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לעילוי נשמת אחי ורבי הרב ישראל יוסף אליהו בן ר' טוביה הלוי זצ"ל
ולעילוי נשמת ר' יצחק בן יהודה ז"ל

Note: This Shiur it is not intended as a source of practical Halachic (legal) rulings. For matters of Halacha (practical details of Jewish law), please consult a qualified Posek (rabbi).

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I. Introduction

The focus of this presentation is to explore the possible approaches for permitting multifetal pregnancy reduction (abbreviated as: MPR) in Halacha, by applying the teachings of the Talmud (Mishna, Braita and Gemara), post-Talmudic commentators and *Poskim* (Halachic authorities).

Multifetal pregnancies (abbreviated as: MFP) are associated with several risks including complete pregnancy loss (miscarriage and stillbirth) and very preterm birth (i.e., occurring before 32 completed weeks of gestation) which is often complicated by postnatal mortality (i.e., death after birth) and long-term disabilities. MPR is a procedure performed by obstetricians to reduce the number of fetuses *in utero* in a MFP, to improve the survival probability of the remaining fetuses. Reducing the number of fetuses leads to improved outcomes, as measured by lower rates of miscarriage, fewer very preterm births and reduced postnatal mortality (see Appendix C, p. 50). MPR is usually performed between 9 to 15 weeks of gestational age. Historically, MPR has been generally performed in triplet or higher-order pregnancies; however, cases of twin to singleton pregnancy reductions have also been reported.

It is understood that the goal of MPR is to optimize the survival chances of the remaining fetuses in cases where there is a high risk of fetal death without intervention. Yet, since MPR, by definition, terminates one or more fetal lives, contemporary *Poskim* and religious physicians have endeavored to understand how Halacha views this predicament. This dilemma falls into the rubric of a general question: Can we end one life to save another life? Generally, taking a life cannot be justified even if it is the sole means for promoting the survival of another life. This principle is described in Tractate Oholot as: אין דוחין נפש מפני נפש (which will henceforth be referred to as: "אין דוחין"), i.e., we may not push aside one life on account of another life. Nonetheless, in very limited applications discussed below, we are instructed to save a life even if this will lead to the demise of another life. The following discussion describes selected applications and limits of אין דוחין נפש מפני נפש and their relevance to the potential permissibility of MPR.

In the course of this discussion, we will explore two different approaches for permitting MPR in cases where the failure to intervene will lead to a high risk of total fetal/neonatal death (i.e., death either *in utero* or shortly after birth). One approach is derived from the discussion in the Talmud concerning the ruling that one must give up his or her life not to commit murder: יהרג ואל יעבור (i.e., be killed rather than transgress). Perhaps the basis for the יהרג ואל יעבור ruling, which the Talmud describes as a logical reasoning that one may not presume one life is more valuable than any other life, may not apply in a case of multifetal pregnancy if the fetuses are likely to perish without intervention. If this is true, perhaps the principle of אין דוחין also will not apply under these conditions and MPR may therefore, be permitted. The second approach for permitting MPR is the דין רודף (i.e., the law of the pursuer) which states that the life of a pursued person must be saved even at the expense of the pursuer's life. According to this approach, the fetuses that will be reduced (i.e., aborted) are considered as "pursuers" after the other fetuses. We develop this approach through the brilliant writings of the *Gaon* and *Tzaddik*, Rav Moshe Feinstein, זצ"ל, (who was a

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leading Halachic decisor, *Posek*, spanning a half-century period in America, who will henceforth be referred to as: “Rav Moshe”) in his magnum opus, *Igros Moshe*. These approaches are built on two Talmudic cases, the “obstructed labor” and the “fugitive” situations, which will be explained below with different interpretations and their applications to MPR.

II. Two approaches to potentially permit multifetal pregnancy reduction:

Notwithstanding the general principle of אין דוחיין, we will examine two approaches that could be applied to permit MPR in certain cases. These approaches, which originate from two different “life-vs.-life” discussions in the Talmud, will be referred to as: 1) the מאי חזית logic; and 2) the דין רודף.

1. The “coerced murder” case and the מאי חזית logic:

Definitions:

- α :** **The coerced person:** The Jewish person who was ordered by the governor (i.e., the hooligan) to kill another Jew (**β**) under the threat of being killed if he refused.
- β :** **The hooligan’s target:** The person who **α** was ordered to kill.

- A. The Gemara Sanhedrin (Source 1) states that שפיכת דמים (murder, i.e., violating the prohibition of לא תרצח, “do not commit murder”), is one of the three prohibitions for which one must sacrifice his or her own life rather than transgress. This ruling is called יהרג ואל יעבור.

Source 1: Talmud Bavli - Sanhedrin 74a: Three cases where Halacha requires one to sacrifice his life to avoid transgressing – (יהרג ואל יעבור).

<p>רבי יוחנן said in the name of רבי יהושע בן יהוידק: They took a vote and decided in the attic of Nitzah’s home in Lod: Concerning all prohibitions in the Torah, if they tell a person, “<i>transgress and you will not be killed [but if you refuse to do so, we will kill you]</i>,” he should transgress and not allow himself to be killed, except for idol worship, illicit relations and murder (for which a person must sacrifice his life rather than transgress).</p>	<p><u>סנהדרין דף עד עמוד א:</u> אמר רבי יוחנן משום רבי שמעון בן יהושע: כל עבירות נמנו וגמרו בעליית בית נתנה בלוד: כל עבירות שבתורה אם אומרין לאדם עבור ואל תהרג יעבור ואל יקרג, חוץ מעבודת כוכבים וגלוי עריות ושפיכות דמים.</p>
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- B. The Gemara (Source 2) states that the Rabbis deduced the Halacha of יהרג ואל יעבור with respect to שפיכת דמים (murder), through a logical reasoning (סברא), for which the גמרא recounts a true incident: The governor ordered person “ **α** ” to kill person “ **β** ” or else the governor would kill **α** . (This case will henceforth be called the “coerced murder” case). רבא (or רבה) ruled that **α** must be killed rather than kill **β** because of the following logic: “ מאי חזית

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“Why do you presume that your blood is redder? Maybe that man’s blood is redder.” This reasoning will henceforth be called the “מאי חזית logic”.

Source 2: Talmud Bavli - Yoma 82b: Reason for the יהרג ואל יעבור ruling in the “coerced murder” case:
The מאי חזית logic.

<p>From where do we know that a person must sacrifice his life rather than commit murder? It is based on logic (סברא) [as we see from the following incident]: A certain person (α) came before רבא and told him, “The governor of my village said to me, ‘Go kill So-and-So (β), and if you do not [kill him], I will kill you.’” רבא replied to him (α), “Let him kill you and do not kill (β). Why do you presume that your blood is redder [than β’s blood]? Perhaps the blood of that man (β) is redder.”</p>	<p>יומא דף פב, עמוד ב: ורוצח גופיה מנא לן? סברא היא. דההוא דאָתא לקמיה דרבא ואמר ליה אָמר לי מרי דוראי זיל קטליה לפלגנא ואי לא קטלינא לך. אָמר ליה לקטלוך ולא תקטול. מאי חזית דדמא דידך סומק טפי דילמא דמא דההוא גברא סומק טפי?</p>
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- C. What is the meaning of the מאי חזית logic and how does it dictate the Halacha of יהרג ואל יעבור by שפיכת דמים (the “coerced murder” case)? The following two approaches are presented:
- i. Approach 1: The מאי חזית logic operates from a perspective of uncertainty, i.e., since we do not know whose life is considered more valuable, the uncertainty dictates that one must maintain a passive stance (שב ואל תעשה) to avoid arbitrarily selecting who should be allowed to live versus who should be killed, even at the pain of his own death (Talmeidai Rabbeinu Yonah, Reference 1; see also p. 45, Source B-2). Rav Nochum Partzovitz (Reference 2) attributes this approach to Tosfot in Sanhedrin 74b.

According to this approach, in cases of MFP where there is a high risk of total fetal/neonatal death, an argument could be made to permit MPR. Since the fetuses that would be reduced (i.e., aborted) via the MPR procedure would likely die anyway if we remained passive, perhaps it is not considered selecting them for death and therefore, the מאי חזית logic would not apply. This will be discussed further below (see VII-2-C, p. 25).
 - ii. Approach 2: Rashi (Source 3) explains that although the גמרא derives the principle that מצות are pushed aside for the preservation of life from the words “וּחַי בָּהֶם” (Vayikra 18:5, “and he shall live by them”, Source 4), this “וּחַי בָּהֶם-dispensation” does not extend to the prohibition against murder because of the מאי חזית logic: If α would murder β to save his own life, the intent of the “וּחַי בָּהֶם-dispensation”, i.e., preservation of a Jewish life, cannot be fulfilled because a Jewish life (β ’s life) will be lost through the very violation of the מצוה (i.e., transgression of תרצה). In the absence of the “וּחַי בָּהֶם-dispensation”, the מצוה must be observed even at the cost of his (α ’s) own life. (See Figure 1, p. 5 for a schematic

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diagram of Rashi's explanation). Rav Moshe, when discussing this Rashi, adds, "Therefore, we infer [from Rashi] that with regard to this דין [of יהרג ואל יעבור], his (α 's) life and the life of his friend (β) are equal" (Reference 3). Possibly, Rav Moshe inferred the equality of both lives (α and β) from Rashi's explanation that the intent of the "וְחַיֵּי בָהֶם" dispensation is negated when the preservation of one life is neutralized by the destruction of another equally valued life (see Appendix B, pp. 43-49, for further aspects of Rashi's view of the מאי חזית logic, with Rav Moshe's explanation).

Source 3: Rashi's explanation of the מאי חזית logic: Inapplicability of the "וְחַיֵּי בָהֶם" dispensation in the "coerced murder" case (Talmud Bavli - Sanhedrin 74a):

רש"י, סנהדרין דף עד ע"א, ד"ה סברא הוא:

<p>[The logic is]: α may not push aside his friend (β's) life which entails two [negative consequences, "תרתני"], a loss of (β's) life and transgression of an עבירה (i.e., לא תרצה), in order to save himself [from being killed] which would only entail one [negative consequence, "חדא"], a loss of (α's) life, but he will not transgress (לא תרצה).</p>	<p>שלא תדחה נפש חבירו דאיכא תרתני אבוד נשמה ועבירה מפני נפשו דליכא אלא חדא אבוד נשמה והוא לא יעבור.</p>
<p>The Torah only permitted us to violate מצוות based on the "וְחַיֵּי בָהֶם" dispensation because a Jewish life is precious in the eyes of Hashem.</p>	<p>דכי אמר רחמנא לעבור על המצוות משום וחי בהם משום דיקרה בעיניו נשמה של ישראל.</p>
<p>However, here, regarding [the transgression of] murder, [i.e., if α kills β, the "וְחַיֵּי בָהֶם" dispensation will not apply for the following reason]: Since a life will be lost in any event, why should it be permitted to transgress?</p>	<p>והכא גבי רוצח כיון דסוף סוף איכא איבוד נשמה למה יהא מותר לעבור ?</p>
<p>Who says (<i>literally</i>: who knows) that your (α's) life is dearer to Hashem than your friend (β's) life?</p>	<p>מי יודע שנפשו חביבה ליוצרו יותר מנפש חבירו ?</p>
<p>Therefore, the word of Hashem (לא תרצה) may not be pushed aside.</p>	<p>הלכך דבר המקום לא ניתן לדחות.</p>

Source 4: Basis for the dispensation to suspend nearly all מצוות for the preservation of human life:

The "וְחַיֵּי בָהֶם" (Vayikra 18:5 and Talmud Bavli - Yoma 85b).

<p>You shall observe my statutes and ordinances which a man shall do and live by them, I am Hashem.</p>	<p>ויקרא פרק יח: פסוק ה: וּשְׁמַרְתֶּם אֶת חֻקֹּתַי וְאֶת מִשְׁפָּטַי אֲשֶׁר יַעֲשֶׂה אִתְּם הָאָדָם וְחַיֵּי בָהֶם אֲנִי יְקוּק.</p>
<p>Rav Yehuda said in the name of Shmuel: The words "וְחַיֵּי בָהֶם" teach us that he shall live by them (the מצוות) and he shall not die by them.</p>	<p>יומא דף פה עמוד ב: אמר רב יהודה אמר שמואל ... וחי בהם ולא שימות בהם.</p>

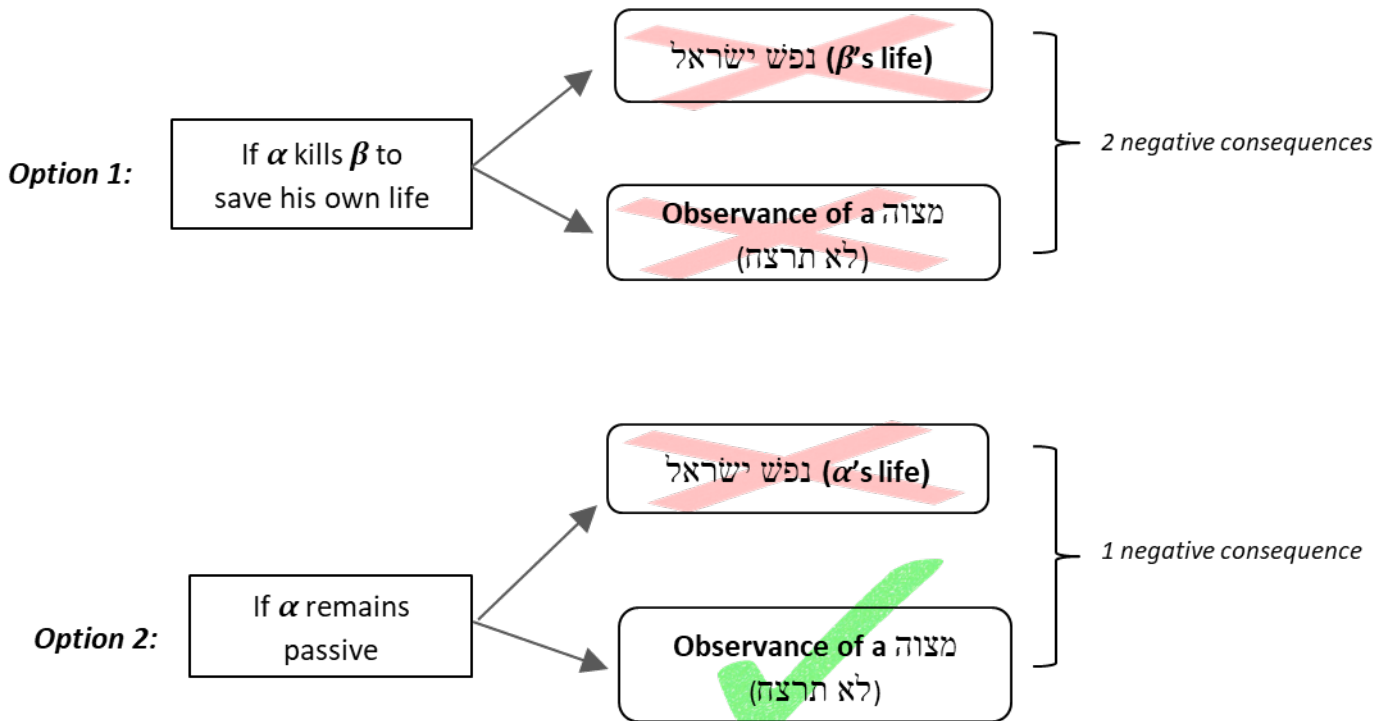
Figure 1: Rashi explains the מאי חזית logic as the basis for יהרג ואל יעבור in the “coerced murder” case:

The “מאוי-דיספנסציה” is inapplicable.

If α would murder β to save his own life (*Option 1*), there would be **two negative consequences**: the loss of a life (β 's life) and violation of a מצוה (i.e., transgression of לא תרצח). On the other hand, if α remains passive (*Option 2*), only **one negative consequence** would occur: the loss of α 's life, but no מצוה will be transgressed. The reason for the “מאוי-דיספנסציה” is that a Jewish life (נפש ישראל) is dearer to Hashem than His מצוה and thus, He prefers to forego His מצוה in favor of preserving a נפש ישראל. However, here, since a life (β) will be lost in end, why should Hashem be willing to forego his מצוה (i.e., why should He allow α to transgress לא תרצח)?

The מאי חזית logic in the “coerced murder” case, according to Rashi:

“תרתי-נגד-חדא” - two negative consequences vs. one negative consequence



“~~X~~”: Denotes the loss of a Jewish life (נפש ישראל) or a violation of a מצוה.

“~~✓~~”: Denotes the fulfillment of a מצוה.

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2. Concept of Pursuer - The דין רודף (Source 5):

Definitions:

רודף - Pursuer: Person who endangers the life of a prospective victim.

נרדף - Pursued person: The prospective victim, whose life is endangered by the רודף.

- A. A pursuer who attempts to kill a prospective victim is called a רודף. The Torah authorizes the נרדף or anyone else to preemptively take the רודף's life to save the נרדף. This is called the דין רודף.

Source 5: Mishna - Sanhedrin 73a: The דין רודף: Saving the intended victim by killing the pursuer.

These are to be saved at the cost of their (attackers') lives: One pursuing his fellow man to kill him ...	סנהדרין דף עג, עמוד א: ואלו הן שִׁמְצִילִין אוֹתָן בְּנִפְשׁוֹן הָרֹדֵף אֶתֶר תְּבִירוֹ לְקַרְגּוֹ ...
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- B. For the purposes of this discussion, we will divide pursuers (רודפים) into two categories:
- i. Intentional רודף: This category refers to the classic pursuer who intends to kill or endanger another person. This category may perhaps be expanded to a situation where a person displays blatant disregard for another's life by engaging in an activity with the awareness that it may result in a loss of life even if his goal is not to bring about someone's death.
 - ii. Unintentional רודף: This category refers to a pursuer who has no intention to endanger anyone, but nonetheless unwittingly poses a threat to another's life. This type of pursuer may be a passive participant in a process that leads to endangerment of another person, without knowledge nor intent of any potential harmful consequences.
- C. There are two approaches, as to whether the דין רודף applies only to (permit killing) intentional pursuers or to both intentional and unintentional pursuers.
- i. Intentional pursuit only: According to the *Dina Dechayei* (authored by Rav Chaim Benveniste, Reference 4) and the *Minchat Chinuch* (authored by Rav Yosef Babad, Source 8, p. 8), the דין רודף only applies to cases of intentional pursuit.
 - ii. Intentional and unintentional pursuit: According to the *Chazon Ish* (authored by Rav Avrohom Yeshaya Karelitz, Reference 5; see pp. 57-58) and Rav Moshe (Source 15, p. 17), the דין רודף applies to cases of both intentional and unintentional pursuit.
- D. According to the position that the דין רודף applies even to unintentional pursuit, in cases of MFP where there is a high risk of total fetal/neonatal death, perhaps it would be permitted to reduce one or more of fetuses based on the premise that they pursue after the other fetuses. This will be discussed further below (see VIII, 2-7, pp. 27-30).

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III. The “obstructed labor” situation: When can the mother be saved at the expense of the fetus’ life?

1. Mishna, Tractate Oholot (Source 6): ‘non-emerged fetus’ vs. ‘partially-emerged fetus’

This Mishna discusses the case of a woman in mortal danger during obstructed labor. The only way to save her life would be to dismember and remove the fetus. Before the fetus’ head has emerged (henceforth described as the ‘non-emerged fetus’), the fetus should be cut out (i.e., killed) to save his mother’s life. The Mishna’s reason to permit sacrificing the fetus is “because her life takes precedence over his life”. However, after the emergence of fetus’ head (henceforth described as the ‘partially emerged fetus’), we must allow the childbirth to proceed although the mother will die, because of the principle of אין דוחין, i.e., we may not push aside the fetus’ life to save his mother.

Source 6: Mishna - Oholot 7:6: “Obstructed labor” situation:

Source for the permissibility to save the mother at the expense of the unborn fetus.

<p>A woman who is having difficulty giving birth (and her life is endangered), we cut the fetus within the womb and remove him limb-by-limb, because her life has precedence over his life. However, if his (i.e., the fetus’) *head has emerged, we may not touch (i.e., kill) him, because we may not push aside one life on account of another life.</p> <p><small>*According to the text in Talmud Bavli - Sanhedrin 72b</small></p>	<p>אהלות פרק ז, משנה ו: האשה שהיא מקשה לילד, מסתכין את הנולד במעיה ומוציאין אותו אברים אברים מפני שמינה קודמין לחייו. יצא *ראשו, אין נוגעין בו לפי שאין דוחין נפש מפני נפש.</p>
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Table 1: Summary of the “obstructed labor” situation. Whose life is spared: the mother or the fetus?

