

The Immigration Ban

Banning Refugees for Fear of Terrorism in the Eyes of Halacha

By Dayan Shlomo Cohen / Badatz Ahavat Shalom, Yerushalayim

The war in Syria and uprisings in other parts of the world have uprooted hundreds of thousands of families from their homes. Many of these refugees would face certain death if they were to stay in their countries.

Countries all over the world are willing to open their borders to these refugees, giving them safety and a chance to start a new life.

There is clearly a humanitarian issue on our hands. However, the problem with the open border approach is that due to the rise of terror in these countries, Western countries are rightly worried that amongst these refugees may be terrorists whose intentions are not to find asylum but rather to carry out attacks on civilians.

In this article, I will examine how *Halacha* approaches this question. In order to do so, we must first define the question.

Defining the Problem

A refugee from Syria may face certain death if he remains there and therefore wishes to enter our country. We, however, are concerned that he may be either an actual terrorist or one in the making and therefore a threat to national security.

If we presume that it is definite that the refugee will be killed if returned to his country, while it is a *Safek* (doubt) as to whether he will engage in terrorist activity in our country, we have before us a question of whether we are obligated to risk our lives to save someone else from certain death.

The *Talmud Yerushalmi*[1] relates that *Resh Lakish* risked his life to save *Ribbi Ami* from certain death when the latter was taken captive by bandits, and all others had given up hope of him getting away alive. The *Bet Yosef*[2] proves from here that the opinion of the *Talmud Yerushalmi* is that one is obligated to risk his life to save his fellow from certain death.

Bavli vs. Yerushalmi

However, in the *Shulhan Aruch*[3], *Maran* omits this opinion of the *Yerushalmi*, as the *Talmud Bavli* does not agree, and the *Rishonim* (*Rif*, *Rambam* and *Rosh*) – when defining the obligation of a Jew to save his fellow from a life endangering situation – do not mention the opinion of the *Yerushalmi* at all. Therefore, the *Shulhan Aruch* does not include not risking your life to save another's life as a form of standing by while the

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blood of your fellow is spilt (“*Lo Ta'amod 'Al Dam Re'echa*”).

The *Havot Yair*[4] suggests that the *Talmud Bavli* agrees with this principle based on the following case in the *Gemara*[5]: Two Jews are walking through the desert, but only one of them has water, and there is not enough for both of them to survive. If the guy with the water does not share it with his fellow traveler, he will survive, and get to the nearest town alive, while his companion will not. Ribbi Akiva says that he may keep the water for himself even though his fellow will definitely not survive.

The *Havot Ya'ir* understands that this applies only where it is certain that they cannot both survive. Where it is not, there is an obligation to share the water, even though this may endanger the giver's life. From here it would seem that the *Talmud Bavli* too agrees that one must risk his life to save another from certain death.

Still, the *Shulhan Aruch* disagrees with the *Havot Ya'ir*, as explained above, and therefore, *L'Halacha*, one would not be obligated to do so.

Risk/Benefit

The *Radbaz*[6] states clearly that in such a case, there is no obligation to risk one's life, and one who does so has not transgressed the prohibition to stand aside while the blood of your fellow is being spilt.

However, he continues and says, that despite the above, in any particular situation the degree of risk involved must be carefully weighted up, to see if it is really a risk that needs to be taken into consideration, and how much weight it should be given.

He continues that there are certainly cases where the risk should be taken, citing as a source

for this, the *Gemara* in *Bava Metzia*[7] that where one can save either his father's lost property or his own, he may save his own, as he comes first.

Accordingly, if you are on the way to work and you see someone in distress, you are not obligated to help them if you will incur a loss for being late to work as here too, you come first.

Nevertheless, the *Gemara* continues that while you are allowed to put your interests first, one who continually does so will in the end come to need the favors of others. This is because such a person is not prepared to do acts of kindness which are by their very nature, putting the interests of another before your own.

In Conclusion

To conclude, while it may not be an obligation to accept refugees who face certain danger if returned to their countries, as maybe they will endanger our national security, it would certainly be an act of kindness and compassion to do so, after thorough screening to reduce the risk to its minimal possible level.

While it could be argued that all the above only applies to a fellow Jew, we find in many places, such as giving charity and returning lost property, that while the actual *Halacha* may be different in relation to a gentile – where a *Kiddush Hashem* and the promotion of peace will result, no differentiation should be made.

Certainly, having a compassionate policy on immigration towards those fleeing war zones is a *Kiddush Hashem* and one which the *Halacha* would, in my opinion, encourage after thorough screening to reduce the risk of terrorism to a minimum.

Sources:

- [1] *Terumot* 8 [2] *H.M.* 426 [3] *H.M.* 426:1 [4] 146 [5] *Bava Metzia* 62a [6] *Vol. 3 Ch. 627* [7] 33a



Sports Injuries in Jewish Law

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Serious and painful injuries can be caused while playing sport. A game of football can end in concussion from a strong tackle and a boxer or wrestler can suffer even worse injuries.

