community must incur for the sake of securing the release of a fellow Jew in captivity.
- The second possible explanation is that **we do not wish to encourage further kidnappings**. Complying with a captor’s unreasonable demands to secure a prisoner’s release provides incentive for further abductions, and it is perhaps for this reason that Chazal forbade paying exorbitant sums for ransom.

The practical difference between these two possibilities, the Gemara notes, is the case of a prisoner whose family **has the financial means** to pay the exorbitant ransom being demanded.

- If the family is prepared and able to bear the outrageous cost of the prisoner’s release, then there is no concern of draining the community’s resources – and the deal would be **permissible**.
- If, however, the Mishna’s prohibition was enacted to avoid providing incentive for future kidnappings, then paying an exorbitant ransom would be **forbidden**, regardless of the family’s financial capabilities.

The Gemara leaves this question unresolved, noting that although there is a recorded case of a wealthy man named Levi bar Darga who ransomed his daughter for a price of 13,000 gold coins, it is uncertain whether the rabbis of his time approved of his decision.

THE ACCEPTED HALACHAH

The Rambam adopts the second explanation – that exorbitant ransoms are forbidden because they encourage **additional kidnappings**:

Rambam Hilchos Matnos Aniyim 8:12
Maimonides (1138–1204)

Captives may not be ransomed for more than their value, out of concern for the public welfare, **so that enemies are not encouraged to kidnap people**.

אין פודין את השבויים ביתר על דמיהן מפני תיקון העולם, שלא יהיו האויבים רודפין אחריהם לשבותם.

The Rambam’s formulation is also cited in the Shulchan Aruch (Y.D. 252:4), making it the accepted halachah. Thus, it would be **forbidden** to pay an exorbitant ransom for a captive, **even** if an individual or group of individuals is able and willing to incur the cost.

QUESTIONS TO CONSIDER

- Can you think of any cases where there might be exceptions to this rule?

**A POSSIBLE
EXCEPTION
TO THE
PROHIBITION**

However, some *rishonim* (medieval halachic authorities) qualify this ruling, claiming that it does not apply to cases in which the prisoner's life is in danger.

The basis for this qualification is a story told later in Talmud Bavli Gittin 58a of Rabbi Yehoshua ben Chananya, who came across an impressive and promising Jewish child who was being held captive in Rome. Rabbi Yehoshua determined that the child had the potential to become a towering Torah sage, and he pledged to ransom him for whatever price the authorities set – no matter how high. The Gemara relates that soon after making this pledge, **Rabbi Yehoshua indeed paid an exorbitant sum for the child's release**, and the child grew to become none other than Rabbi Yishmael ben Elisha, the famous Kohen Gadol and sage.

Tosfos raises the question: How can we reconcile Rabbi Yehoshua's pledge with the Mishna's prohibition against ransoming captives for exorbitant sums?

Tosfos in Talmud Bavli Gittin 58a

The Baalei Tosfos (~1200)

[Why was this permissible? Tosfos gives two possible answers:] [1] **When the life of a captive is in danger, one is allowed to pay even an exorbitant sum to redeem them...** [2] Alternatively, because Rabbi Yehoshua saw that this boy was an **exceptional *talmid chacham***, the regular rules of redeeming captives did not apply...

כל ממון שפוסקין עליו – כי איכא סכנת נפשות פודין שבויין יותר על כדי דמיהן כדאמרין בפרק השולח גבי מוכר עצמו ואת בניו לעובדי כוכבים כל שכן הכא דאיכא קטלא אי נמי משום דמופלג בחכמה היה...

SEE THIS TOSFOS IN THE ORIGINAL PAGE OF TALMUD ON THE NEXT PAGE

Tosfos draws a comparison to the Gemara's discussion earlier in Gittin (44a) concerning one who sold himself as a slave to gentiles, whom **a community must ransom if his life is danger**, even if he repeated the offense several times. Tosfos claim that the restriction on paying exorbitant sums similarly **does not apply in situations of life-threatening captivity**.

**QUESTIONS TO
CONSIDER**

- What are the implications of Tosfos's answer for a captive like Gilad Shalit, who is being held captive by Hamas?

**REJECTION
OF TOSFOS'S
RULING**

In light of this approach by Tosfos, it would appear that an Israeli prisoner **may** be ransomed from terrorists at any price, because his life is in danger.

However, **not all halachic authorities accept the distinction made by Tosfos between life-threatening situations and other cases**. The Baalei Tosfos themselves offer an alternate answer, suggesting that Rabbi Yehoshua was prepared to pay an exorbitant price for the child's release because of his extraordinary scholarly potential. According to this answer, it seems, the prohibition of paying exorbitant ransoms may apply **even** in life-threatening situations of captivity and **an exception is made only for scholars**. Indeed, the *Pischei Teshuva* cites several responsa from later halachic authorities who do not allow the redemption of prisoners even in life-threatening situations.