Case	Description	What is the Halacha?	Whose life is spared?	Reason stated in the Mishna
<i>‘non-emerged fetus’</i>	Fetus is still totally <i>in utero</i>	Cut out the fetus	Mother	The mother’s life has precedence over the fetus’ life
<i>‘partially-emerged fetus’</i>	Fetus’ head has emerged during birth process	Remain passive	Fetus	We may not push aside one life to save another life

2. Gemara (Talmud Bavli) - Sanhedrin 72b (Source 7):

In this Gemara, רב הונא states that a child pursuer may be killed to save his prospective victim. רב הונא posed the following challenge to רב הונא from the above Mishna in Oholot: Since the Mishna rules that we may not kill the ‘partially emerged fetus’ to save his mother even though he is the cause of her endangerment, it is apparent that the דין רודף is not applied to kill a child pursuer? The Gemara answers, “שאני התם דמשמיה קא רדפי לה” – “That (obstructed labor) case is different because she is being pursued by Heaven.” Two explanations of the Gemara’s answer are presented:

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- A. The *Minchat Chinuch* (Source 8), who believes the דין רודף does not apply in cases of unintentional pursuit, understands the phrase, “משמיא קא רדפי לה” - *she is pursued by Heaven* - to mean that, in fact, the ‘*partially emerged fetus*’ is not considered a רודף because physiology (childbirth), rather than volition, has endangered his mother’s life (per Rabbi Dr. Zalman Levine, Reference 6). Accordingly, the Gemara answers the above question on רב הונא by differentiating between the child pursuer and the ‘*partially emerged fetus*’, i.e., the דין רודף applies to the former case because the child pursuer intends to kill his prospective victim but not to the latter case because the emerging fetus lacks volition.
- B. The explanation of the Gemara’s answer, according to Rav Moshe Feinstein, will be discussed below (VI, 4-6, pp. 14-17).

Source 7: Talmud Bavli - Sanhedrin 72b: Does the דין רודף apply to a child pursuer?

Source of the לה רדפי קא משמיא concept.

<p>רב הונא said, If a child pursues his fellow, (the fellow) may be saved at the cost of the child’s life רב חסדא posed a question to רב הונא [from a Mishnah]: “<i>If his (the fetus)’ head has emerged we may not touch him for we may not push aside one life on account of another person’s life.</i>” But why not kill the fetus – he is a רודף (pursuer)? [The Gemara answers]: That [obstructed labor case] is different because she (i.e., the mother) is being pursued by Heaven.</p>	<p><u>תלמוד בבלי סנהדרין דף עב. עמוד ב:</u> אמר רב הונא קטן הרודף ניתן להצילו בנפשו. איתיביה רב חסדא לרב הונא יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש. ואמאי רודף הוא ? שאני התם דמשמיא קא רדפי לה.</p>
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Source 8: *Minchat Chinuch*, Mitzvah 296: The דין רודף does not apply to unintentional pursuit.

(See Supplement 1, Source 3, p. 52, for a more extensive excerpt from the *Minchat Chinuch*).

<p>The Gemara in Sanhedrin states that a child pursuer may be killed to save his prospective victim. The Gemara asked from the Mishna in Oholot, “... <i>If his head has emerged, we may not touch him because we may not push aside one life on account of another life. But - why not kill the fetus – he is a רודף?</i>” The Gemara answered, “<i>that [obstructed labor case] is different because she is being pursued from Heaven.</i>” Hence, the fetus is not a רודף and it is forbidden to save one life by taking another life since [the transgression of] murder is not pushed aside [to save a life].</p>	<p><u>מנחת חינוך, מצוה רצו:</u> דהנה מבואר בסנהדרין שם דאף קטן הרודף ניתן להצילו בנפשו. ומקשה הש”ס ממשנה דאהלות ... יצא ראשו, אין נוגעין בו מפני שאין דוחין נפש מפני נפש. ואמאי הא הוי ליה רודף ? ומשני הש”ס שאני התם דמשמיא קא רדפי לה, ואם כן לא הוי רודף ואסור להציל נפש עם נפש אחר כי שפיכת דמים אינו נדחה.</p>
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IV. The “fugitive” situation: When can the townspeople save themselves at the expense of the fugitive’s life?

Defintions:

Fugitive:	Refers to the individual hiding in the city that the hooligans wish to kill. The hooligans order the townspeople to hand the fugitive over to them.
Townspeople:	Refers to the remainder of the people in the city who are ordered by the hooligans to either hand over the fugitive or else they will all be killed.
מסירה:	Refers to the act of handing over a Jew to the gentiles.

- The Tosefta in Terumot (Source 9) discusses a case in which a group of people (i.e., ‘townspeople’) are surrounded by hooligans who demand they hand over an individual (i.e., a ‘fugitive’) to be killed or else they will all be killed. The Tosefta and the Yerushalmi - Terumot (Source 10) distinguish between a case where the hooligans designate (i.e., single out) a specific victim to be delivered to them versus a case where they simply demand that the townspeople hand over any person to them. If the hooligans do not designate a specific victim, it is forbidden for the townspeople to hand over anyone even though everyone will then be killed. However, if the hooligans designate a specific victim to be handed over, under specified conditions, the townspeople may hand him over to save themselves. The paradigm presented by the Tosefta is the episode of **ב.ב.ש** in Shmuel II, Ch. 20. After **ב.ב.ש**, a fugitive from justice for leading a revolt against **דוד המלך**, took refuge in the city Avel, the townspeople delivered him to **יואב**’s sieging army, thereby saving the lives of all the townspeople who otherwise would have been killed when the army invaded the city. Clearly, **ב.ב.ש** was a designated fugitive (and was liable to the death penalty for rebelling) as **יואב** stated, (ibid, verse 21) “*ב.ב.ש has lifted his hand against the king, against David; give us him alone and I will depart from the city.*”

Source 9: Tosefta Terumot 7:20: “Fugitive” situation (Explanation is based on the Eitz Yosef on Bereishis Rabbah, 94).

(See Supplement 1, Source 4, p. 53, for a more extensive explanation) :תוספתא מסכת תרומות פרק ז הלכה כ’:

If a group of people [were accosted by] gentiles who said to them, “Give us one of you and we will kill him; and if not, we will kill all of you,” [the ruling is]: Let them all be killed, and they may not give over one Jewish life to them.	סיעה של בני אדם שאמרו להם גוים תנו לנו אחד מכם ונהרגהו ואם לאו הרי אנו הורגין את כולכם יהרגו כולן ואל ימסרו להן נפש אחת מישראל.
But if the gentiles designated someone (i.e., a ‘fugitive’) in the manner that they designated ב.ב.ש , they should hand him over rather than all being put to death.	אבל אם ייחדוהו להם כגון שייחדו לשבע בן בכרי, יתנו להן ואל יהרגו כולן.
רבי יהודה said, when does this apply (i.e., they may not hand him over)? Only if the fugitive is in the exterior [and he can escape] while the townspeople are in the interior [and are unable to escape]. However, if all of them are in the interior since [no one can escape and consequently] they will all be killed, they should hand him over to them rather than all being put to death.	אמר רבי יהודה במה דברים אמורים בזמן שהוא מבחוץ והן מבפנים. אבל בזמן שהוא מבפנים והן מבפנים הואיל והוא נהרג והן נהרגין, יתנוהו להן ואל יהרגו כולן.

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<p>As it states, <i>“And the woman approached all the people with her wisdom”</i> (Shmuel II, Ch. 20, v. 22). She said to them, <i>“Since he will be killed and you will be killed, give him over to them so that all of you will not be killed.”</i></p>	<p>וכן הוא אומר ותבא האשה אל כל העם בחכמתה. אמרה להן הואיל והוא נהרג ואתם נהרגין תנוהו להם ואל תהרגו כולכם.</p>
<p>רבי שמעון said, so she said to them, <i>“Anyone who rebels against the kingdom of David, is liable to execution.”</i></p>	<p>רבי שמעון אומר כך אמרה להם כל המורד במלכות בית דוד חייב מיתה.</p>

2. Yet, the hooligans’ designation of a specific victim (in most cases) is not sufficient to permit handing the fugitive over. In the Tosefta (Source 9, third statement), רבי יהודה states that the second requirement for permitting handover (מסירה) is that the fugitive must be unable to escape (*‘fugitive without escape capability’*) even if they do not hand him over. However, if the fugitive can escape (*‘fugitive with escape capability’*), it is forbidden to hand him over even though he was designated by the hooligans.
3. The permissibility of מסירה is subject to further dispute between רבי יוחנן and רבי לקיש (ריש לקיש) in the Talmud Yerushalmi (Source 10). רבי יוחנן maintains that the designated fugitive must be liable to the death penalty (חייב מיתה) in order to permit handing him over, whereas רבי יוחנן believes that even if the fugitive was not liable to the death penalty, it is permitted to hand him over. Refer to Appendix A (pp. 35-41) for an explanation of the positions of רבי יוחנן and ריש לקיש.

Source 10: Talmud Yerushalmi, Terumot 8:4: Fugitive situation: Dispute between רבי יוחנן and ריש לקיש.

<p>We learned: If groups of people, who were traveling on the road, were accosted by gentiles who said, <i>“Give us one of you and we will kill him; and if not, we will kill all of you,”</i> [the ruling is]: Even if all of them will be put to death, they should not hand over [even] one person of Israel. But if the gentiles designated someone (i.e., a <i>‘fugitive’</i>), as in the ב.ב.ש episode, they should hand him over and not get killed. רבי שמעון בן לקיש said, This is providing he is liable to the death penalty like ב.ב.ש was. But רבי יוחנן said, This applies even if he is not liable to the death penalty like ב.ב.ש.</p>	<p><u>תלמוד ירושלמי תרומות פרק ח, הלכה ד’:</u> תני סיעות בני אדם שהיו מהלכין בדרך, פגעו להן גוים ואמרו תנו לנו אחד מכם ונהרוג אותו ואם לאו הרי אנו הורגים את כולכם: אפילו כולן נהרגים לא ימסרו נפש אחת מישראל. ייחדו להן אחד כגון שבע בן בכרי ימסרו אותו ואל ייהרגו. אמר רבי שמעון בן לקיש והוא שיהא חייב מיתה כשבע בן בכרי. ורבי יוחנן אמר אף על פי שאינו חייב מיתה כשבע בן בכרי.</p>
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V. Reason for the difference within the two obstructed labor and the two fugitive situations (Approach 1):

1. Obstructed labor situation: What is the reason that the mother's life is prioritized only over the life of the 'non-emerged fetus', but not over the life of the 'partially-emerged fetus'? The *Sefer Meirat Einayim* (סמ"ע; Source 11b) and the *Minchat Chinuch* (Supplement 1, Source 3, p.52) take the approach that the unborn ('non-emerged') fetus does not have the Halachic status of a living human being. These commentaries interpret Rashi's statement regarding a fetus, "as long as he has not emerged into the air of the world, he is not a נפש" (Source 11a), to mean that a fetus is not deemed a Halachic life. As such, feticide does not constitute נפישת דמים (murder) and therefore, the fetus' life may be pushed aside to save the mother, just as the imperative to save lives (פיקוח נפש) pushes aside all מצוות (other than murder, idolatry and illicit relations). However, once the fetus' head emerges, since he has the full Halachic status of a living being, killing him constitutes נפישת דמים and therefore, we must remain passive so as not to push aside one life on account of another life.

Source 11a-b: Rashi in Sanhedrin (11a) and the *Sefer Meirat Einayim* (סמ"ע) on Shulchan Aruch (11b):
Status of the 'non-emerged fetus' (See Supplement 1, Source 2, p. 51, for full text of Rashi):

<p>Source 11a:</p> <p>This is referring to a woman who is having difficulty giving birth and her life is endangered. The first section of the Mishna states that the midwife extends her hand, cuts him and removes him limb-by-limb. As long as he (i.e., the fetus) has not emerged into the air of the world, he is not a נפש (i.e., a life) and it is permitted to kill him to save his mother.</p>	<p><u>רש"י סנהדרין דף עב: ד"ה יצא ראשו:</u> באשה המקשה לילד ומסוכנת. וקתני רישא החיה פושטת ידה וחותרתו ומוציאתו לאברים דכל זמן שלא יצא לאויר העולם לאו נפש הוא וניתן להורגו ולהציל את אמו.</p>
<p>Source 11b:</p> <p>Nonetheless, while he is still <i>in utero</i>, it is permitted to dismember him even though he is alive because there is no name (i.e., status) of a נפש on him before he emerges into the air of the world. The proof is from the fact that one who strikes a pregnant woman aborting her pregnancy, must pay restitution for the fetuses, but there is no name of a murderer or death penalty upon him.</p>	<p><u>סמ"ע על שלחן ערוך חושן משפט סי' תכה ס"ק ח':</u> ואף על פי כן, בעודו במעיה מותר לחתכו אף על פי שהוא חי, שכל שלא יצא לאויר העולם אין שם נפש עליו, והא ראייה דהנוגף אשה הרה ויצאו ילדיה ומתו משלם דמי הולדות ואין שם רוצח ומיתה עליו.</p>

2. Fugitive situation: Why is it prohibited to hand over a 'fugitive with escape capability' while it is permitted to hand over a 'fugitive without escape capability'? The *Chasdei Dovid* (authored by Rav Dovid Pardo, Source 12) explains this distinction based on the logic of מאי הזית. If the fugitive has the capability to escape, the townspeople have two theoretical options: (1) they could either allow the fugitive to escape and they will all be killed, or (2) they could save themselves by handing over fugitive to be killed. This is the standard מאי הזית dilemma, i.e., *Why do you presume that the townspeople's blood is redder than the fugitive's blood?* Accordingly, the townspeople must remain passive and allow

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the fugitive to escape. However, if the fugitive has no capability to escape, the מאי חזית logic does not apply since he cannot be saved even if the townspeople do not hand him over. Since the entire basis for the Halacha of יהרג ואל יעבור by שפיכת דמים is the מאי חזית logic, when the מאי חזית logic does not apply, i.e., if he is unable to escape, it is permitted to hand him over (See Supplement 2, p.46, paragraph 6a-b, for further explanation of the basis to permit מסירה).

Source 12: *Chasdei Dovid* on the Tosefta (Source 9): Basis for differentiating between the ‘fugitive with escape capability’ and the ‘fugitive without escape capability’: The מאי חזית logic.

(See Supplement 1, Source 5, p. 54, for a more extensive excerpt from the *Chasdei Dovid*).

<p>When is it forbidden to hand over even a singled-out fugitive? ... [if the fugitive is in a location where] if the townspeople do not hand him over, they will be killed and he will escape. In such cases, even if the hooligans designated him, it is forbidden to hand him over because of the reason of מאי חזית (<i>Why do you presume that the townspeople’s blood is redder than the fugitive’s blood?</i>).</p> <p>However, if everyone is in equal danger, i.e., they all are located in the inner sector ... such that if the hooligans would come, they would kill the fugitive along with the townspeople – then, if the hooligans designated him, it is permitted [to hand him over] ... because the מאי חזית logic does not apply when they all are in an equal state of danger.</p>	<p><u>חסדי דוד על תוספתא תרומות :</u> במה דברים אמורים שאסור על כל פנים למוסרו ? ... שאם לא ימסרו אותו, הן נהרגים והוא נמלט, אז אפילו יחזוהו להם אסור מטעמא דמאי חזית דדמא דידך סומק טפי דילמא דמא דהוא גברא סומק טפי כדאמרינן בעלמא ... אבל אם כולם שוין בסכנה כגון שכולם מבפנים ... שאם יבאו עכו"ם הורגים אותו ואותם, אז אם יחזוהו הוא דשרי ... דהא לא שייך טעמא דמאי חזית וכו' כשכולם שוין בסכנה.</p>
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- A. This explanation fits well with the opinion of the *Minchat Chinuch* that מסירה is called “אביזרא דשפיכת דמים” - i.e., an “ancillary form” of murder. Accordingly, just as the ruling of יהרג ואל יעבור by שפיכת דמים is based on the מאי חזית logic, the ruling of מסירה is also based on the מאי חזית logic. Therefore, since the מאי חזית logic is inapplicable when the fugitive cannot escape, it is permitted to hand him over.
- B. On a deeper level, the *Chasdei Dovid’s* understanding can be explained as follows: Perhaps the Halacha of יהרג ואל יעבור only dictates that one must remain passive (i.e., in the “coerced murder” case) when only one of the two parties will be killed and the only question is which of the two shall be killed. Since we don’t know whose life is more valuable, the מאי חזית logic dictates that we must remain passive rather than arbitrarily choosing one party to be killed. However, since the ‘fugitive without escape capability’ will be killed regardless of which option the townspeople choose, there is no reason to remain passive since we are not choosing any person for death. The only choice is whether to have all the townspeople killed along with the fugitive or to spare them, for which we may argue that מאי חזית does not pertain.

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Table 2: Summary of Approach # 1 to explain the different rulings in the obstructed labor and fugitive situations:

Based on the position that an unintentional pursuer does not have a status of a רודף¹⁻².

Type of Situation	Sub-category	Who will be saved, as a consequence of choosing the _____ option?		Is the active option a <i>de facto</i> selection? <i>who shall live vs. who shall die?</i>		Is the active option considered נפישת דמים (murder)?		Does the מאי הזית logic apply to forbid choosing the active option?		How does the Halacha decide?
		³ Active	Passive	Yes/No	Why	Yes/No	Why	Yes/No	Why?	<i>which option?</i>
Obstructed labor	<i>non-emerged fetus</i>	Mother	Fetus	Yes	By terminating the fetus, we are choosing that the mother, rather than the fetus, will live.	No	Since the fetus is not a 'נפש', feticide is not murder	No	מאי הזית only applies if the action is considered murder.	Active (Feticide)
	<i>partially-emerged fetus</i>	Mother	Fetus	Yes		Yes	The fetus now has a 'נפש' status	Yes		Passive
Fugitive	<i>with escape capability</i>	Townspeople	Fugitive	Yes	Fugitive will escape if we remain passive	Yes	מסירה is an ² "ancillary form" of murder	Yes	מאי הזית only applies if the action selects who shall live vs. who shall die ⁴ .	Passive
	<i>without escape capability</i>	Townspeople	No one	No	Fugitive will be killed even if we remain passive	Yes		No		Active (מסירה) ⁵

¹Dina Dechayai (see Supplement 1, Source 6c, pp. 54-55)

²Minchat Chinuch (Source 8, p. 8)

³The active option is as follows: In the 'obstructed labor' situation: feticide; in the 'fugitive' situation: מסירה (handing him over).

⁴Based on the Chasdei Dovid (Source 12, p. 12)

⁵ריש לקיש maintains that מסירה is only permitted if there is a death sentence against the 'fugitive without escape capability'.

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VI. Reason for the difference within the two obstructed labor and the two fugitive situations (Approach 2):

1. According to Rav Moshe Feinstein and the other Halachic authorities who maintain that the דין רודף applies even to an unintentional רודף, both the fetus and the fugitive have the status of a רודף since they (albeit unintentionally) pose a danger to the mother or the townspeople, respectively. Accordingly, the permissibility to kill the 'non-emerged fetus' or to hand over the 'fugitive without escape capability' is based on the דין רודף. Rav Moshe (Reference 7), as well as Rav Chaim Soloveitchik (Reference 8) and Rav Elazar Menachem Man Shach (Reference 10), derive this approach from the Rambam (Source 13) who states that it is permitted to kill the 'non-emerged fetus' because he is considered a רודף after his mother.

Source 13: The Rambam's view: The fetus is viewed as a רודף after the mother.

This is one of the negative commandments not to take pity on the life of a pursuer. On this basis, our Sages ruled regarding a woman who is having difficulty giving birth (and her life is endangered), that it is permitted to cut out the fetus *in utero*, either medicinally or manually, because the fetus is considered a pursuer after her to kill her. However, if [the fetus'] head has emerged, we may not touch (i.e., kill) him since we may not push aside one life on account of another life and this is the natural order of the world.

רמב"ם, פרק א' ה"א רוצח ושמירת הנפש, הל' ט':
הרי זו מצות לא תעשה שלא לחוס על נפש הרודף.
לפיכך הורו חכמים שהעובר שהיא מקשה לילד
מותר לחתוך העובר במיעיה בין בסם בין ביד מפני
שהוא כרודף אחריה להורגה. ואם משהוציא
ראשו, אין נוגעין בו שאין דוחין נפש מפני נפש
וזהו טבעו של עולם.

2. Rav Moshe deduces from the Rambam that a fetus is deemed a living being to the extent that feticide is included under the prohibition against murder (לא תרצח) unless the mother's life is threatened. If feticide was not included under the prohibition of לא תרצח, it would not be necessary to invoke the דין רודף to authorize saving the mother at the fetus' expense since all prohibitions (other than the three prohibitions mentioned above) are pushed aside for the sake of saving lives (פיקוח נפש).
3. However, according to this view, since intent is not needed to be considered a רודף, the 'partially-emerged fetus' should also be considered a רודף and therefore, should be killed to save his mother? What is the basis for the distinction in Halacha between the 'non-emerged fetus' and the 'partially emerged fetus'? Similarly, if the basis for handing over the fugitive is his status as a רודף, why is there a distinction between a fugitive who can escape and a fugitive who cannot escape? In both cases, he endangers the lives of the townspeople and should be handed over to save them?
4. To explain Rav Moshe's resolution of this dilemma, we must present his explanation of the phrase, "משמיא קא רדפי לה" - "she is being pursued by Heaven", which the Gemara (Source 7, p. 8) states is the reason the 'partially-emerged fetus' must not be harmed even to save his mother. According to Rav Moshe's explanation, the משמיא קא רדפי לה concept applies equally to the 'partially-emerged fetus' and 'fugitive with escape capability' cases. The following is the premise of his explanation:

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- A. The obstructed labor and fugitive situations are cases of “bidirectional pursuit”:
- i. In the obstructed labor situation, the mother and fetus mutually pursue each other;
 - ii. In the fugitive situation, the fugitive and townspeople mutually pursue each other.

Definition: “*Rodef-א*” = fetus or fugitive and “*Rodef-ב*” = mother or townspeople

Note: The terms “opposing רודפים” or “opposing parties” denote a confrontation between “*Rodef-א*” and “*Rodef-ב*”.