The question is, can a player in a football game claim damages for those injuries from the guy who tackled him, or can a boxer get compensation from his opponent for a bloody nose.

Human Fault

The general rule in all cases of damages caused by a human being, as opposed to an animal, is that 'a human is responsible for all damages caused by his actions, whether intentional or unintentional, and even while he is asleep'.

The only exception to this rule is where the damages were caused by totally extraordinary and exceptional circumstances.

The *Shulhan Aruch* writes that even if someone was blown off a roof by an unexpected gust of wind, and were to fall on the utensils of another, that he is required to pay for the damage caused by his fall, as this is not considered as totally extraordinary and unexpected circumstances[1].

However, if one was climbing a ladder, where the rungs were strong and solid, but nevertheless one of them broke while the guy was

climbing, and he fell onto the utensils of another, he is not required to pay for the damages as this is considered as an 'act of G-d' [of course everything is an act of G-d! The intention here is that when an accident is completely out of the ordinary, it cannot be attributed to human negligence][2].

This would seem to imply that compensation could be claimed for damages caused while playing football, as it was the tackler's responsibility to ensure the safety of his opponent.

Rules of the Game

However, elsewhere in *Shulhan Aruch*[3], *Maran* rules that if two guys were wrestling together and one of them threw his opponent to the ground blinding his eye, that a claim for damages cannot be made.

The *S'ma* explains the reasoning: since each of the fighters is participating out of his own free will – with the intention to throw his opponent to the ground – he realizes and accepts that he too may be damaged, and it is as if each one of them, by taking part, exempts his opponent from paying for any damage caused to him.

[This of course will only apply to fair play, according to the rules of the game. Where the rules were broken, this will not apply, and any damages caused by a foul must be paid for!]

Rip My Shirt

This principle however, seems to be contradicted by the *Shulhan Aruch* himself who rules[4] that if one guy were to invite another to tear his shirt, telling him explicitly that he will not



claim damages; the guy who tears the shirt is not required to pay. But, if he invited the other guy to tear his shirt without *explicitly* stating that he will not be required to pay, the owner of the shirt can claim compensation.

This would seem to contradict the previously mentioned *Halacha* that a wrestler is exempt from paying damages to his opponent!

The *Shulhan Aruch* himself provides the answer to this apparent contradiction, by continuing to say that an explicit exemption is only required where the damager had a responsibility to guard and protect his fellow's property. Where he did not, an explicit exemption is not required.

Bodily Injury

While it could be argued that in the case of bodily damage we are obligated to guard and protect our fellow, nevertheless, participation in the game of one's own free will would be considered as an explicit exemption[5].

This principle can be found in a number of other places in the *Shulhan Aruch*. The *Rama*[6] writes that there used to be a custom at weddings for the young men to ride on horseback towards the groom, and that they would sometimes push each other, not maliciously, but in a friendly, playful fashion. If one rider would fall from his horse and be damaged, compensation cannot be claimed from the guy who pushed him. The reason for this is based on the same principle: each participant realizes that there is a risk of damage and by taking part he exempts his fellow riders.

Fair Play

In the *Halachot* of *Purim* too, the *Rama* writes[7] that compensation for damages caused during the *Purim* festivities cannot be claimed.

The *Mishna Berura* adds that this would only apply to small damages – not large, and, in addition, that it would only apply where there was no intention to cause damage.

The principle here too, has the same basis as the case of two wrestlers mentioned earlier, that by participating one realizes that such damage can occur and accepts the risk.

However, we see an important qualification to this *Halacha* from the words of the *Mishna Berura*, that this exemption only applies where there was no intention to damage.

While this exemption will clearly not apply to a foul tackle during a game of football, as explained above; all football players know, that if a player has intention to damage his opponent, a lot of harm can be caused by a fair tackle too.

In my opinion, only damages caused by fair play where there was no positive intention to cause damage is included in his exemption. Where the intention of the tackler was to cause damage to his opponent, even though the tackle may have been in

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accordance with the rules of the game, he can be made to pay compensation for the damage caused.

This is because the intention of the players is to have fun, and not to damage each other.

To differentiate between these two types of tackle is not easy but I think that any experienced football player will be able to do so.

We once had a case in *Bet Din* of a group of young boys who got very drunk on *Purim*, and set up a road block, stopping passing cars. The wing mirror of a passing driver was broken, and the boys seemed to think that they were exempt from paying compensation, quoting the above *Halacha*.

Bet Din of course made them pay for the damage, as the exemption applies to small damage in *Simhat Purim*, which may include spilling wine on someone or stepping on their toe while dancing, but certainly not such wild behavior.

Sources:

[1] *H.M.* 378:1 [2] *Ibid.* 2 [3] 421:5 [4] 380:1 [5] *See Rama* 380:1 [6] 379:9 [7] *O.H.* 695:2 [8]

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