Among the sources he cites is a responsum of the *Kenesses Yechezkel* (Rav Yechezkel Katzenellenbogen, 1668–1749), who notes that Tosfos's distinction between life-threatening situations and others presumes that paying exorbitant sums is forbidden **because of the financial strain** it imposes upon the community. From this perspective, it stands to reason that when a captive's life is in danger, the community is required to do whatever it takes to rescue him. **But if we assume that the Sages forbade paying such sums in order to avoid incentivizing future abductions, then one may not redeem captives even if the prisoner's life is in danger, as rescuing his life does not warrant jeopardizing the lives of others in the community by encouraging further kidnappings**. Hence, the *Kenesses Yechezkel* writes, the approach of Tosfos must be based on the reason of concern for the community's funds. Since the normative halachah cited in Shulchan Aruch explicitly favors the approach of concern for encouraging kidnappings, we must conclude that **Tosfos's view is not accepted as normative halachah**.

Accordingly to this approach, the public would not be allowed to pay exorbitant sums to release Jewish prisoners, despite the fact that the prisoners' lives are in grave danger.

All of the above sources discuss cases of redeeming captives in exchange for **money**; redeeming them in exchange for **imprisoned terrorists** introduces a whole new set of issues. In light of the statistical evidence that convicted terrorists tend to resume their nefarious activities after their release, one needs to wonder if such a dangerous exchange can be performed according to **any** of the above authorities.

A similar conundrum is discussed in Sanhedrin, and the Gemara's ruling there can shed light on our discussion:

Talmud Bavli Sanhedrin 74a

What is the source that [one must give up his life] rather than commit murder? It is pure logic, as can be seen in the following story:

A man once came to Rabbah with a predicament: "My landlord recently came to me and demanded, 'Kill so-and-so, or else I'll kill you!' [Should I kill the person, or should I let myself be killed?]"

[Rabbah responded:] "**Let him kill you, rather than commit murder yourself. Who says that your blood is any redder than his? Maybe his blood is redder than yours!**"

רוצח גופיה מנא לן? – סברא הוא. דההוא
דאתא לקמיה דרבה, ואמר ליה: אמר לי מרי
דוראי זיל קטליה לפלניא, ואי לא – קטלינא
לך. – אמר ליה: לקטלוך ולא תיקטול. מי
יימר דדמא דידך סומק טפי דילמא דמא
דהוא גברא סומק טפי.

SEE THIS ORIGINAL PAGE OF TALMUD ON THE NEXT PAGE

QUESTIONS TO CONSIDER

- What are the implications of this Gemara for the question at hand? Does it make halachic sense to endorse the release of dangerous terrorists to save a single Jewish prisoner?

It seems clear that the mitzvah of redeeming captives applies only to paying money or making efforts on behalf of the captive's release. Nowhere do we find an obligation upon the community to endanger itself for the sake of releasing a Jewish captive. The rationale of "Mai Chazis" ("Who says your blood is redder than his?") – which forbids killing someone else to save one's own life – presumably applies here, as well. **The captive's blood should not be regarded as "redder" than anyone else's**, and thus it seems to be improper to free a Jewish prisoner at the expense of public safety.

CONCLUSION

There are two factors that must be addressed when considering the exchange of one thousand terrorists for a single Jewish captive:

- "Paying" one thousand terrorists for one captive would seem to be an **exorbitant sum**, with the potential to encourage terrorists to perform **future kidnappings**, and hence is likely **forbidden** even when the prisoner is in a life-threatening captivity.
- The mitzvah of *pidyon shevuyim* (redeeming captives) **does not require a community to endanger itself** for the sake of securing a prisoner's release.

It goes without saying that this analysis is presented only as a theoretical basis for discussion, and not for the purpose of issuing a practical halachic ruling, a responsibility that lies with the halachic authorities of our generation. There are many other factors and considerations that must be taken into account when deciding such issues of life and death, such as the psychological effect such a captivity has on other soldiers as they go out to battle, and this discussion is in no way intended as a comprehensive study of this very complex and painful question that the Jewish State has unfortunately been forced to confront time and time again.

We hope and pray for the protection of our soldiers and of each and every member of Klal Yisroel, and for the quick and immediate release of all our imprisoned brethren, speedily in our days.

DISCLAIMER:

The views and opinions presented in this sourcesheet should not be taken as *halachah l'maaseh*. Before applying these halachos to real-life situations, one must consult with a competent halachic authority.