- B. In the obstructed labor and fugitive situations, Heaven has arranged that there would be an “inverse relationship” between the respective survivals of *Rodef-א* and *Rodef-ב* :
- i. If the passive option is chosen, *Rodef-א* will live and *Rodef-ב* will die;
 - ii. Conversely, if the active option is chosen, *Rodef-ב* will live and *Rodef-א* will die.
- C. The reason why the fetus is considered a רודף despite having no intention to pursue or harm his mother, is because his only path to survival is by allowing the birth to proceed, which will cause his mother’s death. Similarly, the fugitive is considered a רודף because his only path to survival is by escaping, which will lead to the death of the townspeople.
- D. One might ask, it is understandable that the fetus and fugitive are considered pursuers (רודפים) since their “arrival on the scene” threatens the lives of mother or townspeople, respectively. However, the mother and townspeople merely wish to defend themselves from the threat imposed on them. If so, how can they be defined as pursuers?
- E. Rav Moshe writes (Source 14) that the message of קא רדפי לה is: Despite the fact that the mother’s life was not endangered until after the “arrival” of the fetus, we do not view the fetus as a unilateral רודף. Rather, Heaven ordained the “arrival” of the fetus with the purpose that both he and his mother would live, and only after this, the situation of danger befell both equally. My limited understanding of Rav Moshe’s explanation is: Since Heaven designed the (obstructed labor or fugitive) situation with an inverse relationship between the respective survivals of *Rodef-א* and *Rodef-ב*, none of which intended to cause harm, therefore, neither party is considered a greater contributor or more responsible for this situation. Accordingly, the same logic that defines the fetus and fugitive as pursuers, also defines the mother and the townspeople as pursuers since their only path to survival is through the death of the fetus and fugitive, respectively.

Note: Rav Moshe’s understanding of Rashi’s statement regarding a fetus, “as long as he has not emerged ... he is not a רודף,” can be found in Supplement 2, pp. 66, and is explained in Appendix D, p. LVII.

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Source 14: Rav Moshe's explanation of the *מְשַׁמֵּיא קַא רַדְפֵי לֵה* concept in the '*partially emerged fetus*' case.

(See Supplement 2, pp. 80-82, for more extensive excerpts from the *Sefer Igros Moshe*).

<p>¹The Gemara's answer <i>לֵה קַא רַדְפֵי לֵה</i> comes to refute the contention that the '<i>partially-emerged fetus</i>', who came into existence after his mother, is considered a [unilateral] רודף after his mother since she was not in any danger prior to his arrival in her womb. [The Gemara's rebuttal is, <i>מְשַׁמֵּיא קַא רַדְפֵי לֵה</i>, i.e., on the contrary], it was Heavenly decreed when the fetus initially arrived here at the inception of her pregnancy, that he also should be here, (i.e., ²<i>his initial arrival was not to pursue, but rather, with the purpose that they would both live</i>). Thus, [it is viewed] as if the pursuit from Heaven befell both equally, whereupon it is only possible for one of them to live and therefore, it is not known who is killing whom.</p> <p>¹<i>This translation is partially in paraphrase form.</i></p> <p>²<i>Words in parentheses are from a subsequent section in the same responsum.</i></p>	<p>אגרות משה חושן משפט ח"ב, סימן ע"א: הא דמשני משמייא קא רדפי לה ... היינו שנותן הגמרא טעם על מה שלא נחשב הולד שבא באחרונה לרודף על האם, שהרי כשלא היה הולד במעיה לא היתה מסוכנת. דהוא משום דמשמייא בא שם הולד תחילה כשנתעברה היינו שגם הוא צריך להיות כאן, והוי כבא הרדיפה משמייא על תרויהו בשוה, דרך אחד מהם יוכל להיות שממילא לא ידוע מי הורג את מי.</p>
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- Thus, the questions in paragraphs 3 and 4D (pp. 14 and 15) can be answered by explaining that the *מְשַׁמֵּיא קַא רַדְפֵי לֵה* concept tells us that we view the obstructed labor or fugitive situations such that Heaven has arranged that *Rodef-א* and *Rodef-ב* are equal participants in an impasse in which each one's survival is dependent on the other's demise, thus rendering both of them equal pursuers after each other. Consequently, we cannot apply the *דין רודף* to kill the '*partially-emerged fetus*' or hand over the '*fugitive with escape capability*' because of the *מאי הזית* logic (*Why should you presume that Rodef-א pursues after Rodef-ב more than Rodef-ב pursues after Rodef-א ?*). See Source 15; also Figures 2-3, pp. 18-19, for schematic diagrams.
- Rav Moshe points out that the Gemara's answer, *מְשַׁמֵּיא קַא רַדְפֵי לֵה*, is identical (or, similar) to an answer in the Talmud Yerushalmi (Source 16). The Yerushalmi attempted to prove that the *דין רודף* does not apply to a child pursuer, from the prohibition to kill the '*partially-emerged fetus*' (stated in the Mishna in Oholot). The Yerushalmi then refuted this proof with the following statement, "שנייא היא תמן" - "That case (of the emerging fetus) is different because you do not know who is killing whom." Rav Moshe explains the meaning of the answer "שנייא היא תמן" is: "you do not know who pursues whom", i.e., the mother and the '*partially-emerged fetus*' equally pursue each other and therefore, the *דין רודף* cannot be applied because of the *מאי הזית* logic. The *Divrei Yissachar* (Reference 9) and Rav Shach (Reference 10) also understand that our Gemara's answer, *מְשַׁמֵּיא קַא רַדְפֵי לֵה*, aligns with the Yerushalmi's answer of "שנייא היא תמן".

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Note: The term “מאי חזית” described by Rav Moshe is identical to that discussed above in Section II-C, pp. 3-5.

However, to prevent confusion, we will refer to this term when used by Rav Moshe in the context of רודף (i.e., in the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases), as “מאי חזית”^{Rodef}.

Source 15: Rav Moshe’s explanation of the לה קא רדפי concept in the ‘partially emerged fetus’ and ‘fugitive with escape capability’ cases. (See Supplement 2, pp. 65-66; 68-70, for more extensive excerpts).

<p>We must explain that the reason [to permit handing over the fugitive] is that he is considered a רודף because the townspeople will be killed on account of him. [One may question] since the fugitive had no intention to pursue them, [the דין רודף should not apply] because of the לה קא רדפי reasoning [as in the case of] the ‘partially-emerged fetus’? We can answer that this [משמיא קא רדפי] reasoning is only effective [to protect the fugitive] if he could escape and hide. Since he has no intent to pursue, it is only Heaven Who arranged that it is impossible for both parties to survive, for if they spare the fugitive, the townspeople will die and if they spare themselves, the fugitive will die. This is analogous to the obstructed labor case after emergence of the fetus’ head, where he and his mother are considered [equal] pursuers after each other. Although the fetus is the cause [of his mother’s danger], since he has no intent [to harm], we cannot permit [killing him] on the basis of the דין רודף since [this is undermined by] the מאי חזית^{Rodef} logic – <i>Why do you presume that the fetus pursues after his mother more than she pursues after the fetus?</i></p>	<p><u>אגרות משה, יורה דעה ח"ב סימן ס', ענף ב':</u> ולכן מוכרחין לומר שהוא מטעם דהוי כרודף כיון שעל ידו יהרגו, ואף שאין כוונה לרודפם שאם כן הוא רק כמשמיא קא רדפי להו כמז שאמרו בסנהדרין שם לענין עובר שיצא ראשו, צריך לומר שמועיל טעם זה רק באם היה הוא ניצול כגון שיכול לברוח ולהתחבא, שהטעם הוא דמחמת שאין כוונתו לרדוף רק משמיא נזדמן כן שאי אפשר להו להתקיים שניהם דאם יצילו את זה ימות זה ואם יצילו את זה ימות זה, כעובדא דהמקשה לילד ויצא ראשו באהלות פ"ז מ"ו נחשבו כרודפים זה את זה, אף שהוא הסבה בזה כיון שהוא בלא כוונה, ולכן אי אפשר להתיר מטעם רודף דמאי חזית להחשיב את העובר יותר רודף את האם מכפי שהאם רודפת את העובר.</p>
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Source 16: Talmud Yerushalmi - Shabbat 14: 4: The דין רודף does not apply to the ‘partially emerged fetus’.

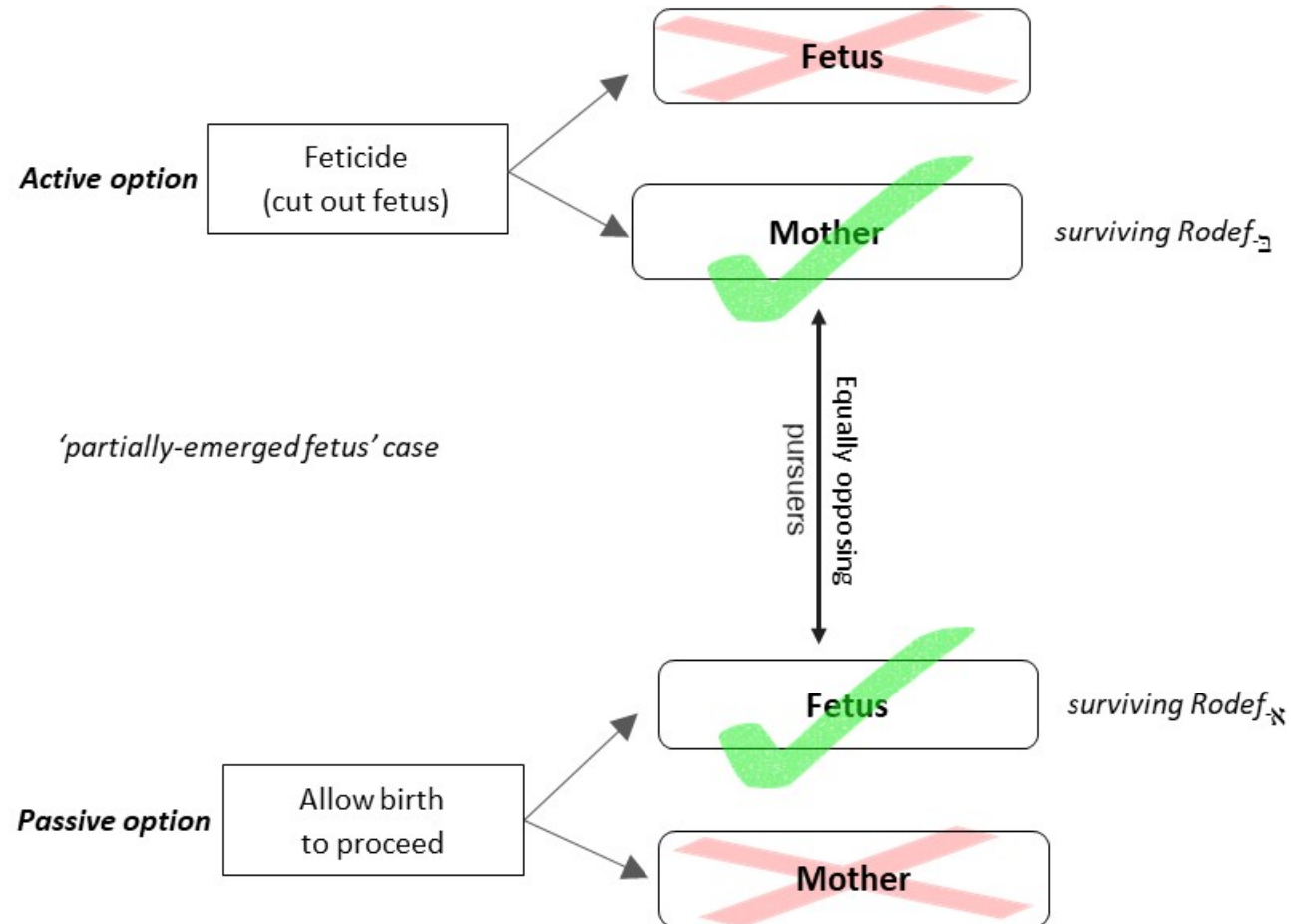
(See Supplement 1, Source 7b, p.55, for the commentary of the Pnei Moshe on the Yerushalmi).


<p>Rav Chisda asked, Can you save an adult [who is being pursued], by killing a child [pursuer]? Rav Yirmiya answered, Is this not addressed in the Mishnah (in Oholot), “If *most [of the fetus] has emerged, we may not touch him because we may not push aside one life on account of another life?” Rav Yosse son of Rav Bon, quoting Rav Chisda said, That case [of the emerging fetus] is different because you do not know who is killing whom.</p>	<p><u>תלמוד ירושלמי שבת פרק יד, הלכה ד:</u> רב חסדא בעי מהו להציל נפשו של גדול בנפשו של קטן? התיב רב ירמיה וקא מתני היא, יצא רובו אין נוגעין בו שאין דוחין נפש מפני נפש? רב יוסה בי רב בון בשם רב חסדא שנגייה היא תמן שאין את ידע מי הורג את מי.</p>
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*This text of the Mishna in Oholot differs from the version quoted in the Talmud Bavli (see Source 7, p. 8).

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Figure 2: The 'partially-emerged fetus' case, as explained by Rav Moshe: The respective survivals of the fetus and mother are "inversely related": If the active option is chosen (i.e., if the fetus is killed), the mother will live at expense of the fetus' life. If the passive option is chosen, the fetus will be born while his mother will die. Therefore, the fetus and his mother pursue each other equally and the *מאזי חזית*^{Rodef} logic determines that we may not apply the *דין רודף*.

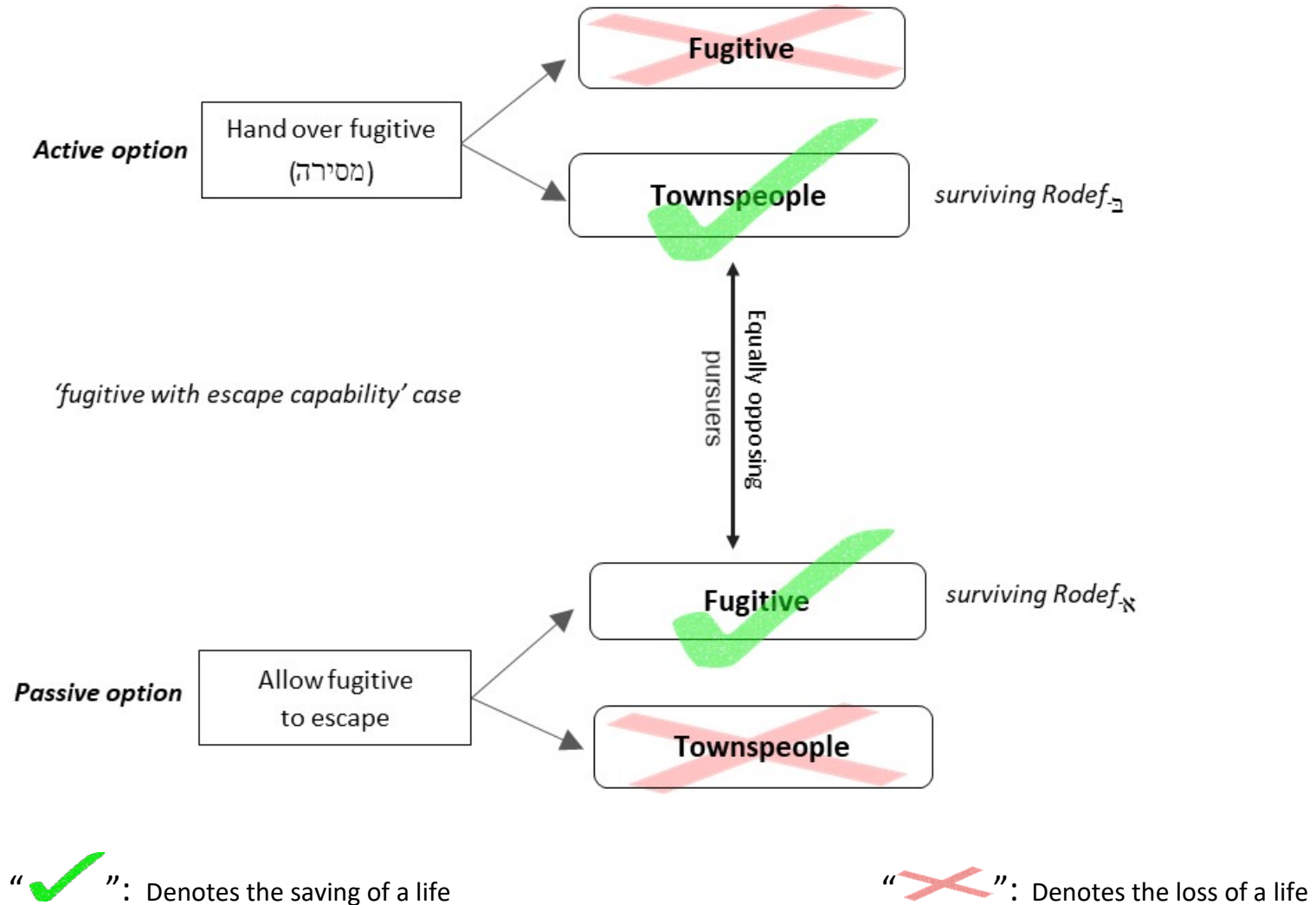


“”: Denotes the saving of a life

“”: Denotes the loss of a life

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Figure 3: The 'fugitive with escape capability' case, as explained by Rav Moshe: The respective survivals of the fugitive and townspeople are "inversely related": If the active option is chosen (i.e., if the fugitive is handed over), the townspeople will live at the expense of fugitive's life. If the passive option is chosen, the fugitive will escape and live while the townspeople will be killed. Therefore, the fugitive and the townspeople pursue each other equally and the *מאי הזית* *Rodef* logic determines that we may not apply the *דין רודף*.



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7. However, this “flips” our original question (in paragraph 3, p. 14) “on its head”. By his own definition of *משמיה קא רדפי לה*, how can Rav Moshe explain the permissibility to kill the ‘*non-emerged fetus*’ or to hand over the ‘*fugitive without escape capability*’ based on the *דין רודף*? Since all the obstructed labor and fugitive situations involve bidirectional *רדיפה*, we always have a *מאזי הזית* dilemma and therefore, the *דין רודף* should not apply?
8. Rav Moshe explains that in the ‘*non-emerged fetus*’ and ‘*fugitive without escape capability*’ cases, *Rodef-א* has a lower “level” of life than *Rodef-ב*. In the ‘*non-emerged fetus*’ case, the fetus has an “incomplete *נפש*” status whereas the mother has a “complete *נפש*” status. Similarly, in the ‘*fugitive without escape capability*’ case, the fugitive only has transient life (*חיי שעה*), i.e., short stay of execution until the hooligans invade the city and kill everyone if the townspeople do not hand him over), while the townspeople have the potential for normal life expectancy (*חיי עולם*) if they hand him over. Therefore, we say that there is a “differential” (abbreviated with the symbol “ Δ ”) between the respective “life-levels” of *Rodef-א* and *Rodef-ב*. Only *Rodef-א* pursues after this Δ and therefore, with respect to this Δ , only *Rodef-א* is a *רודף*. Since they are **not** equal pursuers (with respect to the Δ), *Rodef-א* is assigned the “definitive *רודף*” status and thus, there is no *מאזי הזית* dilemma. Accordingly, the *דין רודף* will be applied to permit sacrificing the ‘*non-emerged fetus*’ or ‘*fugitive without escape capability*’ to save the mother or townspeople, respectively

Note: See Table 3, p. 21 and Figure 4, p. 22, for depiction of the “differential” (Δ) concept.

Note: The expression “definitive *רודף*” status, in reference to *Rodef-א* (the fetus or fugitive), is not intended to suggest that *Rodef-א* is considered more responsible (or a greater contributor) than *Rodef-ב* for the perilous situation they are in. It is merely a convention that was created to refer to Rav Moshe’s explanation that *Rodef-א* alone pursues a “differential” between their “life levels”.

- A. In the case of ‘*non-emerged fetus*’, only the fetus pursues after the Δ -*נפש* between the complete *נפש* of the mother and his own incomplete *נפש*. Therefore, the fetus has the “definitive *רודף*” status and the *דין רודף* will permit killing him to save his mother. However, after the emergence of his head, since both the mother and the fetus have a complete *נפש*, there is no Δ -*נפש* between them. Therefore, they are equal *רודפים* and the *דין רודף* cannot be applied because of the *מאזי הזית* logic (Source 17).
- B. Similarly, in the case of the ‘*fugitive without escape capability*’, only the fugitive pursues after the *life expectancy*- Δ between the townspeople’s *חיי עולם* (normal life expectancy) and his own *חיי שעה* (transient life). Therefore, the fugitive has the “definitive *רודף*” status and the *דין רודף* will permit handing him over to save the townspeople (see Figure 5, p. 23, for a

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schematic diagram of the *'fugitive without escape capability'* case). However, if he can escape, since both the fugitive and the townspeople have potential for Δ *חיי עולם*, there is no *life expectancy- Δ* between them. Therefore, they are equal *רודפים* and the *דין רודף* cannot be applied because of the *מאי חזית* *Rodef* logic (Source 18).

Source 17: Rav Moshe's explanation why the *דין רודף* applies to the *'non-emerged fetus'* (See Supplement 2, pp. 65-66, 70-71):

<p>However, [the <i>'non-emerged'</i>] fetus does not yet have a complete <i>נפש</i>, as we deduce from the fact that one does not incur capital liability (for killing an unborn fetus). Therefore, regarding the advantage (i.e., the <i>נפש-Δ</i>) that the mother has over the fetus – that she is a complete <i>נפש</i> while he is not yet a complete <i>נפש</i> – only the fetus is a <i>רודף</i> and his mother is not a <i>רודפת</i> (pursuer). Therefore, the <i>דין רודף</i> applies to the fetus because of the advantage that the mother has over him.</p>	<p><u>אגרות משה, יורה דעה ח"ב, סימן ס', ענף ב':</u> אבל בעובר שעדיין אינו נפש גמור כדחזינו שאין נהרגין עליו, ונמצא שעל היתרון של האם מהעובר שהיא נפש גמור והוא אינו עדיין נפש גמור, הוי רק העובר רודף והאם אינה רודפת. לכן יש להעובר דין רודף מחמת היתרון זה שיש להאם עליו.</p>
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Source 18: Rav Moshe's explanation why the *דין רודף* applies to the *'fugitive without escape capability'* (See Supplement 2, pp. 67, 69):

<p>However, if it is evident that everyone will die [including the fugitive, if they remain passive] ... the townspeople only pursue after the fugitive's <i>שעה חיי</i> (transient life) while he pursues after all their life (<i>חיי עולם</i> - normal life expectancy). Thus, regarding the essential life – which is the advantage (i.e., the <i>life expectancy-Δ</i>) that the townspeople have over the fugitive's <i>שעה חיי</i> – the fugitive pursues after them while they do not pursue after him at all. Thus, the <i>דין רודף</i> applies to the fugitive despite his lack of intent to harm, since he nevertheless is the cause [of their impending danger].</p>	<p><u>אגרות משה, יורה דעה ח"ב, סימן ס', ענף ב':</u> אבל באם ברור שימותו כולם ... נמצא שהם רודפים אותו רק על חיי שעה והוא רודף אותם בכל חייהם. הרי נמצא שעל עיקר החיים שהוא היתרון מחיי שעה, הוא רודף אותם והם אינם רודפים אותו כלל, יש לו דין רודף אף שהוא שלא בכוונה כיון שעל כל פנים הוא הסבה.</p>
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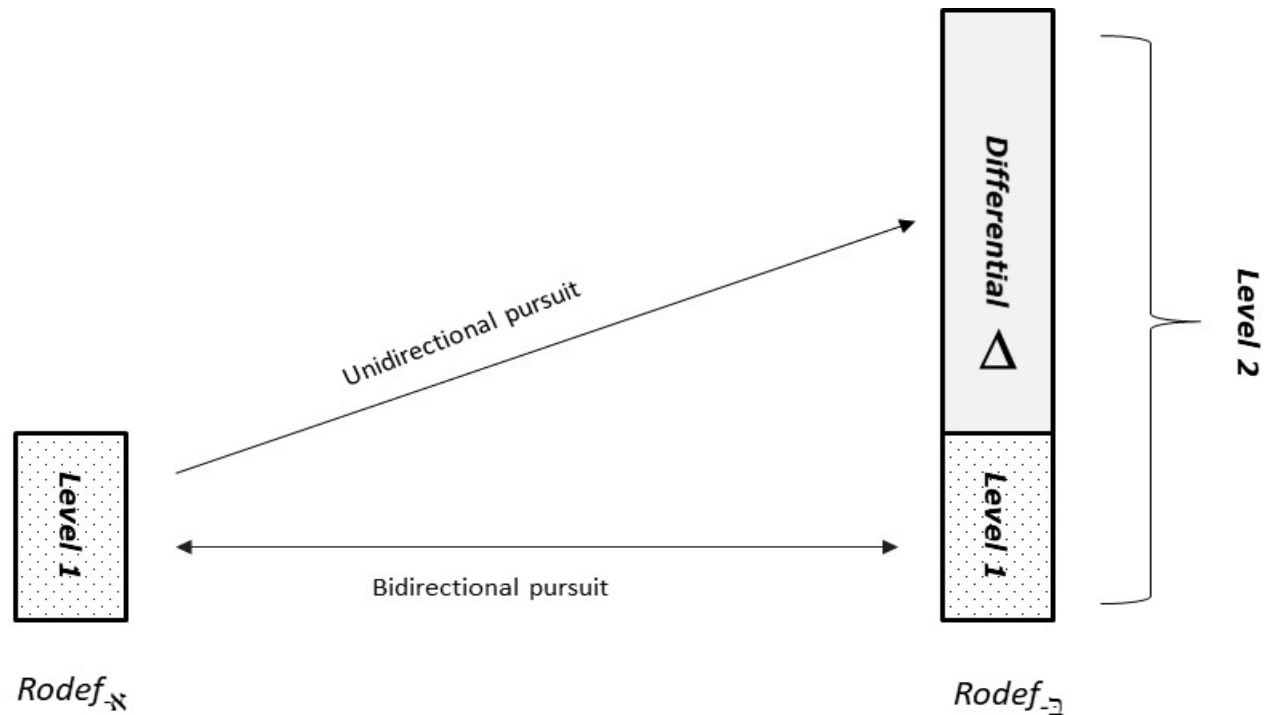
Table 3: Description of “differentials” between the participant’s respective “levels” of life in the *'non-emerged fetus'* and *'fugitive without escape capability'* cases

Case	Participant	“Level” of life	Type of “differential”	Abbreviation for “differential”
<i>'non-emerged fetus'</i>	Fetus	incomplete <i>נפש</i>	<i>nפש-differential</i>	<i>נפש-Δ</i>
	Mother	complete <i>נפש</i>		
<i>'fugitive without escape capability'</i>	Fugitive	<i>חיי שעה</i>	<i>life expectancy-differential</i>	<i>life expectancy-Δ</i>
	Townspeople	<i>חיי עולם</i>		

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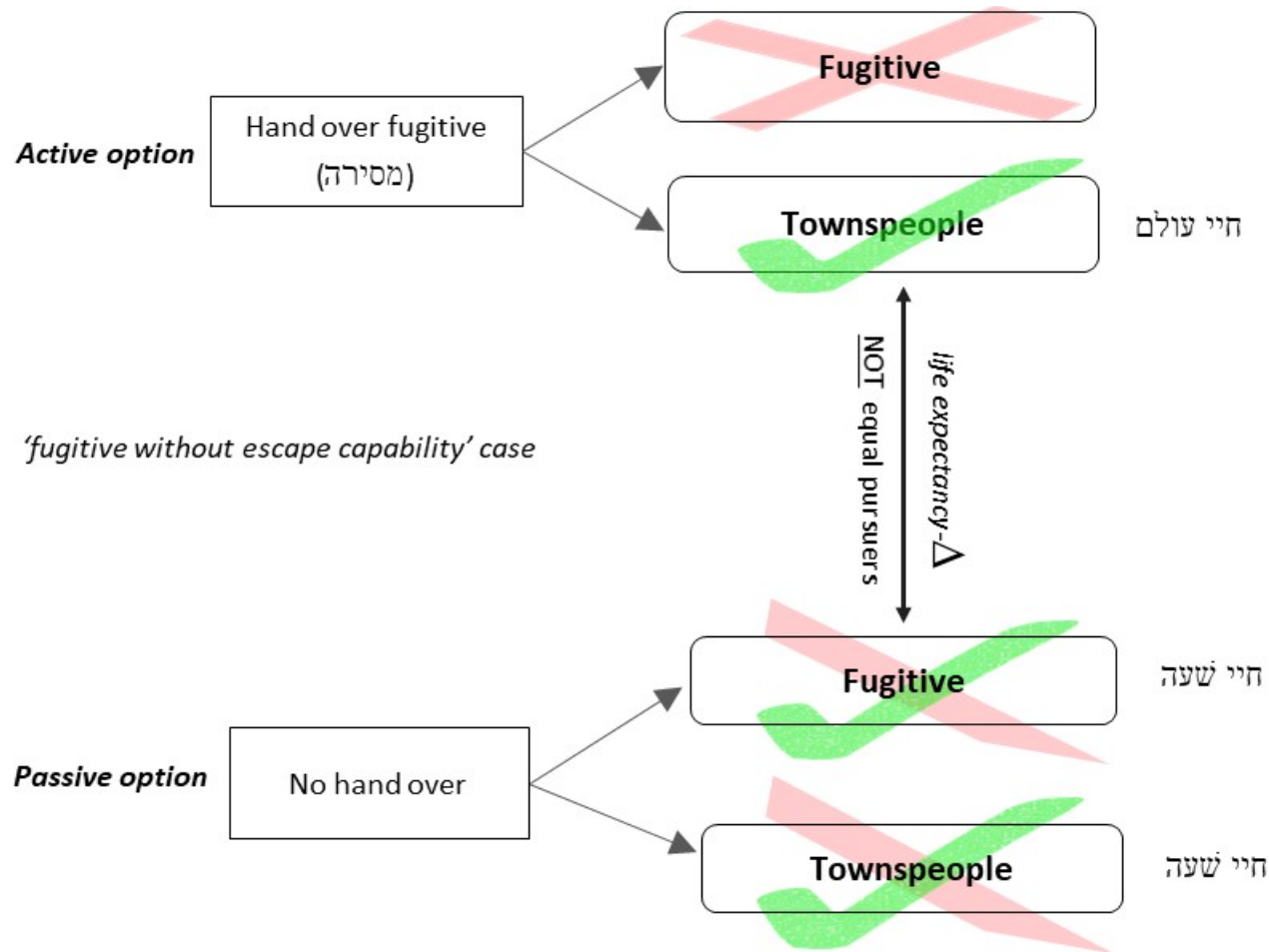
Figure 4: The “differential” (Δ) in the ‘non-emerged fetus’ and ‘fugitive without escape capability’ cases: The term “level” refers to “life-level”, either the “נפש-level” or the “life expectancy-level”. *Rodef-ב*’s “Level 2” is higher than, and is inclusive of, *Rodef-א*’s “Level 1”. The Δ refers to the “differential” between “Level 1” and “Level 2”. Accordingly, only *Rodef-א* pursues after the Δ and therefore, he has the “definitive רודף” status.

Case	<i>Rodef-א</i>		<i>Rodef-ב</i>	
	Name	“Level 1”	Name	“Level 2”
‘non-emerged fetus’	Fetus	incomplete נפש	Mother	complete נפש
‘fugitive without escape capability’	Fugitive	חיי נשעה transient life	Townsperson	חיי עולם normal life expectancy



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Figure 5: The *'fugitive without escape capability' case*: If the active option is chosen (i.e., if the fugitive is handed over), the townspeople will live at the expense of the fugitive's life. If the passive option is chosen, both the fugitive and townspeople will only have חיי שעה (temporary life extension). Since there is a *life expectancy- Δ* between them, they do not pursue each other equally and there is no *גמאי חזית* RoDef dilemma.



“✓” : Denotes the saving of a life

“✗” : Denotes the loss of a life

“✓✗” : Denotes the temporary extension of life

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Table 4: Summary of Approach # 2, (approach of Rav Moshe), to explain the different rulings in the obstructed labor and fugitive situations:
Based on the position that an unintentional pursuer has a status of a רודף.

Type of Situation	Sub-category	Who will be saved, as a consequence of choosing the _____ option?		Does ² Rodef-א pursue a ³ Δ between the "life-levels" of Rodef-א and Rodef-ב ?		⁴ Does משמיה קא רדפי לה apply?	Who is assigned "definitive-רודף" status?	How does the Halacha decide? which option?
		¹ Active	Passive	Yes/No	Explanation			
Obstructed labor	<i>non-emerged fetus</i>	Mother's complete נפש	Fetus' incomplete נפש	Yes	The fetus pursues the ³ Δ between the mother's complete נפש and his own incomplete נפש.	No	Fetus	Active (Feticide)
	<i>partially-emerged fetus</i>	Mother's complete נפש	Fetus' complete נפש	No	The fetus and mother equally pursue each other's complete נפש.	Yes	No one	Passive
Fugitive	<i>with escape capability</i>	⁵ TP's חיי עולם ⁶	Fugitive's חיי עולם ⁵	No	The fugitive and TP equally pursue each other's חיי עולם.	Yes	No one	Passive
	<i>without escape capability</i>	⁵ TP's חיי עולם ⁶	Fugitive's חיי שעה ⁷	Yes	The fugitive pursues the ³ Δ between the TP's חיי עולם and his own חיי שעה.	No	Fugitive	Active ⁸ (מסירה)

¹The active option is as follows: In the obstructed labor situation: feticide; in the fugitive situation: hand-over (מסירה).

²Rodef-א = fetus or fugitive; Rodef-ב = mother or townspeople; ³Δ = "differential", either a נפש-Δ or a life expectancy-Δ.

⁴For simplicity purposes, this can be regarded as synonymous with: "Is there a מאי חזית Rodef dilemma?".

⁵TP = Townspeople

⁶חיי עולם = Normal life expectancy; ⁷חיי שעה = Transient life (expectancy);

⁸מסירה maintains that מסירה is only permitted if the hooligans imposed a "death sentence" (they have a grievance) against the 'fugitive without escape capability'.

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VII. Application of *אין דוחין נפש מפני נפש* and the *דין רודף* to the multifetal pregnancy (MFP) situation:

1. The following discussion refers to a hypothetical sextuplet pregnancy (6 fetuses), in which:
 - A. There is a high probability of fatality for all fetuses either *in utero* or shortly after birth, if MPR is not performed. In this scenario, "*F_{reduce}*" = the 3 fetuses that the physician wishes to reduce, and "*F_{save}*" = the remaining 3 fetuses that the physician wishes to save.
 - B. All fetuses have the same potential to survive if other fetuses are reduced.
 - C. No fetus displays a gross abnormality or malformation (based on ultrasound imaging studies).
2. In light of the above discussions, several arguments can be made to either allow or prohibit MPR:
 - A. On one hand, perhaps the principle of *אין דוחין* would forbid performing MPR even though it would increase the survival probability of the remaining fetuses, since we would be forced to save some lives at the expense of others.
 - B. On the other hand, just as we are permitted to hand over the '*fugitive without escape capability*' where everyone would die if the townspeople remained passive, perhaps we should be permitted to reduce some of the fetuses to save the others if all fetuses are otherwise likely to perish (without MPR). We have looked at two different approaches for the permissibility to hand over the '*fugitive without escape capability*' (i.e., the permissibility for *מסירה*). The logic inherent in each of these approaches may also provide a basis to permit MPR.
 - i. Approach 1 - *Chasdei Dovid*: The permissibility for *מסירה* is based on the inapplicability of the *מאי הזית* logic. Since the fugitive will die whether or not the townspeople hand him over, the logic of *מאי הזית* does not apply.
 - ii. Approach 2 - Rav Moshe: The permissibility for *מסירה* is based on the *דין רודף* since the fugitive is considered a *רודף* after the townspeople.
 - C. Rabbi Dr. Zalman Levine (Reference 6) suggests that the *מאי הזית* logic may not apply in a MFP situation where there is a high risk of total fetal/neonatal death without reduction. Therefore, just as the inapplicability of the *מאי הזית* logic permits *מסירה* (when the fugitive is unable to escape, according to the *Chasdei Dovid*, Approach 1), this approach may also permit MPR.
 - D. According to Rav Moshe (Approach 2), perhaps each fetus in an MFP situation has the status of a *רודף* after the other fetuses. Just as the *דין רודף* permits *מסירה* (when the fugitive is unable to escape, according to Rav Moshe) despite the absence of volition to harm or wrongdoing, perhaps the *דין רודף* will permit MPR if the passive option is likely to lead to total fetal/neonatal death.

This approach is problematic, however, because Rav Moshe explains that the permissibility to hand over the '*fugitive without escape capability*' is based on the fugitive being considered the

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“definitive רודף” due to the *life expectancy-Δ* between himself and townspeople. By MFP, there is no *life expectancy-Δ* between the fetuses, assuming all have the same survival probability. Accordingly, even if the fetuses are considered pursuers (רודפים), they all equally pursue after each other, and thus, we have a מאי הזית dilemma: *Why do you presume that that F_{reduce} pursues after F_{save} more than F_{save} pursues after F_{reduce} ?* Apparently, it does not seem possible for the רודף דין to permit MPR?

3. In personal correspondence with Rabbi Dr. Zalman Levine (Reference 6), Rav Yosef Sholom Elyashiv ruled that the single deciding factor for permitting MPR is the probability of mortality for each of the fetuses. Rav Elyashiv permitted MPR (in a specific case presented to him by Rabbi Dr. Levine) if the probability of all fetuses perishing was greater than 50%. In addition, Rav Elyashiv ruled that major disability or morbidity (which is common in surviving multifetal-pregnancy babies) may not be considered a factor in allowing MPR.
4. In *Sefer Nishmat Avraham* (Source 19), Rabbi Dr. Abraham records the ruling of Rav Shlomo Zalman Auerbach (henceforth referred to as “Rav Shlomo Zalman”) who permitted MPR in “cases where the pregnancy is at high risk” on the basis that “each of the fetuses has the status of a רודף”. I do not know the risk level necessary to be considered a “high risk” to the pregnancy, in order to permit MPR according to Rav Shlomo Zalman. Similarly, Rav Mordechai Eliyahu wrote that if all fetuses will otherwise die, each fetus is a רודף after the others and therefore, MPR would be permitted (Reference 11).

Source 19: Rav Shlomo Zalman Auerbach permits MPR in certain cases of high risk to the pregnancy based on the רודף דין; *Sefer Nishmat Avraham*. (See Supplement 1, Source 11, p. 58, for a more extensive excerpt).

The *Gaon*, Rav Shlomo Zalman Auerbach, *ZT”L*, explained to me that in cases where the pregnancy is at high risk due to multiple fetuses, *each of the fetuses has the status of a רודף and therefore the physicians are permitted to select those fetuses for reduction whose termination will cause the least risk of aborting the entire pregnancy. He also agreed that this is permissible even beyond 40 days
The *Gaon*, Rav Yosef Sholom Elyashiv, *Shlita (now, ZT”L)* told me since the doctors state there is a risk in a quadruplet pregnancy that all the fetuses will be miscarried, it is permitted to reduce. On the other hand, it is known to me that the *Gaon* (Rav Elyashiv), *Shlita*, forbade reducing a triplet pregnancy.

נשמת אברהם חושן משפט סימן תכה:

הסביר לי הגאון זצ"ל שבמקרה של הריון בסיכון גבוה עקב ריבוי עוברים כל אחד מהעוברים יש לו דין של רודף ולכן מותר לרופא להרוג חלק מהם בזריקה בבחירת אותם לפי שיקול רופאי שהריגתם יגרום לסיכוי הקטן ביותר של הפלת כולם. והוא זצ"ל גם הסכים שמותר לעשות זאת אחרי ארבעים יום ואמר לי הגרי"ש אלישיב שליט"א שכיון שהרופאים אומרים שיש סכנה ברביעיה שתפיל את כולם, מותר לדלל. מאידך ידוע לי שהגאון שליט"א אסר דילול בשלישיה

*If none of the fetuses displays abnormalities (which is our hypothetical case), the physician selects the fetus(es) to be reduced based on their position in the uterus (per Rabbi Dr. Levine, Reference 6). It is beyond my level of understanding to determine whether such a selection is Halachically equivalent to the designation required to permit מסירה in the fugitive case, or even if such equivalency would be necessary to permit MPR based on the רודף דין.

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VIII. Possible approach to permitting MPR based on Rav Moshe Feinstein's explanation of the דין רודף:

Note: Rav Moshe has not published any ruling on the permissibility of MPR (possibly because this procedure was not yet clinically well established during his life time). Thus, any thoughts below are intended as merely an attempt to logically extend Rav Moshe's Halachic analysis from the fugitive and obstructed labor situations discussed above, to multifetal pregnancy.

1. Rav Hershel Schachter (Reference 12) explains that the position of Rav Moshe, i.e., the prohibition of feticide is included under *לא תרצה*, is based upon the eventuality that a fetus would become a viable born person. Therefore, if the physicians state with near-certainty that all fetuses will die unless MPR is performed, since the eventuality of a viable born person does not exist, there would be no prohibition of *לא תרצה*. Therefore, MPR would be permitted to save the remaining fetuses in such cases. According to this approach, Rav Moshe would presumably not agree with Rav Elyashiv that a mortality risk of merely greater than 50% suffices to permit MPR. Rather, a much higher mortality risk would likely be required to permit MPR.
2. Above (VII-2-D, pp. 25-26), we suggested the possibility that perhaps Rav Moshe would consider each fetus as a רודף after the others and accordingly, the דין רודף would provide the basis for permitting MPR, which is the position of Rav Shlomo Zalman. However, we challenged this supposition: Since there is no *life expectancy-Δ* between fetuses, the *מאי הוית Rodef* logic (*Why do you presume that F_{reduce} pursues after F_{save} more than F_{save} pursues after F_{reduce} ?*) would prevent the דין רודף from permitting MPR?
3. I would suggest that the key to determining whether the דין רודף can be applied to permit MPR is by assessing if the concept of *משמיה קא רדפי לה* extends to the MFP situation. If the *משמיה קא רדפי לה* concept applies to MFP, then, just as in the '*partially-emerged fetus*' and '*fugitive with escape capability*' cases, we cannot apply the דין רודף and thus, MPR would be forbidden. Conversely, if the *משמיה קא רדפי לה* concept does not apply to MFP, the דין רודף could be applied (just as in the '*fugitive without escape capability*' case) and MPR would be permissible.
4. For purposes of simplicity, I suggest that Rav Moshe's explanation how the *משמיה קא רדפי לה* concept applies in the '*partially-emerged fetus*' and '*fugitive with escape capability*' cases, may be presented as follows: There are two ends of the "*active-vs.-passive option spectrum*" (abbreviated as "*A-vs.-P spectrum*"): The "*passive end*" and the "*active end*". At the "*passive end*", *Rodef-א* (the fetus or fugitive) will live at the expense of *Rodef-ב* (the mother or townspeople); whereas, at the "*active end*", *Rodef-ב* will live at expense of the *Rodef-א* (see Figures 2-3, pp. 18-19). Since we see that their respective survivals are inversely related, it is evident that Heaven has arranged that *Rodef-א* and *Rodef-ב* are equally "*opposing רודפים*". Accordingly, we have no basis to assign the "*definitive רודף*" status to one party more than to the other and thus, the דין רודף cannot be applied.

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5. How does this help us determine if *משמיה קא רדפי לה* applies to the MFP situation? Two opposing perspectives are suggested, to either support or oppose applying *משמיה קא רדפי לה* to MFP.
- A. On one hand, there are two analogies between the MFP situation and the *'fugitive with escape capability'* case: (1) Each fetus in the MFP situation has a similar potential to survive if other fetuses are reduced, and thus, there is no *life expectancy- Δ* between the fetuses; (2) Since F_{save} can only live if F_{reduce} is reduced and visa versa, therefore, the respective survivals of all the fetuses are inversely related. From this vantage point, we should say that all fetuses pursue after each other equally. Accordingly, just as in the *'fugitive with escape capability'* case, the *משמיה קא רדפי לה* concept should apply and the *דין רודף* would not apply to permit MPR.
- B. On the other hand, a strong argument could be made against applying *משמיה קא רדפי לה* to MFP, as follows: At the *"passive end"* of the *"A-vs.-P spectrum"* (i.e., if MPR is not performed), no fetus is likely to live at the expense of another fetal life since there is a high risk of total fetal/neonatal death. Only at the *"active end"* (i.e., if MPR is performed), some fetuses (i.e., F_{save}) will live at the expense of the others (i.e., F_{reduce}) (see Figure 6, p. 31). Accordingly, the survivals of F_{save} and F_{reduce} are not truly inversely related in the same manner as in the *'partially-emerged fetus'* and *'fugitive with escape capability'* cases. Therefore, we would not say that Heaven has arranged that all parties pursue each other equally. Accordingly, the *משמיה קא רדפי לה* concept would not apply to the MFP situation in question and the *דין רודף* could permit MPR despite the absence of a *life expectancy- Δ* .
6. Thus, we have arguments both to support and oppose applying *משמיה קא רדפי לה* to the MFP situation. I would like to suggest the following approach why the *משמיה קא רדפי לה* concept should not apply to the MFP situation and thus, the *דין רודף* would permit MPR.
- A. In the *רמב"ם על הרמב"ם* (Reference 8), Rav Chaim states, *"The רמב"ם understands that the תורה's authorization for killing the רודף is based on the imperative of saving the life of the pursued party (הצלת הנרדף)." In the 'partially-emerged fetus' and 'fugitive with escape capability' cases, whether we choose the active option or passive option, we will save the life of a נרדף since each רודף is simultaneously also a נרדף. If we choose the passive option, Rodef-א (the fetus or fugitive) is the נרדף who will be saved and if choose the active option, Rodef-ב (the mother or townspeople) is the נרדף who will be saved. Since the entire purpose of the דין רודף is to save the נרדף, unless we know that one of the "opposing parties" has the "definitive רודף" status, we should choose the passive option since we are saving a נרדף without actively taking a life. This would seem to fit with Rav Moshe's explanation of משמיה קא רדפי לה: The same Heavenly process that caused the mother (Rodef-ב) to be the object of the fetus'*

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(*Rodef-א's*) pursuit, i.e., that she would suffer such a difficult labor that she cannot live if the fetus' life is spared, has also caused the fetus to become the object of the mother's pursuit. Since the fetus is an equal נרדף as the mother is, there is just as much imperative to save his life as there is to save his mother's life. The מאי הזית *Rodef* logic, therefore, dictates that we choose the option of saving a נרדף which would not require actively taking a life. Only if we know that *Rodef-א* is the "definitive רודף" (in the 'non-emerged fetus' and 'fugitive without escape capability' cases), which is another way of saying *Rodef-ב* is the "definitive נרדף", the imperative of saving *Rodef-ב* determines that we must choose the active option.

- B. However, in the MFP situation, there is only one option that would result in saving a נרדף, i.e., the active option (MPR). The passive option is not likely to save any lives. Therefore, the imperative of saving the life of a נרדף should determine that we choose the active option, i.e., we should perform MPR to save some of the fetuses.
7. Rav Moshe's use of the מאי הזית *Rodef* terminology in the context of the 'partially-emerged fetus' and 'fugitive with escape capability' cases, may be analogous to Rashi's understanding of the מאי הזית logic in the "coerced murder" case.
- A. Rav Moshe portrayed Rashi's view of the מאי הזית logic in the "coerced murder" case as "two negative consequences vs. one negative consequence" (see Figure 1, p. 5).
- B. Similarly, in the 'partially-emerged fetus' and 'fugitive with escape capability' cases, we have a "standoff" between two options:
- If we choose the passive option, there will be one positive consequence, הצלת הנרדף (saving the pursued party), without performing an act of שפיכת דמים (murder).
 - If we choose the active option, there will be a positive consequence, הצלת הנרדף, but there will also be a negative consequence, an act of שפיכת דמים.
- C. Thus, we have a "standoff" between: (1) the passive option, which will only produce a positive consequence; vs. (2) the active option, which will produce both a positive and a negative consequence. Therefore, the מאי הזית *Rodef* logic dictates that we should choose the passive option which will only produce a positive consequence.
8. However, in the MFP situation, there is no similar "standoff" since the passive option will not likely produce any positive consequence. The only available option which will produce the positive consequence of הצלת הנרדף is the active option, i.e., performing MPR. Therefore, the מאי הזית *Rodef* logic and thus, the משמיה קא רדפי לה concept, will not apply and the דין רודף would permit MPR. The only remaining question is which fetus(es) to select for reduction. Perhaps this is not a question in

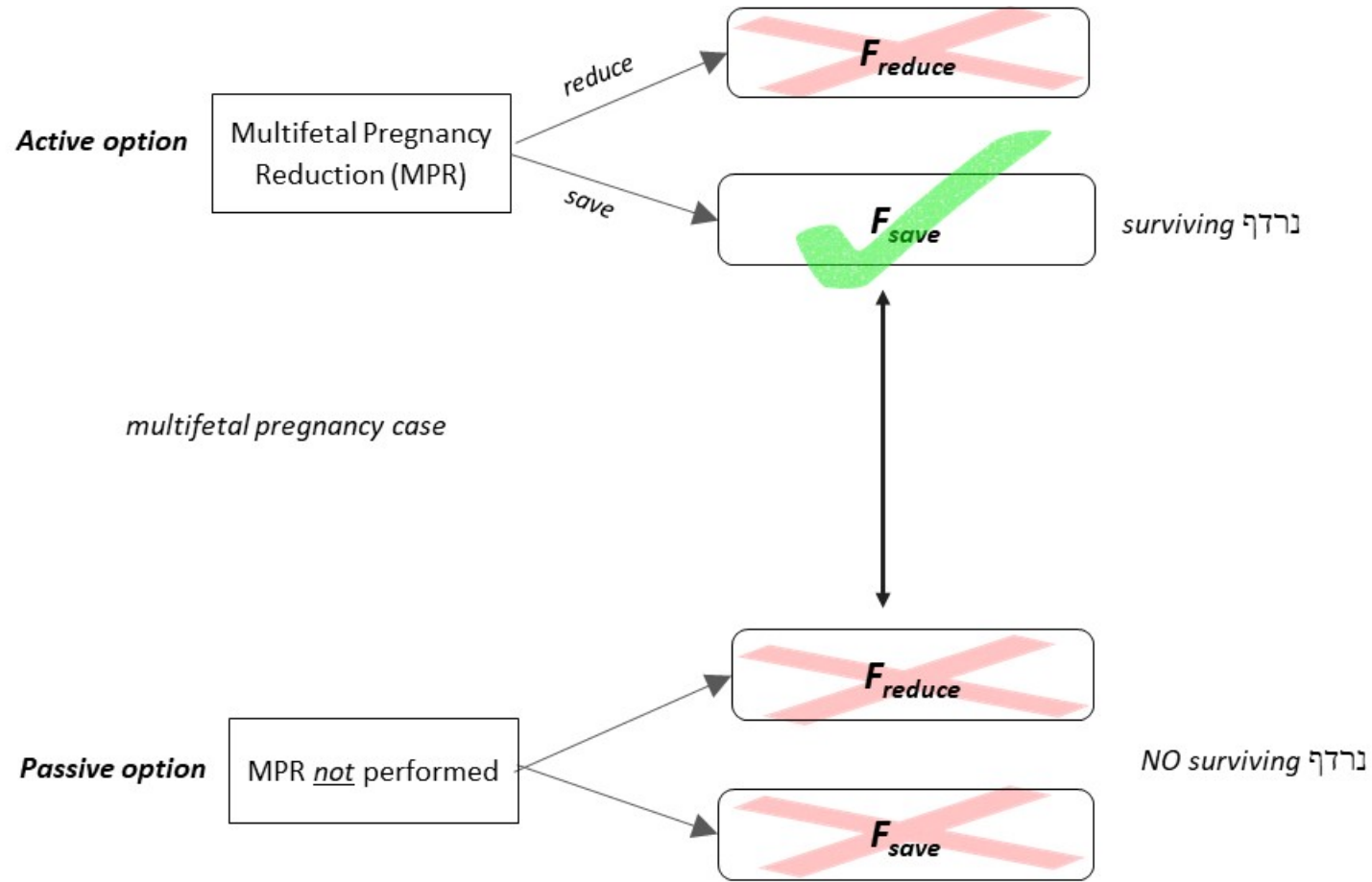
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Halacha, but rather, a strategic medical question, i.e., which fetuses does the physician believe he can reduce while causing the least risk to the remainder of the fetuses as Rav Shlomo Zalman said (Source 19, p. 26).

9. There is a difficulty, however, with this rationale. Previously (VI-8, pp. 20-21), we explained that according to Rav Moshe, the reason why the *משמיה קא רדפי לה* concept does not apply in the *'fugitive without escape capability'* situation is because of the *life expectancy- Δ* between the townspeople's *חיי עולם* (normal life expectancy) and the fugitive's *חיי נשעה* (temporary life). However, if our rationale by MFP is correct, we should apply the same logic in the *'fugitive without escape capability'* case, i.e., since the only end of "A-vs.-P spectrum" in which anyone will survive is at the "active end" (i.e., *מסירה*), the *משמיה קא רדפי לה* concept should not apply. Why does Rav Moshe need a *life expectancy- Δ* to explain why *משמיה קא רדפי לה* does not apply in the *'fugitive without escape capability'* situation?
- A. Perhaps we can answer that in the *'fugitive without escape capability'* situation, even though there would be no survivors if the passive option was chosen, nonetheless, the fugitive would still have *חיי נשעה* remaining until the hooligans invade and kill everyone, which he stands to lose if the townspeople hand him over. Therefore, if not for the *life expectancy- Δ* between the townspeople's *חיי עולם* and the fugitive's *חיי נשעה*, we would still have the same dilemma as in the *'fugitive with escape capability'* situation: If we choose the active option, the fugitive will lose his *חיי נשעה* and if we choose the passive option, the townspeople will lose their *חיי עולם*. Accordingly, we would have reasoned since we can fulfill *הצלת הנרדף* through the passive option, i.e., temporarily extending the life of the fugitive, we must remain passive rather than performing an act of *שפיכת דמים*. Only because of the *life expectancy- Δ* , we can say that the respective pursuits of the "opposing parties" are not equal and therefore, the *משמיה קא רדפי לה* concept will not apply.
- B. However, in the MFP situation, if we believe that the concept of *חיי נשעה* does not exist during fetal life *in utero*, which is the position of the *Yad HaMelech* (Reference 13), there will not be any fulfillment of *הצלת הנרדף* through the passive option. Although the passive option will temporarily prolong the existence of the fetuses, since they do not have *חיי נשעה*, this prolongation is not considered life-saving (*הצלת הנרדף*) at all. Only the active option (MPR) can achieve *הצלת הנרדף*. Thus, the *מאי חזית* ^{Rodef} logic and the *משמיה קא רדפי לה* concept will not apply despite the absence of a *life expectancy- Δ* and the *דין רודף* would permit MPR.

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Figure 6: Multifetal pregnancy (MFP) case: If the passive option is chosen, there will not likely be any הצלת הנרדף since there is a high risk of total fetal/neonatal death. Only if the active option (MPR) is chosen, some of the fetuses (F_{save}) will survive at the expense of the other fetuses (F_{reduce}).



“✓” : Denotes the saving of a life

“✗” : Denotes the loss of a life

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IX. Conclusion

1. Table 5 summarizes Rav Moshe's analysis of the fugitive and obstructed labor situations and compares these cases to the MFP situation.
2. We discussed several reasons to permit MPR in cases of high risk of total fetal/neonatal death:
 - A. Rav Shlomo Zalman Auerbach ruled that in cases of high risk to the pregnancy, "each of the fetuses has the status of a רודף," and on this basis, he permitted MPR.
 - B. Rav Hershel Schachter explained that even according to Rav Moshe who believes that feticide usually is a violation of לא תרצה, if there is a near certainty that all fetuses will die without MPR, there would be no prohibition of לא תרצה and therefore MPR would be permitted to save the remaining fetuses.
 - C. Rabbi Dr. Zalman Levine reasoned that if there is a high probability of fetal death, the מאי חזית logic would not apply (just as in the 'fugitive without escape capability' case according to the Chasdei David's explanation) and therefore MPR would be permitted.
 - D. Although Rav Moshe did not rule on the permissibility of MPR, perhaps he would agree with Rav Shlomo Zalman that we apply the דין רודף to permit MPR since Rav Moshe believes that the דין רודף applies even to unintentional pursuit. This approach is based on a suggestion that the מאי חזית logic and thus, the משמיה קא רדפי לה concept, only apply if both the passive and active options can achieve הצלת הנרדף, i.e., in the 'partially-emerged fetus' and 'fugitive with escape capability' cases. However, in the MFP situation, if we assume that the concept of הצלת הנרדף does not exist during fetal life, the only option that will achieve הצלת הנרדף is the active option (MPR). Therefore, משמיה קא רדפי לה will not apply and the דין רודף would permit MPR.
3. The question as to how Rav Moshe would have ruled regarding the permissibility of MPR cannot be definitively answered based on his rulings and insights that we have presented here. If we had the fortune to still have Rav Moshe leading us today, we could be certain that he would have marshaled his immense and profound understanding of all areas of Shas and Poskim, as well as his great Yirat Shomayim and Mesirat Nefesh for K'lal Yisroel to properly determine the Halacha in each type of multifetal pregnancy situation, to guide us through these very critical situations. It is our hope that through this essay, we have, in some small measure, demonstrated the timelessness of the Torah as well as the brilliance and ability of Torah giants such as Rav Moshe to transcend time and to thereby inspire the many to embrace the beauty that was Rav Moshe and that he left for us to further cultivate.

חבל על דאבדין ולא משתכחין, מי יתן לנו תמורתו

Woe is to us that Rav Moshe is lost and not found. Who will give us another as him?

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Table 5: Summary of Suggested Analyses of the Fugitive, Obstructed Labor and Multifetal Pregnancy Situations, Based on Rav Moshe's Insights

Type of Situation	Sub-category	Who will be saved if the _____ option is chosen?		Is there a Δ (differential) between ² Rodef- _x and Rodef- _z ?		Does the משמיא קא רדפי לה concept apply?	
		¹ Active	Passive	Yes/No	Explanation	Yes/No	Why
Obstructed labor	non-emerged fetus	Mother's complete נפש	Fetus' incomplete נפש	Yes	Δ between the mother's complete נפש and the fetus' incomplete נפש	No	The fetus is considered the "definitive רודף" because of the נפש- Δ
	partially-emerged fetus	Mother's complete נפש	Fetus' complete נפש	No	Both the fetus and mother have a complete נפש	Yes	<p style="text-align: center;">מאי חזית^{Rodef}</p> <p>why do you presume Rodef-_x pursues Rodef-_z more than Rodef-_z pursues Rodef-_x ? (i.e., they are mutually equal pursuers)</p>
Fugitive	with escape capability	³ TP's חיי עולם ⁴	Fugitive's חיי עולם ⁴	No	Both fugitive and TP have potential for חיי עולם		
	without escape capability	³ TP's חיי עולם ⁴	Fugitive's חיי נשעה ⁵	Yes	Δ between the TP's חיי עולם and the fugitive's חיי נשעה	No	
Multifetal Pregnancy <u>Assume:</u> High risk of total fetal/neonatal death without MPR		⁶ F _{save} (⁷ F _{reduce} will be lost)	High probability: No one	No	<u>Assume:</u> All fetuses have the same survival potential if others are reduced.	No	משמיא קא רדפי לה only applies if both the passive option and active option would achieve הצלת הנרדף. However, by MFP, the only option that can achieve הצלת הנרדף is the active option (MPR).

¹The active option is as follows: In the obstructed labor situation: feticide; in the fugitive situation: hand-over (מסירה); in the MFP situation: MPR (fetal reduction)

²Rodef-_x = fetus or fugitive; Rodef-_z = mother or townspeople; ³TP = Townspeople; ⁴חיי עולם = Normal life expectancy; ⁵חיי נשעה = Temporary life (expectancy)

⁶F_{save} = fetuses that the physician wishes to save; ⁷F_{reduce} = fetuses that the physician wishes to reduce.

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X. References

1	<p style="text-align: center;">תלמידי רבינו יונה על מס' עבודה זרה דף כח ע"ב, ד"ה דילמא דמא דחברך סומק טפי (See Appendix B, Source B-2, p. 45, for an excerpt and translation).</p>
2	<p style="text-align: center;">רבי נחום פרצוביץ, ספר זכרון טוב משה, בענין יהרג ואל יעבור</p>
3	<p style="text-align: center;">אגרות משה, יורה דעה ח"ב, סימן קעד', ענף ד' (See Supplement 2, pp. 83-85, for excerpts and translation).</p>
4	<p style="text-align: center;">דינא דחיי על ספר מצוות גדול, לאווין קסד' (See Supplement 1, Source 6c, pp.54-55, for an excerpt of the Sefer Mitzvot Gadol and Dina Dechayei).</p>
5	<p style="text-align: center;">חזון איש על מס' סנהדרין, סימן כה' (See Supplement 1, Source 10, pp.57-58, for an excerpt and translation).</p>
6	<p>Rabbi Dr. Zalman Levine: "Multi Fetal Reduction"; audio file on YUTorah.org, October 2007</p>
7	<p style="text-align: center;">אגרות משה, חושן משפט ח"ב, סימן סט', אות א'-ב' (See Supplement 2, pp. 63-66, for excerpts and translation).</p>
8	<p style="text-align: center;">חידושי רבינו חיים הלוי על הרמב"ם הל' רוצח ושמירת הנפש, פרק א' הלכה ט' (See Supplement 3, pp. 91-94, for full Hebrew text and partial translation).</p>
9	<p style="text-align: center;">דברי יששכר, חושן משפט, סימן קסח' (See Supplement 1, Source 13, pp.60-61, for an excerpt and translation).</p>
10	<p style="text-align: center;">אבי עזרי על הרמב"ם הל' רוצח ושמירת הנפש, פרק א' הלכה ו', הלכה ט' (See Supplement 4, pp. 95-99, for excerpts and translation).</p>
11	<p style="text-align: center;">הרב מרדכי אליהו, תחומין, השמדת ביציות מופרות ודילול עוברים, כרך יא, תש"ן, עמ' 272</p>
12	<p>Rabbi Hershel Schachter: "Fetal Reduction"; audio file on YUTorah.org, March 2002</p>
13	<p style="text-align: center;">יד המלך על הרמב"ם הל' שבת, פרק ב' הלכה יח' (See Supplement 1, Source 16, pp.62-62A, for an excerpt of the Yad Hamelech).</p>

Appendix A: The “Fugitive” Situation in the Tosefta and Yerushalmi Terumot, explained by Rav Moshe Feinstein

This discussion pertains to a dispute between ר' יוחנן and ר"ל (ריש לקיש) in the Yerushalmi (Source 10, p. 10) regarding the fugitive situation, where hooligans order the townspeople to hand over a victim (a “fugitive”) to be killed, or else they will kill everyone in the town. In addition to the requirement that the fugitive was designated (i.e., singled out) by the hooligans, ר"ל also requires that he is חייב מיתה (deserving of death, defined below) to permit handing him over (מסירה). However, ר' יוחנן permits מסירה even if the designated fugitive is not חייב מיתה.

A. The חסדי דוד and the ב"ה (Rav Yoel Sirkes) explain that the term, חייב מיתה (which ר"ל stipulates as a requirement to permit מסירה), means that the fugitive deserves a legal death sentence because of his criminal actions. The ב"ה writes, “*The logic does not apply since he brought [the threat] on himself through his actions for which he deserves the death penalty by the non-Jewish laws*” (Source A-1). Similarly, the חסדי דוד, explaining the view of ר' שמעון in the Tosefta (Source 9, pp. 9-10), writes, “*However, ר' שמעון believes that ... if the designated fugitive is חייב מיתה, even if he could escape and the townspeople will be killed, it is permitted to hand him over because the logic of מאי חזית does not apply when he is חייב מיתה*” (Supplement 1, Source 5, p. 54). Both the חסדי דוד and the ב"ה understand that: 1) ר"ל's intended meaning of the term, חייב מיתה, i.e., the fugitive deserves a legal death sentence, is identical to ר' שמעון's intent in the Tosefta; and 2) Since the היתר (permissibility) for מסירה is based on the fugitive deserving capital punishment because of his criminal actions, he should be handed over even if could escape (i.e., we prevent him from escaping, to save the others).

Source A-1: The ב"ה's explanation why ר' שמעון permits מסירה when the fugitive deserves the death penalty.

<p>... If the townspeople are in immediate danger, even if the fugitive is outside the danger (i.e., he has escape capability), they should hand him over since he is חייב מיתה and the hooligans designated him. The מאי חזית of יעבור ואל יהרג (i.e., in the “coerced murder” case, α must be killed rather than kill β), which is based on the מאי חזית logic, only applies if β is not חייב מיתה. However, if β is חייב מיתה, even if he is outside the danger, the מאי חזית logic does not apply since he brought [the threat] on himself through his actions, for which he deserves capital punishment by the [non-Jewish] laws. [In this case], we say, “<i>On the contrary, the blood of α [and similarly, the blood of the townspeople] is redder,</i>” since he (α) has not done anything at all for which he deserves to be killed.</p>	<p><u>שו"ת בית חדש (ב"ח) (ישנות) סימן מג':</u> ... אבל כשהן מבפנים לסכנה אף על פי שהוא מבחוץ לסכנה ימסרוהו להן מאחר שמחוייב מיתה וייחדוהו להן ולא אמרינן יהרג ואל יעבור מטעמא דמאי חזית דדמן סומקי טפי וכו' אלא אם כן דאינו מחוייב מיתה ... אבל במחוייב אף על פי שהוא מבחוץ לסכנה מכל מקום מאחר דאיהו גרם לנפשיה על ידי מעשיו שנתחייב מיתה בדיניהם אין אומרים בזה מה חזית וכו' דאדרבא אמרינן דדמא דהאי סומקא טפי דהרי לא עשה מעשה שיהא מחוייב מיתה כל עיקר.</p>
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B. However, Rav Moshe understands that the basis for the היתר to hand over the fugitive according to both ר' יוחנן and ר"ל, is that he is considered a רודף after the townspeople (Source A-2). Rav Moshe explains when ר"ל stipulates that the fugitive must be חייב מיתה to permit מסירה, he does not require that a death sentence was issued by a legitimate justice system. Rather, ר"ל's intent in the term, חייב מיתה, is that the hooligans have any grievance against a specific victim for which they wish to kill him, in which case, מסירה is permitted. Moreover,

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ר"ל agrees with ר יוחנן that מסירה is only permitted if the fugitive has no escape capability, but if he has escape capability, מסירה is prohibited even if the hooligans have a grievance against him.

C. From Sources A-2 and A-3, we see that Rav Moshe understands that there is two-step process in order to apply the דין רודף to permit מסירה, according to both ר יוחנן and ר"ל:

1. Condition 1: The fugitive must be considered the cause of the lethal threat (the exact term Rav Moshe uses is: “הסבה להרדיפה”) facing the townspeople, thus defining him as a רודף; and
2. Condition 2: The fugitive must be unable to escape, in order to assign him the “definitive רודף” status due to the ‘life expectancy-differential’ between the townspeople’s חיי עולם and the fugitive’s חיי שעה (Section VI-8-B, pp. 20-21).

Source A-2: Rav Moshe’s explanation of the position (ר"ל) ריש לקיש in the Yerushalmi.

(See Supplement 2, pp.73, 75, for more extensive excerpts from the Sefer Igros Moshe).

<p>... [According to ר"ל, if hooligans want to kill the fugitive [merely] because of their grievance against him, the דין רודף will apply to him even though he has no intention to pursue. Thus, the townspeople will be permitted to hand him over even according to ר"ל just as [we may kill the ‘non-emerged’] fetus ... When the hooligans come with a grievance against the fugitive, ר"ל will agree with ר יוחנן [to permit מסירה] since, in this case, the fugitive is certainly the cause of the pursuit (i.e., the threat) to kill the townspeople.</p> <p>According to how I have explained ... that ר"ל does not require that a [legitimate] death sentence [was issued against the fugitive, to permit מסירה], but rather, even if his death sentence came from [a grievance of] the gentile hooligans, ר"ל also agrees with ר יהודה (in the תוספתא). Accordingly, ר"ל will not permit [מסירה] unless the fugitive will certainly be killed along with the townspeople when the hooligans capture the city (i.e., if he has no escape capability).</p>	<p style="text-align: center;"><u>אגרות משה יורה דעה ח"ב, סימן ס', ענף ג':</u></p> <p>... שגם ליסטים בעלמא כיון שהם רוצים להרגו מחמת טענה שיש להם עליו, הוא בדין רודף אף שהוא שלא בכונת רדיפה, ומותרין למוסרו גם לר"ל כמו בעובר, וכמו לר יוחנן כיון שודאי באופן זה שבאין בטענה עליו הוא הסבה להרדיפה גם להרוג אותם שבזה מודה גם ר"ל לר יוחנן.</p> <p>דלמה שבארתי ... דלא מצריך ר"ל חיוב מיתה אלא מה שחייב מיתה להעכו"ם הליסטים, גם לר"ל הוא כר יהודה ואין להתיר אלא דוקא כשודאי יהרג גם הא כשיתפסו העיר עמהן.</p>
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D. In Source A-2, Rav Moshe states, “Thus, the townspeople will be permitted to hand him over even according to ר"ל just as [we may kill the ‘non-emerged’] fetus ... since, in this case, the fugitive is certainly the cause of the threat to kill the townspeople.” Thus, ר"ל fundamentally agrees with ר יוחנן that we consider the fugitive as a רודף after the townspeople despite his lack of volition or wrongdoing, because his only path to survival necessitates their death just as the fetus is considered a רודף after his mother because his only path to survival is through her death (Section VI-4-C, p. 15). ר יוחנן and ר"ל merely disagree on the level of the hooligans’ designation of a specific victim required to consider him the cause of the lethal threat and thus, to define him as a רודף (condition #1). ר יוחנן believes that by merely designating an individual, the hooligans demonstrate that

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they are prepared to kill all the townspeople unless he is handed to them. Therefore, he is deemed the cause of the threat and is defined as a רודף after the townspeople. However, ר"ל requires a higher level of designation, i.e., a designation linked to that specific victim because of the hooligans’ grievance against him. If the hooligans demand a specific victim because of their grievance toward him, their murderous desires will only be assuaged by receiving this individual, which identifies him as the cause of the threat against the townspeople, thus, defining him as a רודף. However, if they have no grievance against this individual, it is evident that the hooligans’ purpose is to demonstrate their ferocity and kill anyone they choose. If the selected person had not been present, the hooligans possibly would have picked out a different person and thus, their random selection cannot render him as the cause of the threat (Source A-3). The איש חזון explains ר"ל’s position in a similar manner (see Supplement 1, Source 10, p. 58).

Source A-3: Rav Moshe’s explanation of the dispute between ר יוחנן and ריש לקיש (ר"ל) in the Yerushalmi.

(See Supplement 2, pp.72, 74-75, for more extensive excerpts from the Sefer Igros Moshe).

<p>... They disagree only insomuch as ר יוחנן understands that the “analogy-שבוע בן בכרי” is merely to require designation, whereas, according to ר"ל, [the analogy comes to] additionally require designation similar to the שבוע בן בכרי situation where there was a grievance specific to him.</p> <p>... ר"ל believes that we cannot assign the status of a רודף at all to the person that the hooligans designated to kill (in the absence of a grievance) since they have no basis to condemn him to die. It merely “fell upon” their minds to demonstrate their ferocity and kill a person who they singled out from the group, but this does not define him as the cause of the threat [facing the townspeople], since if he had not been present, it is possible that the hooligans would have designated someone else.</p>	<p><u>אגרות משה יורה דעה ח"ב, סימן ס', ענף ג':</u></p> <p>... ופליגי רק שר יוחנן סובר שהמשל דשבוע בן בכרי הוא רק לעצם הייחוד ור"ל מוסיף שהוא גם לענין כעין הייחוד דהיה שם בטענה רק אליו כמו שהיה בשבוע בן בכרי.</p> <p>... אבל בייחודו סובר שאין להחשיבו למי שייחודו העכו"ם להרגו לרודף כלל כיון דאין להם עליו שום חיוב מיתה רק שכך נפל בדעתם להראות אימתם ולהרוג אחד שייחודו מהסיעה, שאין זה אף סבה לרדיפה שאפשר אם לא היה זה שם היו מיחדין אחר.</p>
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- E. According to Rav Moshe, since ר"ל’s disagreement with ר יוחנן is merely to require a higher level of designation (condition 1), ר"ל will agree with ר יוחנן that the fugitive must be unable to escape, so that the ‘life expectancy-differential’ will enable the דין רודף to permit מטירה (condition #2). However, if the fugitive has escape capability, even if he was defined as a רודף either via designation alone or in conjunction with the hooligans’ grievance, the townspeople are defined as equal pursuers (רודפים) after the fugitive, by the same logic that defines the fugitive as a רודף. Accordingly, the מאי חזית logic states, “Why do you presume the fugitive is more of a רודף after the townspeople, than they are רודפים after him?”, which according to Rav Moshe is the essence of the לה רדפי קא משמיה concept (pp. 16-17, 20-21). Therefore, the דין רודף will not apply when he has escape capability, regardless of the level of designation and thus, מטירה is prohibited.
- F. Since the reason ר"ל requires a grievance against the fugitive is to define him as a רודף, if there are other means to define him as a רודף, Rav Moshe posits that ר"ל will agree with ר יוחנן that that a grievance is not required

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to permit מטירה. Accordingly, Rav Moshe says if the fugitive was designated by the hooligans to be killed before he fled to the city, ר"ל will agree that the townspeople may hand him over even if hooligans have no grievance against him, providing he has no escape capability (Source A-4). Presumably the explanation is: Since the fugitive was designated for death before he fled to the city, it is evident that the hooligans specifically are targeting him alone. Therefore, the circumstances define the fugitive as a רודף (condition #1) despite the absence of a grievance against him.

Source A-4: Rav Moshe explains that ר"ל (ר"ל) ריש לקיש does not always require a “death sentence” (i.e., a grievance). (See Supplement 2, p.74, for a more extensive excerpt from the Sefer Igros Moshe).

<p>Even in a case where the hooligans have no grievance against the fugitive but nonetheless, if they designated him to be killed before he fled to the city and then the hooligans demand that the townspeople turn him over or else they will kill them all, it is as if the fugitive has a “death sentence”. Since the hooligans previously designated him to be killed, it is as if he was sentenced to death by the hooligans and therefore, he is defined as a רודף even though he has no intent [to harm]. Accordingly, ר"ל will agree with ר יוחנן that if he is unable to escape to safety, but rather, everyone (including the fugitive) will definitely be killed, they are permitted to hand him over because of the <i>life expectancy-differential</i> that the townspeople have over his <i>שעה</i>, for which he is a רודף after them and not the reverse. However, if he can escape and be saved, even though the townspeople will then be killed, it is forbidden to hand him over since he is not literally a רודף (i.e., he has no intent to harm).</p>	<p>אגרות משה יורה דעה ח"ב, סימן ס', ענף ג': וכן אף בלא טענה אבל ייחזוהו מקודם להריגה וערק להעיר ותובעים מהעיר שימסרו ובאם לאו יהרגו את כולם, הוא גם כן כחייב מיתה דכיון שכבר ייחזוהו מקודם להריגה הוא כחייב מיתה להם, שלכן ודאי הוא כרודף אף שהוא שלא בכוונה. ויודה בזה גם ר"ל לר יוחנן שבאם אם אפשר לו לברוח ולהנצל אלא שודאי יהרגו כולם שמותרין למוסרו, מחמת היתרון על חיי שעה שהוא רודף אחרם ולא הם. ובאם יכול לברוח ולהנצל אף שאז יהרגו אסור גם בזה כיון שאינו רודף ממש.</p>
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G. Rav Moshe suggests (*while cautioning that further study is needed*) that if the fugitive was aware that the hooligans would discover the city where he would seek asylum and that they could massacre the townspeople on his account, his subsequent entry into this city renders him “as a רודף with intent ... since [the massacre of the townspeople] is an inevitable consequence [of him taking asylum there], it is certainly forbidden for him to save himself at the expense of his fellow’s life. In this situation, they would be permitted to hand him over even if he had the ability to escape” (Supplement 2, p. 74). This is consistent with Rav Moshe’s explanation that the requirement for escape incapability is to enable us to assign the “definitive רודף” status to the fugitive (condition #2). Therefore, if the fugitive took refuge in the city knowing that he was thereby endangering the townspeople’s lives, only he is the “definitive רודף” since the townspeople have not done anything to endanger him. Once he is deemed the “definitive רודף”, his ability to escape is immaterial and it is permitted to hand him over. Table 1 (p. 39) summarizes Rav Moshe’s analysis of the views of ר יוחנן and ר"ל in the cases discussed above. The two-step process (decision tree) for applying the דין רודף to the fugitive according to Rav Moshe’s approach, is schematically depicted in Figure 1 (p. 40).

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Table 1: Rav Moshe’s analysis of the fugitive cases: When is a grievance or escape incapability required to permit handing over the fugitive?

¹ Was the fugitive aware that the hooligans would discover his city of asylum and potentially kill everyone?	² Was the hooligans’ designation of the fugitive based on a grievance specific to him?	² Was the fugitive designated by the hooligans before or after he took asylum in the city?	³ Fugitive has escape capability	³ Fugitive has NO escape capability	
			ר' יוחנן and ריש לקיש	ר' יוחנן	ריש לקיש
			Is it permitted (מותר) or forbidden (אסור) to hand over the fugitive?		
No	No <i>(designation without a grievance)</i>	After	אסור ³	מותר	אסור ²
		Before	אסור ³	מותר	מותר ²
	Yes	Before or after	אסור ³	מותר	מותר
⁴Yes	<i>Possibly not applicable?</i>		מותר ⁴	מותר	מותר

¹Before he took asylum in the city whose residents were threatened by the hooligans to either hand him over or else everyone will be killed.

²If the hooligans had no grievance against anyone but randomly picked out a person in the city to kill, ר"ל maintains that the randomness (or capriciousness) of their designation cannot render this fugitive as the cause of the threat and thus, he is not defined as a רודף. However, if he was designated by the hooligans before he fled to the city, Rav Moshe maintains that מסירה would be permitted without a grievance even according to ר"ל.

³If the fugitive has the capability to escape, we have a מאי הזית dilemma and therefore, the דין רודף will not apply to permit מסירה.

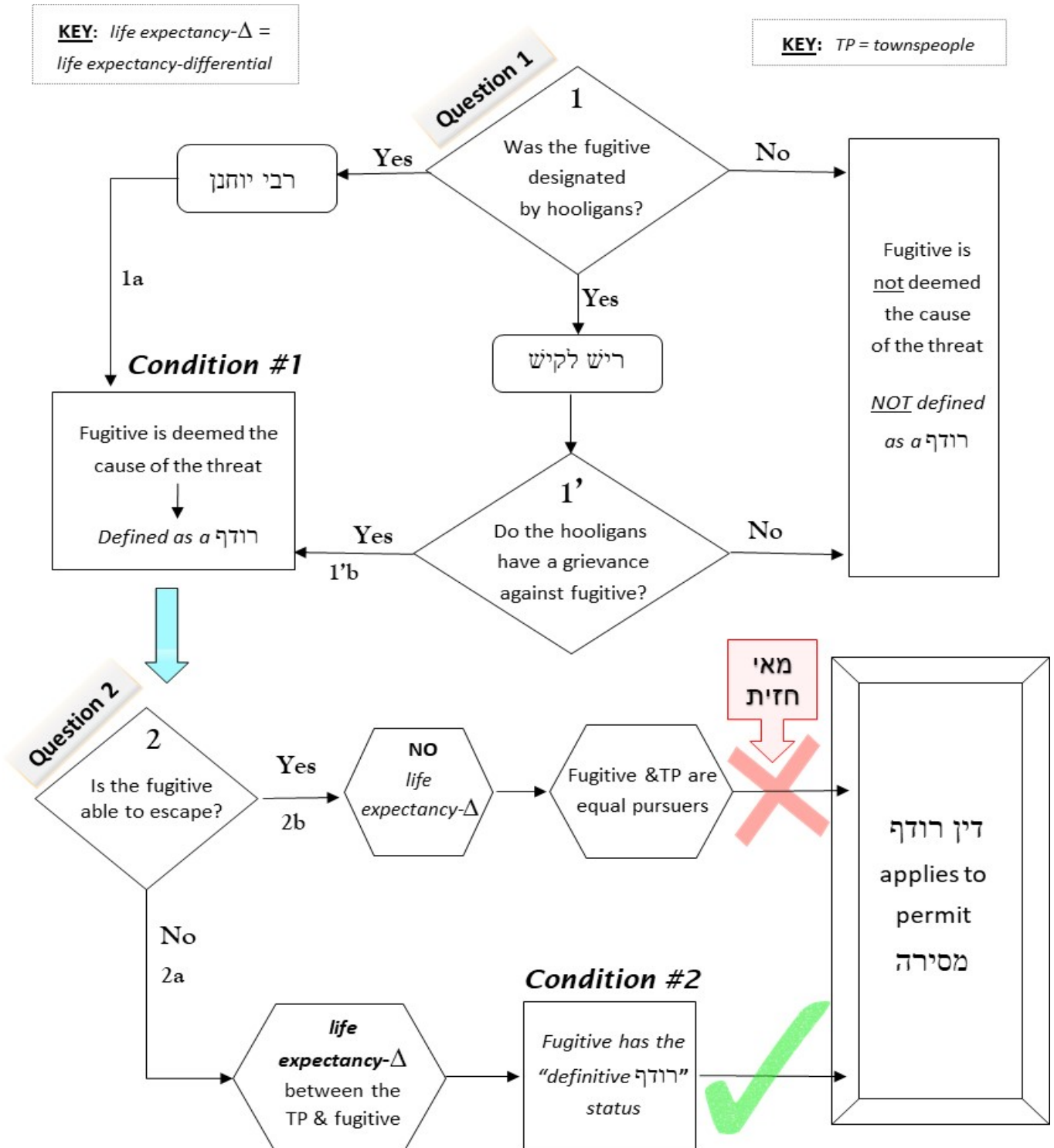
⁴The fugitive knew that: (1) the hooligans wanted to kill him, (2) they would find him in the city in which he would hide, and (3) they had the ability to kill everyone in the city if he was not handed over, and despite this knowledge, he still took asylum in the city. Since he intentionally placed the townspeople at risk to save himself, he is considered like a רודף with intent to harm and therefore, Rav Moshe says it is probable that they are permitted to hand him over even if he has the ability to escape. However, Rav Moshe states that further analysis is required to finalize the Halacha accordingly.

Note: If the fugitive was truly deserving of the death penalty even through a (legitimate) non-Jewish legal system, Rav Moshe would appear to agree with the חסדי דוד and the ב"ה, i.e., that he may be handed over even if he has escape capability. The ט"ז (Supplement 1, Source 9b, p. 57) states that in such a case, such as one who revolts against the non-Jewish government, he should be handed over even if the authorities did not demand his apprehension since he is certainly a רודף after the other Jews because of his evil actions, while they have done nothing to endanger him. From the context in which Rav Moshe quotes this ט"ז (Supplement 2, p. 73), it appears that he concurs with the ט"ז. This would logically apply even if this individual is able to escape.

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Figure 1: Two-step process (decision tree) to apply the דין רודף in the fugitive case, based on Rav Moshe’s analysis:

Condition 1: The fugitive must be the cause of the threat and thus, he is defined as a רודף. According to רבי יוחנן, this is determined by the mere designation by the hooligans (Step 1a), whereas ריש לקיש also requires that they have a grievance against the fugitive (Step 1’b). **Condition 2:** The fugitive must have the “definitive רודף” status (e.g., if he is unable to escape), because of the *life expectancy-differential* (Step 2a). However, if he can escape (2b), since the fugitive and townspeople (TP) are viewed as equal pursuers, there is a *מאי הזית* dilemma and the דין רודף cannot apply.



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H. In summary, the following two approaches for the היתר to hand over the designated fugitive were presented:

1. According to the חסדי דוד and the ב”ה, the townspeople are permitted to hand over the fugitive if the circumstances dictate that the מאי הזית logic does not apply, as follows:
 - a. If the fugitive has no escape capability, even if he does not deserve the death penalty, ר יוחנן in the Yerushalmi and ר יהודה in the Tosefta permit מסירה *“because the reason of מאי הזית does not apply when they all are in an equal state of danger”* (חסדי דוד, Source 12, p. 12, and the first approach of the ב”ה).
 - b. If the fugitive deserves a death penalty (חייב מיתה) via a legal justice system because of his wrongdoings, ר”ל in the Yerushalmi and ר שמעון in the Tosefta permit מסירה regardless of his ability to escape. The reason for permitting מסירה is *“because the logic of מאי הזית does not apply when he is חייב מיתה”* (חסדי דוד and ב”ה).

Note: Both the חסדי דוד and the ב”ה offer approaches whereby ר יהודה and ר שמעון could agree with each other. The ב”ה maintains that ר יוחנן and ר”ל certainly disagree with each other.

2. According to Rav Moshe, the reason for the היתר for מסירה is that the fugitive is considered a רודף after the townspeople since he is the cause of their impending doom (הסבה להרדיפה). This approach is based on Rav Moshe’s belief that intent to harm is unnecessary for a person to be considered a רודף. Both ר יוחנן and ר”ל agree that this applies only if the fugitive has no escape capability. ר יוחנן and ר”ל merely disagree as follows:
 - a. ר יוחנן believes that merely by being (randomly) selected by the hooligans, the fugitive is the cause of the townspeople’s impending doom, thereby, defining him as a רודף. Therefore, he may handed over (providing he has no escape capability); whereas
 - b. ר”ל believes that the fugitive is only defined as a רודף if the hooligans have a grievance against him for which they wish to kill him. However, if the hooligans randomly selected a person, he is not defined as a רודף. Alternatively, if the hooligans designated the fugitive to be killed before he fled to the city, he is defined as a רודף even without any grievance against him.

I. The approach of Rav Moshe with regard to the dispute between the Amoraim, ר יוחנן and ר”ל, in the Yerushalmi, also lends itself to a cogent understanding of the Tosefta which records the views of the Tannaim, ר יהודה and ר שמעון. At first glance, it might appear that the statements of ר יוחנן and ר”ל are merely a reiteration of the statements of the Tannaim in the Tosefta, which is perplexing. Why would the Yerushalmi not simply quote the Tosefta if the Amoraim state nothing new, and or at least mention that the dispute of the Amoraim is identical to the earlier dispute between ר יהודה and ר שמעון? As will be evident below, according to Rav Moshe’s approach, this difficulty is readily resolved.

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- J. The statement of ר יהודה in the Tosefta, requiring a situation of escape incapability in order to permit מסירה, is not explicitly found in the Yerushalmi. However, it is unlikely that the Yerushalmi’s case is where the fugitive has escape capability, because ר יוחנן’s leniency to permit מסירה if the hooligans merely designated an individual, would then defy explanation, from the perspective of either the מאי הזית logic or the דין רודף. The מאי הזית logic certainly applies if the fugitive has escape capability because the townspeople are then forced to choose between delivering him to die versus being killed in his stead if they allow him to escape. The דין רודף will not apply when he has escape capability because the townspeople and the fugitive would be considered mutually equal pursuers. Therefore, ר יוחנן’s statement must be referring to a case where the fugitive has no escape capability. Moreover, if we interpret ר”ל’s statement that the fugitive “must be מיתה” (in order to permit מסירה) to mean that he must legally deserve the death penalty (due to his criminal behavior, as the חסדי דוד and the ב”ח understand), ר”ל appears to merely paraphrase ר שמעון’s statement. This reinforces our question, what information does the Yerushalmi offer that was not already covered in the Tosefta?
- K. In paragraph C (p. 36) and in the decision tree (Figure 1, p. 40), we explained that Rav Moshe understands the מסירה for היתר, which is based on the דין רודף, as a two-step process. The dispute of ר יוחנן and ר”ל pertains to the hooligans’ designation of a fugitive to be killed (the 1st step in the decision tree): Is the designation requirement met if they merely randomly singled out any person (i.e., the position of ר יוחנן) or, must their designation be based on their grievance towards this individual (i.e., the position of ר”ל)? However, the statements of ר יהודה and ר שמעון in the Tosefta, pertain to a downstream step in the decision tree, after the designation requirement has been satisfied (as stipulated by either ר יוחנן or ר”ל). At this downstream step, ר יהודה stipulates that (in addition to designation), the fugitive must be assigned the “definitive רודף” status, i.e., he must be unable to escape, in order to permit מסירה (the 2nd step in the decision tree). The phrasing of ר שמעון’s statement suggests that he is not disputing ר יהודה’s statement (in contrast with the phrasing of the argument between ר יוחנן and ר”ל in the Yerushalmi). ר יהודה’s statement, “*When does this apply (i.e., they may not hand him over)? Only if the fugitive is in the exterior while the townspeople are in the interior,*” addresses the initial statement of the Tosefta which prohibits מסירה. Thus, ר יהודה is coming to define the parameters of this prohibition, i.e., מסירה is only prohibited if the fugitive has escape capability. On the other hand, ר שמעון’s statement, “*So she said to them, ‘Anyone who rebels against the kingdom of David, is liable to execution,’*” addresses the details of the שבע בן בכרי incident, i.e., ר שמעון is coming to clarify the negotiations between the wise woman (according to the Midrash, סרה בת אשר) and the residents of the city, Avel. Based on his insightful analysis of the verses in ספר שמואל, Rav Moshe explains that the townspeople were satisfied that שבע בן בכרי met the two requirements of the decision tree, i.e., he was designated (according to the stipulations of both ר יוחנן and ר”ל) and he also had the “definitive רודף” status because he had no escape capability (see Supplement 2, pp. 76-79). Thus, the requirements to permit מסירה as defined by ר יהודה, were met.

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Nonetheless, this היתר is only sanctioned on the “מדנינא-level” (*rough translation: the minimal fulfillment level of the Halacha*), but the townspeople would only agree to hand שבע בן בכרי over if it was sanctioned on the “לכתחילה-level” (*rough translation: the ideal fulfillment level of the Halacha*). Accordingly, ר שמעון explains that סרה בת אשר told the townspeople that, in addition to meeting all the above requirements, שבע בן בכרי legally deserved the death penalty because he revolted against דוד המלך, and therefore, מסירה was sanctioned on the “לכתחילה-level”. Thus, according to Rav Moshe’s approach, there is no redundancy; the statements of ר יוחנן and ר”ל in the Yerushalmi pertain to a different segment of the decision tree than the statements of ר יהודה and ר שמעון in the Tosefta. In the Yerushalmi, ר יוחנן and ר”ל discuss the 1st step of the decision tree, i.e., delineating the required level of designation to define the fugitive as a רודף. However, in the Tosefta, ר יהודה and ר שמעון discuss the “מדנינא-level” היתר (based on the 2nd step of the decision tree) and the “לכתחילה-level” היתר, respectively. Accordingly, the statements of both Amoraim are compatible with both Tannaim and therefore, we are not forced into a difficult position (taken by the תוס’ אנשי שם; see Supplement 2, p. 74) that the Amoraic dispute in the Yerushalmi is identical to the Tannaic dispute in the Tosefta.

- L. Furthermore, the Yerushalmi is intrinsically more logical to understand according to Rav Moshe’s approach. As explained above, the Yerushalmi appears to discuss a case without escape capability; otherwise, ר יוחנן’s leniency would be untenable. Rav Moshe’s understanding that ר”ל does not require a legal death sentence to permit מסירה, fits this scenario most closely for the following reason: If the fugitive legally deserved the death sentence (due to his criminal behavior), מסירה would be permitted regardless of his escape capability (per the ב”ז, Source A-1, p. 35). Consequently, if we interpret ר”ל to mean that the fugitive must legally deserve the death penalty, we would be forced into an awkward explanation of the Yerushalmi, i.e., ר יוחנן’s statement is limited to a situation where the fugitive has no escape capability whereas ר”ל’s statement applies to either situation - with or without escape capability - providing that the fugitive deserves a legal death sentence. However, according to Rav Moshe, ר”ל’s requirement that that the fugitive “must be מיתה” merely comes to stipulate a higher level designation than that required by ר יוחנן, and therefore, ר”ל will also require a situation of escape incapability to permit מסירה, just as ר יוחנן does (Source A-2, p. 36).
- M. Lastly, if ר”ל’s intention is that the fugitive must legally deserve the death sentence to permit מסירה, what is the logical connection between the designation by hooligans who operate outside of any legal system, with the fugitive’s death sentence? Since the fugitive’s liability to the death penalty arises from his violation of Torah law or even civil law, if this liability alone is insufficient to permit מסירה, how would the designation by lawless hooligans combine with the legal liability to complete the process to permit מסירה? However, according to Rav Moshe’s understanding, ר”ל’s requirement, מיתה, comes to stipulate the nature of the hooligans’ designation that is considered sufficient to define the fugitive as the cause of the threat, and thus, a רודף (Source A-3, p. 37). Accordingly, the hooligan’s designation and the “death sentence”, which in this context refers to the hooligan’s grievance, are integrally connected.

Appendix A: The “Fugitive” Situation in the Tosefta and Yerushalmi Terumot, as explained by Rav Moshe Feinstein

- N. The רמב"ם (Source A-5) and the second opinion in the רמ"א (Rav Moshe Isserles, Supplement 1, Source 9a, p. 57) follow the position of ר"ל who requires a “death sentence” (i.e., the hooligans’ grievance against this fugitive, according to Rav Moshe’s interpretation) to permit גטירה. This poses a difficulty for the suggestion that multifetal pregnancy reduction could be permitted based on the דין רודף (Section VIII, pp. 27-30). Certainly, no fetus in the multifetal pregnancy situation has a “death sentence” against him. According to the רמב"ם and the second opinion in the רמ"א, how could the דין רודף be applied to permit multifetal pregnancy reduction?

Source A-5: The רמב"ם follows לקיש’s position regarding handing over the fugitive.

<p>Similarly, if gentiles told [a group of Jews], “Give us one of you and we will kill him; and if not, we will kill all of you”: Let them all be killed and they may not give over one Jewish life to them. However, if they designated someone and said, “Give us So-and-So, or we will kill all of you”: If the person is liable to the death penalty like שבע בן בכרי, they may give him over to them. However, at the ideal level of Halacha (לכתחלה), this instruction is not conveyed to them. If he is not liable to the death penalty, let them all be killed and they may not give over one Jewish life to them.</p>	<p><u>רמב"ם פרק ה' הלכות יסודי התורה, הלכה ה':</u> וכן אם אמרו להם עובדי כוכבים תנו לנו אחד מכם ונהרגנו ואם לאו נהרוג כולכם, יהרגו כולם ואל ימסרו להם נפש אחת מישראל. ואם יחדוהו להם ואמרו תנו לנו פלוני או נהרוג את כולכם, אם היה מחויב מיתה כשבע בן בכרי יתנו אותו להם, ואין מורין להם כן לכתחלה. ואם אינו חייב מיתה יהרגו כולן ואל ימסרו להם נפש אחת מישראל.</p>
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- O. Perhaps we can answer this question based on Rav Moshe’s understanding that the only reason ר"ל requires a “death sentence” is to define the fugitive as the cause of the threat (הסבה להרדיפה) confronting the townspeople and thus, define him as a רודף (see paragraphs C-D, pp. 36-37). In the fugitive situation, there is no inherent basis for any one person to be considered as the cause of the threat even if he was designated because the entire origin of the crisis (i.e., the hooligans) was externally imposed (according to Rav Moshe’s understanding that ר"ל’s ruling is unrelated to any culpability of the fugitive). Thus, we need some method to discern that this fugitive is considered the cause of the threat. The “death sentence”, i.e., the hooligans’ grievance (unjust as it is), serves to define him as the cause of the threat since it demonstrates that the hooligans specifically selected this individual and they will not be assuaged by handing over anyone else. As an illustration of this notion, Rav Moshe notes that ר"ל will agree with ר יוחנן that a grievance is not required if other situational details demonstrate that the fugitive is the cause of the threat, e.g., if the fugitive was designated before he fled to their city, the townspeople may hand him over even without a grievance (see paragraph F, pp. 37-38). By contrast, in the multifetal pregnancy situation, the cause of the danger is internally imposed, i.e., it is evident that the fetuses themselves are the origins of the threat and therefore, we do not require any external imposition of a “death sentence” to define any fetus as a רודף. Therefore, even according to ר"ל who requires a “death sentence” to define the fugitive as the רודף, presumably there would be no such requirement to define the fetuses in the multifetal pregnancy situation as רודפים (assuming that there are no other reasons to prevent the דין רודף from being applied in this situation).

Note: This discussion refers to the "coerced murder" case described in Section II-1A-B (pp. 2-3). "Option 1" and "Option 2" in the following paragraph, are schematically depicted in Figure 1 on p. 5.

1. רש"י (in סנהדרין; Source 3, p. 4) explains the "מאי הזית logic" as the basis for the דין of יעבור ואל יהרג, i.e., one must be killed rather than violate the prohibition (איסור) against שפיכת דמים (murder, i.e., the מצוה of לא תרצח), as follows: The "וחי בהם-dispensation", which generally suspends observance of מצוות to save a Jewish life, is inoperative in the "coerced murder" case (pp. 3-5) for the following reason: If α would murder β to save his own life ("Option 1" in Figure 1), there will be two negative consequences ("תרת"י): The loss of a Jewish life (β 's life) and violation of a מצוה. On the other hand, if α remains passive ("Option 2"), there will only be one negative consequence ("חדא"): The loss of a Jewish life (α 's life), but the מצוה will be observed. Therefore, as רש"י in יומא (Source B-1) states, "... if you kill β , since a Jew will be killed and a מצוה will be violated, why should it be acceptable in the eyes of Hashem to violate his מצוה?" The terminology which Rav Moshe describes to formulate רש"י's reasoning is the "תרת-ינגד-חדא" argument – "two negative consequences vs. one negative consequence" (see Supplement 2, pp. 86-87).

Source B-1: רש"י's explanation of the מאי הזית logic: Inapplicability of the "וחי בהם-dispensation":

רש"י יומא, דף פב ע"ב, ד"ה מאי הזית:

[רבא or רבה responds to α who asked if he may accede to the hooligan's demand to kill β]: "What is your premise to permit [yourself to kill β]? Is it based on וחי בהם ולא שימות בהם?"	כלומר מאי דעתיך למשרי מילתא ? משום וחי בהם ולא שימות בהם ?
[Your premise is untrue because] the reason [for the "וחי בהם-dispensation"] is that Jewish lives are more precious to Hashem than the מצוות. Therefore, the Holy One, blessed be He, says, "let the מצוה be abrogated (i.e., violated) and this person will live."	טעמו של דבר לפי שחביבה נפשן של ישראל לפני המקום יותר מן המצוות, אמר הקדוש ברוך הוא תבטל המצוה ויחיה זה.
But now [if you kill β], since a Jew will be killed and the מצוה will be violated, why should it be acceptable in the eyes of Hashem to violate his מצוה (i.e., תרצח, לא תרצח)?	אבל עכשיו שיש כאן ישראל נהרג והמצוה בטילה, למה ייטב בעיני המקום לעבור על מצותיו ?
Why should your (α 's) blood be more precious to Him [i.e., to Hashem] than the blood of your Jewish friend (β)?	למה יהיה דמך חביב עליו יותר מדם חבירך ישראל ?

2. Rav Moshe comments, "We can infer [from this רש"י] that with regard to this דין [of יעבור ואל יהרג], his (α 's) life and the life of his friend (β) are equal" (Supplement 2, p. 83). Perhaps Rav Moshe's inference is as follows: The reason for the "וחי בהם-dispensation" is that Jewish lives are more dear to Hashem than observance of מצוות (רש"י, above). If we accept the premise that all Jewish lives are deemed equal, it logically follows that the intent of the "וחי בהם-dispensation" cannot be met if α kills β to save himself, since the preservation of α 's own life will be nullified by the loss of β 's equally valued life. Therefore, since the "וחי בהם-dispensation" is inapplicable, the מצוה of לא תרצח must be observed even at the cost

of α 's life. According to Rav Moshe's understanding, apparently רש"י believes that the Torah declares total equivalence between the two lives in question regardless of any factor that may appear to render one life more valuable than the other. Accordingly, even if there was a method to discern that α 's life has a higher value than β 's life, the inapplicability of the "dispensation-והי בהם" and thus, the דין of יהרג ואל יעבור, would remain in place.

3. Therefore, according to רש"י, in a different "coerced murder" case where the hooligan orders α , "either kill β or I will kill both of you," although β will certainly be killed in any event, it appears logical that α would still be forbidden to save his life by killing β because of the "תרתי-נגד-הדא" reasoning: If α remains passive, even though both α and β will die, this would still be classified as "הדא" ("one type of negative consequence"), without transgression of an עבירה. However, if α kills β , there will be "תרתי" ("two types of different negative consequences"): β 's death and a transgression of an עבירה. Therefore, the "dispensation-והי בהם" is inapplicable and the דין of יהרג ואל יעבור would apply even if β will certainly be killed anyway. Thus, on a fundamental level, since רש"י considers the inapplicability of the "dispensation-והי בהם" as the basis of the מאי הזית logic, whenever we have a "תרתי-נגד-הדא" situation, the מאי הזית logic, and thus, the דין of יהרג ואל יעבור, will remain in force.
4. We discussed two approaches to understand the permissibility (היתר) of handing over (מסירה) the 'fugitive without escape capability' (see Appendix A, p. 41, paragraph H).
 - a. The חסדי דוד (Source 12, p. 12) explains since the fugitive will certainly be killed with the townspeople if he is not handed over, "the logic of מאי הזית does not apply when they all are in an equal state of danger." Since the מאי הזית logic is not applicable, the דין of יהרג ואל יעבור would not apply and therefore, the townspeople are permitted to hand over the fugitive.
 - b. However, according to Rav Moshe, the reason for the היתר to hand over the 'fugitive without escape capability' is because he is considered as a רודף after the townspeople (Source 15, p. 17). Below (paragraph 6b, p. 46), we will suggest a possible reason why Rav Moshe does not explain in the same way as the חסדי דוד.
5. In Section II-1-C (pp. 3-4), we discussed two approaches for the מאי הזית logic in the "coerced murder" case and how it dictates the Halacha of יהרג ואל יעבור by נשפיכת דמים.
 - a. The תלמידי רבינו יונה (1st explanation; Source B-2), as elucidated by Rav Nochum Partzovitz, understand the מאי הזית logic as follows: Since we do not know whose life (α vs. β) is considered more valuable, therefore, the uncertainty dictates that α must remain passive (שב ואל תעשה), even at the pain of his own death. According to this approach, if there was a way to definitively determine that α 's blood is redder than β 's blood, (i.e., that α 's life is definitively more valuable), since there is no uncertainty, perhaps α would be permitted to kill β to save himself.

Source B-2: First understanding of the meaning of מאי חזית in the תלמידי רבינו יונה: The מאי חזית logic operates from a perspective of uncertainty (about the relative worth of the two lives):

<p>The explanation is since his (i.e. your friend, β's) blood [may be] redder [than your blood], he should continue to live and perform מצוות. By living, he (β) will continue to fulfill the will of הקב"ה. If you will ask, since the matter lies in doubt [whose blood is redder], let α kill β so that he (α) will not be killed? The answer is [the loss of a life by] remaining passive is different [i.e., preferable than the loss of life by a Jew actively committing murder]. A person must refrain from actively transgressing a sin.</p>	<p>תלמידי רבינו יונה, עבודה זרה דף כח ע"ב, <u>ד"ה דילמא דמא דחברך סומק טפי:</u> פירוש וכיון שדמו יותר אדום יחיה יותר ויקיים מצוות ויעשה רצונו של הקב"ה יותר על ידי החיים. ואם תאמר כיון שהדבר ספק יהרוג אותו ואל יהרג הוא? יש לומר שב ואל תעשה שאני, שהאדם יש לו למנוע מלעשות שום עבירה בידיים.</p>
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b. However, רש"י, as explained by Rav Moshe, believes that the primary message of the מאי חזית logic is the inapplicability of the "dispensation-והי בהם" to the איסור of דמים. When the Gemara used the words "מאי חזית", it never meant to suggest that the דין of יעבור ואל יהרג could be influenced by any assessment of the relative worth of the two lives. Rather, the two lives in question are always considered equal, requiring α to sacrifice his life not to murder β , "even if α is a חכם and β is an הארץ (ignoramous)" (Supplement 2, p. 84). Rav Moshe expands this thought, "For [in the 'coerced murder' case] the logic of מאי חזית is based on a certainty ... it must be that the Heavenly decree is on α [to be killed], even though he has the [unlawful] possibility of saving himself by committing murder." Thus, Rav Moshe understands that the מאי חזית logic is not based on an uncertainty whose life is more worthy, but rather on the inapplicability of the "dispensation-והי בהם" due to the "תרת-נגד-הדא" argument. Therefore, the מאי חזית logic and thus, the דין of יעבור ואל יהרג, cannot be undermined even if theoretically, one could determine that one life is more valuable than the other.

6. The two approaches to explain the היתר of handing over (מסירה) the 'fugitive without escape capability' may be related to the two approaches to understand the מאי חזית logic. The חסדי דוד, who states that the מאי חזית logic does not apply if the fugitive has no escape capability, would likely subscribe to first opinion in the תלמידי רבינו יונה. The מאי חזית logic dictates if we are uncertain about the relative worth of the two lives and thus, perhaps β 's blood is redder than α 's blood, this uncertainty forbids α from killing him. However, if the fugitive cannot be saved regardless of the townspeople's actions, the redness (i.e., relative worth) of his blood is irrelevant since he is certain to die anyway. Since the דין of יעבור ואל יהרג is based on the מאי חזית logic, if this logic is not applicable, it would be permitted to hand over the fugitive. Similarly, it appears from the מאירי (Source B-3) that reason for the היתר to hand over the 'fugitive without escape capability' is because the מאי חזית logic is inapplicable when he will be killed by the hooligans in any event. However, the מאירי believes this rationale will only permit handing him over to the hooligans, but not killing him with our hands. Therefore, if the hooligan orders α , "either kill β or I will kill both of you," this rationale (that the מאי חזית logic is inapplicable) cannot permit α to kill β .

Source B-3: The מאירי explains the מאי הזית logic and the 'fugitive without escape capability':

<p>We learned in the Talmud Yerushlami, <i>If travelers were accosted by non-Jews who said "Give us one of you so that we will kill him, and if not, we will kill all of you," ...</i> It appears that the Halacha accords with ר יוחנן, as in disputes between ר יוחנן and ריש לקיש, and certainly [when ר יוחנן's view is recorded] in his Talmud (Yerushalmi). ... But if the hooligans say, "I will kill all of you [unless you hand β over]," they should hand β over since he was designated, rather than having all of them killed so that (many) lives will be saved, even if β does not deserve the death penalty by Torah law. However, the virtue of piety dictates that we delay handing him over and maintain composure, until the townspeople are about to be killed. One who rushes to hand him over, has abandoned the virtue of piety.</p> <p>From this we learn that when חז"ל state the מאי הזית logic, this only applies if the hooligan says, "Kill him (β) or else I will kill you," but if he orders (α), "Kill β or else I will kill both of you," it is permitted to kill β. However, it appears that it is only permitted to hand β over, perhaps they will accept ransom or reconsider [their murderous plans], but it is not permitted to kill β with our hands.</p>	<p><u>רב מנחם המאירי בית הבחירה, סנהדרין דף עב:</u> ושנו עליה בתלמוד המערב סיעת בני אדם מהלכין בדרך ופגעו בהם גוים ואמרו תנו לנו אחד מכם ונהרגהו ... ויראה כר יוחנן שהרי כל שנחלקו שניהם הלכה כמותו וכל שכן בתלמוד שלו ... אבל אם אמר הריני הורג את כולכם או אתה והוא ימסרהו ואל יהרגו שניהם או כולם וכו כל להצלת רבים אפילו לא נתחייב מיתה או שנתחייב ולא בדיננו הואיל וייחודהו מותר אלא שמת חסידות לעכב וליתן מתון בדבר עד דכדוכה של נפש וכל שממהר בכך הפקיע מעליו מדת חסידות. ולפי דרכך למדת במה שאמרו מאי הזית דדמא דידך וכו דוקא כשאמר לו קטליה לפלניא ואי לא קטילנא לך אבל אם אמר לו קטליה לפלניא ואי לא קטילנא לדידיה ולדידך מותר לו להרגו. ומכל מקום יראה שלא הותר אלא למסרו לו שמא יקח ממנו כפר או יתחרט עליו אבל להרגו בידיים לא.</p>
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Table 1: Summary of the מאי הזית basis for the דין of יעבור ואל יהרג by שפיכת דמים (murder) and its relevance to permit handing over the 'fugitive without escape capability':

Basis for שפיכת דמים by יהרג ואל יעבור		'fugitive without escape capability'		
Proponent	Meaning of the מאי הזית logic	Is the מאי הזית logic irrelevant?	Why "yes" or "no" ?	Reason to permit מסירה (hand-over)
1 st opinion in the תלמידי רבינו יונה*	Uncertainty about whose life (α vs. β) is more valuable	Yes (חסדי דוד)	The redness of the fugitive's blood is irrelevant since he is certain to die.	The מאי הזית logic does not apply
2 nd opinion in the תלמידי רבינו יונה (רש"י)	שפיכת דמים is excluded from the "וחי בהם" dispensation because of the "תרת-נגד-הדא" argument	No (Rav Moshe)	מאי הזית is unrelated to the relative worth of the lives, but rather, on the "תרת-נגד-הדא" argument which still applies.	דין רודף: The fugitive is considered a רודף after the townspeople

*Rav Nochum Partzovitz attributes this approach to תוספות in Sanhedrin 74b (see p. 34, Reference 2).

7. Perhaps the reason Rav Moshe offers a different explanation (to permit מסירה) than that advanced by the חסדי דוד, is because he understands from רש"י that the דין of יעבור ואל יהרג is not based on any uncertainty about the relative worth of the respective lives, but rather, on the inapplicability of the "והי בהם" dispensation" to שפיכת דמים, due to the "תרת-נגד-הדא" argument. Therefore, even though the 'fugitive without escape capability' will certainly be killed if the townspeople remain passive, the "תרת-נגד-הדא" argument and thus, the inapplicability of the "והי בהם" dispensation", will still remain true, as discussed above in paragraph 3 (p. 44). Although the איסור of מסירה may be less חמור (severe) than the איסור of תרצה, Rav Moshe states that the "תרת-נגד-הדא" argument, and thus, the דין of יעבור ואל יהרג applies even to indirectly causing someone's death (such as removing a ladder needed to rescue a person trapped in a pit; see Supplement 2, p. 88), which certainly would also include מסירה. The ב"ח (authored by Rav Yoel Sirkes; Source B-3) appears to take a similar approach to answer the question of the משנה on כסף לקיש ריש לקיש. Therefore, Rav Moshe understands that the sole reason for the היתר to hand over the 'fugitive without escape capability' is the דין רודף.

Source B-4: The ב"ח answers the כסף משנה's question regarding the 'fugitive without escape capability':

<p>The ב"ח addresses the question of the משנה כסף (Supplemental Source 8b, p. 56): Why does ריש לקיש prohibit handing over the 'fugitive without escape capability' if he is not מיתה חייב: "The logic of מאי חזית does not apply since the designated fugitive will be killed along with everyone else"?</p> <p>(The ב"ח answers): This is not a difficulty since the primary reason for the מאי חזית logic is as רש"י (Source B-1, p. 43) explains: "[If α would kill β to save himself], since a Jew (β) will be killed and the מצוה will be violated, why should it be acceptable in the eyes of Hashem that you (α) should violate the מצוה? Why should your (α's) blood be more precious to Him than the blood of this person (β)?" Therefore, [if the fugitive is not מיתה חייב], all of [the townspeople] should be killed so that the מצוה will not be abrogated.</p> <p>However, if he is מיתה חייב, he caused [the danger] for himself and therefore, his blood is on his head. We should not become ensnared because of his blood and it is permitted to hand him over. We do not describe this as [a situation] where the מצוה is abrogated [if we hand him over] since he himself abrogated this מצוה through his actions, whereby he caused the death for himself.</p>	<p><u>שו"ת בית חדש (ב"ח) (ישנות) סימן מג:</u></p> <p>ולא קשיא, טעמא מאי דהלא עיקר הטעם במאי דקאמר מאי חזית דדמך סומק טפי וכו אינו אלא כדפירש רש"י ... כיון שיש כאן ישראל נהרג והמצוה בטלה למה ייטב בעיני המקום שתעבור על המצוה, למה יהא דמך חביב עליו יותר מדמו של זה, ועל כן כולם יהיו נהרגין ולא תתבטל המצוה.</p> <p>אבל היכא דמחויב מיתה דאיהו גרם לנפשיה, דמו בראשו ואין אנו נתפסין בדמיו ומותר למסרו, ואין אני קורא בזה דלא תתבטל המצוה דאיהו גופיה קא בטיל ליה מצוה זו על ידי מעשיו שגרם מיתה לעצמו.</p>
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8. With this same reasoning, Rav Moshe would maintain that, even if by some Halachic "gauge", one could assess that β 's level of life is definitively lower than α 's level of life, the דין of יעבור ואל יהרג would remain in force since the "תרת-נגד-הדא" reasoning, and thus, the inapplicability of the "והי בהם" dispensation", would still hold true. However, according to first opinion mentioned in the תלמידי רבינו יונה and presumably the

Appendix B: Rashi's View of the מאי הזית Logic in the "Coerced Murder" Case, as Explained by Rav Moshe Feinstein

חסדי דוד, since the מאי הזית logic is operative only if we are concerned that β 's life may be more valuable than α 's life, if we are certain that the opposite is true, the מאי הזית logic, and thus, the דין of יעבור ואל יהרג, may not apply. Killing an unborn fetus or a טריפה (person with only transient life remaining, due to an illness or injury) is not subject to capital punishment, whereas killing a שלם (person with normal life expectancy) incurs capital punishment. According to those who understand that the דין of יעבור ואל יהרג is based on the uncertainty about whose life is more valuable, if β is an unborn fetus or a טריפה and the hooligan threatens α to either kill β or be killed, perhaps α would be permitted to kill β to save his own life since here it is known that α 's life is "more valuable". However, if the דין of יעבור ואל יהרג is based on the inapplicability of the "וחי בהם-dispensation", this Halacha would still be in effect (i.e., α would be prohibited to kill β) even though a Halachic "gauge" tells us that α 's life is at a higher level than β 's life.

- a. The מנחת חינוך states that in the fugitive case, if a טריפה was in the town, the townspeople would be permitted to hand him over even if the hooligans did not single anyone out, "because the logic of why do you presume that your blood is more red etc. (מאי הזית) does not apply since certainly the townspeople's blood is more red" (Supplement 1, Source 3, p. 52). This position is also stated by the מאירי.
- b. By contrast, regarding the 'non-emerged fetus', Rav Moshe describes, "the advantage that the mother has over the fetus, that she is a complete נפש while he is not yet a complete נפש," which is based on "the fact that one does not incur capital liability (for killing an unborn fetus)" (Source 17, p. 21). Nonetheless, Rav Moshe does not say that the היתר to kill the 'non-emerged fetus' (to save his mother) is because the מאי הזית logic does not apply. If not for the דין רודף, the דין of יעבור ואל יהרג would have prohibited saving the mother at the fetus' expense, per Rav Moshe's understanding of the רמב"ם (Supplement 2, pp. 63-66). Similarly, Rav Shach writes (explaining the same רמב"ם), "Even though killing the mother is subject to the death penalty whereas killing a 'non-emerged fetus' is not, nonetheless, since feticide is included under the איסור רציחה (prohibition against murder), both the fetus and mother are equal with regard to the איסור רציחה and thus, the סברא of מאי הזית would apply" (Supplement 4, pp. 95). Even though Rav Shach explicitly states, "the blood of a born person is redder than the blood of an unborn person because the murder of a born person is punishable by death whereas the murder of an unborn person is not," he still believes that the logic of מאי הזית would have prohibited killing the 'non-emerged fetus' if not for the דין רודף, which aligns with Rav Moshe's understanding.
- c. Moreover, Rav Moshe states, "it is obvious that we would apply the דין of יעבור ואל יהרג if hooligans attempt to coerce a שלם to kill a טריפה," even though murdering a healthy person is punishable by the death penalty while murdering a טריפה is not (ibid). The שו"ת נודע ביהודה תנינא, סימן נט' takes the same position. Thus, Rav Moshe's position is consistent that the דין of יעבור ואל יהרג is fundamentally unrelated to the relative worth of the respective lives, but rather, on the inapplicability of the "וחי בהם-dispensation", in accordance with רש"י's explanation.

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9. In a similar way, Rav Shmuel Rozovsky, based on the commentary of Rav Chaim Soloveitchik on the רמב"ם, explains רש"י (in פסחים, Source B-4) that the meaning of the מאי הזית logic is: Since the lives of α and β are equal and one life will be lost in any event, therefore, the imperative of saving α 's life (i.e., α 's פיקוח נפש imperative) cannot permit the לא תרצה איסור (i.e., the "והי בהם" dispensation" does not exist in this case). This is because the entire purpose of the "והי בהם" dispensation" is to save Jewish lives and here, a Jewish life (β) will be lost through the very transgression (see Source B-5).

Source B-5: רש"י's explanation of the מאי הזית logic: Inapplicability of the "והי בהם" dispensation":

רש"י פסחים דף כה ע"ב, ד"ה מאי הזית:

[רבה responds to α who asked if he may kill β to save himself]: "You are coming to ask [if you may kill β] because you know that no מצוה stands in the way of פיקוח נפש. Therefore, you believe that this [איסור against murder] should also be pushed aside because of your פיקוח נפש."	כלומר כלום באתה לישאל על כך, אלא מפני שאתה יודע שאין מצוה עומדת בפני פיקוח נפש וסבור אתה שאף זו תדחה מפני פיקוח נפשך.
[However, this premise is untrue because] this [לא תרצה of עבירה] is unlike other עבירות, since one life will be lost in any event.	אין זו דומה לשאר עבירות, דמכל מקום יש כאן אבוד נפש.
And the תורה only permitted pushing aside a מצוה [based on the "והי בהם" dispensation"] because of the preciousness of a Jewish life.	והתורה לא התירה לדחות את המצוה אלא מפני חובת נפשו של ישראל.
But, here [if you kill β], an עבירה will be transgressed and a life will be lost.	וכאן עבירה נעשית ונפש אבודה.
Who says that your (α 's) life is more precious to Hashem than β 's life? Maybe β 's life is more precious to Him?	מי יאמר שנפשך חביבה לפני המקום יותר משל זה? דילמא של זה חביבה טפי עליו?
And consequently, an עבירה will be transgressed and a life will be lost.	ונמצא עבירה נעשית ונפש אבודה.

Source B-6: Rav Shmuel Rozovsky: רש"י and the רמב"ם understand that there is no פיקוח נפש imperative (for saving α 's life) in the "coerced murder" case.

The following is <u>not</u> the explanation of the מאי הזית logic: Due to the equivalence between the respective פיקוח נפש imperatives [i.e., the imperative of saving the lives] of α and β , therefore, α must remain passive [so as not to actively push aside β 's פיקוח נפש imperative]. Rather, the explanation [of the מאי הזית logic] is: Since α 's life and β 's life are equal and one of them will die in any event, the imperative of saving α 's life cannot generate any dispensation [to transgress לא תרצה] since his friend (β) will be killed through [the transgression]. This is because the entire reason for the פיקוח נפש-dispensation (i.e., the "והי בהם" dispensation") is so that a Jewish life will be saved.	חידושי רבי שמואל על מסכת פסחים, סימן יב', בענין יהרג ואל יעבור: דהא דאמרינן מאי הזית דדמא דידיך סומק טפי דילמא דמא דחברך סומק טפי, אין פירושו דמשום דחוב פיקוח נפשו של חברו שוה לחוב פיקוח נפשו שלו, על כן צריך להיות בשב ואל תעשה. אלא פירושו דכיון דנפשו של חברו ונפשו שלו שוין ובכל ענין ימות אחד מהן, שוב אין הצלת נפשו שלו גורמת שום היתר כיון שעל ידי כך ימות חברו, דכל עיקר ההיתר של פיקוח נפש אינו אלא בשביל שתנצל נפש מישראל.
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10. The כסף משנה (Supplemental Source 8b, p. 56) suggests that according to ריש לקיש (who prohibits handing over the "fugitive" unless he is deserving of death), יהרג ואל יעבור of דין had a tradition for the דין of יהרג ואל יעבור by murder and therefore, even if the מאי הזית logic does not apply, this Halacha remains in force. חז"ל merely attributed a reason based on the סברא of מאי הזית where applicable, but this is not the primary reason. Perhaps, we can explain the כסף משנה based on Rav Shmuel Rozovsky's explanation, as follows: חז"ל had a tradition that the Torah's words, "וחי בהם", i.e., the dispensation to transgress prohibitions to preserve life, were never intended for the איסור of לא תרצה, based on the presumption that all lives are equal (i.e., the מאי הזית logic) and thus, the purpose of "וחי בהם", saving life, cannot be fulfilled by violating this איסור. From the perspective of this logic alone, however, killing the fugitive who is doomed to die anyway, could be considered a fulfillment of the purpose of "וחי בהם", since it will save lives who were not doomed to die. Nonetheless, once we have determined that the "וחי בהם" directive was not stated for the איסור of לא תרצה, the מאי הזית logic is not used as a gauge to determine in which cases the דין of יהרג ואל יעבור applies or not. In any situation where the איסור of לא תרצה will be violated, there is no "וחי בהם-dispensation" and thus, the דין of יהרג ואל יעבור remains in force even if the מאי הזית logic is inapplicable. This may be further explained through the תלמידי רבינו יונה (Source B-7) who explain that רש"י understands that our basic belief (i.e., our default position) is that the דין of יהרג ואל יעבור should apply to all מצוות, until the Torah stated "וחי בהם" to allow transgressing עבירות to preserve life. The סברא of מאי הזית reveals that the Torah's words "וחי בהם" were never intended for the איסור of לא תרצה, because the very result of α 's self-preservation act, i.e., ending β 's life, violates the entire purpose of "וחי בהם". Therefore, even if the סברא of מאי הזית does not apply in certain cases, it is irrelevant since we merely needed the סברא to reveal that the Torah deemed the איסור of לא תרצה ineligible for the "וחי בהם-dispensation", and thus, it reverts back to the default position of יהרג ואל יעבור, regardless of the unique circumstances of a given case.

Source B-7: The תלמידי רבינו יונה explain רש"י's understanding of the meaning of מאי הזית (refer to Source B-2, p. 45):

<p>ריש"י explains [how the reason of מאי הזית determines that] α may not kill β: Our basic belief is that [in the absence of a dispensation], we must be killed to avoid transgressing any מצוה. However, the Torah advocated [on behalf of Jewish life], stating "וחי בהם", teaching that we should live rather than die through the מצוות, and thus, חז"ל taught that, except for three sins, we transgress all עבירות to preserve life. And now that the hooligans order α, "kill your friend (β)," there is no [possibility to fulfill the intent of] "וחי בהם", since the dead person is before us (i.e., by killing β, the result of α's self-preservation act is death itself). Therefore, [since "וחי בהם" cannot be applied to לא תרצה], we revert to the [default] basic belief that we must be killed rather than transgress any מצוה.</p>	<p>ורש"י ז"ל פירש שהטעם הוא שאין לו להרגו, ואף על פי שיש בדבר ספק, לפי שעיקר האמונה היה שעל כל המצוות כולן יהרג ואל יעבור, אלא שהתורה הקפידה עליו ואמרה וחי בהם ודרשינן וחי בהם ולא שימות בהם, ומכאן אמרו חכמים שעל כל העבירות שבתורה יש לו לעבור ואל יהרג כדי שיחיה חוץ מע"ג וש"ד. ועכשיו כיון שאומרים לו הרוג חברך אין כאן וחי בהם שהרי המת לפנינו, אם כן נחזור לעיקר האמונה שעל כל המצוות יש לו ליהרג ואל יעבור.</p>
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Appendix C: Medical Facts Relevant to Multifetal Pregnancies and Multifetal Reduction

I. Adverse outcomes associated with multifetal pregnancies (*from: Stone J and Berkowitz RL, Seminars in Perinatology, volume 19: pp. 363-374, 1995*):

- Morbidity (major illness or disability) and mortality associated with multifetal pregnancies increase with increasing numbers of fetuses. Many adverse outcomes are the consequence of preterm birth:
 - ✓ 11 percent of twins, more than one-third of all triplets, and more than two-thirds of all quadruplets and higher order multiples were delivered very preterm (<32 weeks of gestation), compared with less than 2 percent of singletons.
 - ✓ Early mortality (death from 20 weeks of gestation through the first year of life) was 4.8 percent for twins, 8.6 percent for triplets, 10.8 percent for quadruplets, and 28.9 percent for quintuplets.
- The two most serious risks of multifetal pregnancies are: (1) loss of the pregnancy and (2) preterm birth, with its potential sequelae including perinatal mortality (i.e., death within the first week after birth), respiratory and gastrointestinal complications, infection and long-term neurologic impairment.
- Prevalence of cerebral palsy ranges from 1.6 to 2.3 per 1000 surviving infants in singletons, 7 to 12 per 1000 surviving infants in twins, and 28 to 45 per 1000 surviving infants in triplets.

II. Goals and clinical effects of multifetal pregnancy reduction:

- The goal of MPR is to reduce the risk of adverse outcomes in survivors of multifetal pregnancies by decreasing the number of fetuses *in utero*, since the risk of complications is proportional to the number of fetuses.
- Reducing pregnancies with three or more fetuses to a twin pregnancy results in fewer pregnancy losses, fewer preterm births and fewer postnatal infant deaths than in non-reduced pregnancies.
- See table below for summary of the effects of fetal reduction on decreasing the rate of spontaneous pregnancy loss (*from: Evans M, Andriole S and Britt D, Fetal Diagnosis and Therapy, volume 35: pp. 69-82, 2014*):

Type of Pregnancy (starting # of fetuses)	Spontaneous Pregnancy Loss Rates (%)	
	Without fetal reduction	With fetal reduction
Quintuplet (5)	50	10
Quadruplet (4)	25	5.5
Triplet (3)	15	3.8

Appendix D: אין דוחין נפש מפני נפש: Rav Moshe Feinstein's Explanation of Rashi

Note: The following discussion is based on רש"י (Source D-1) in the Gemara Sanhedrin (72b) which discusses the fetus whose head has emerged (the *'partially-emerged fetus'*) in the Mishna Ohalot (see Section III, pp. 7-8). This Mishna is the source of the "אין דוחין נפש מפני נפש" ruling (henceforth abbreviated as: "אין דוחין"), translated as, "we may not push aside one life on account of (i.e., to save) another life".

1. רש"י (Source D-1) asks the following question concerning the Mishna's אין דוחין ruling in the *'partially-emerged fetus'* case: Why were the townspeople in the שבע בן בכרי (abbreviated as: "ש.ב.ב.") episode permitted to push aside ש.ב.ב.'s life to save their own lives? רש"י provides two answers, based on the statements of רבי יהודה and רבי שמעון in the Tosefta Terumot (Section V, pp. 9-10): (1) In the ש.ב.ב. episode, everyone (including ש.ב.ב.) inevitably would have been killed if they did not hand ש.ב.ב. over since he had no avenue of escape (i.e., he was a *'fugitive without escape capability'*). Therefore, they were permitted to hand him over. However, if ש.ב.ב. had the ability to escape, handing him over (מסירה) would have been forbidden. (2) ש.ב.ב. revolted against the kingdom of דוד המלך and thus, was deserving of the death penalty.

Source D-1: רש"י in Sanhedrin 72b: 1) Status of *'non-emerged fetus'* vs. the *'partially-emerged fetus'*;
2) How does the שבע בן בכרי episode differ from the *'partially-emerged fetus'* case?

<p>This is referring to a woman who is having difficulty giving birth and her life is endangered. The first section of the Mishna states that the midwife extends her hand, cuts him and removes him limb-by-limb. As long as the fetus has not emerged into the air of the world, he is not a נפש and it is permitted to kill him to save his mother. However, once his head has emerged, we may not touch him (i.e., we do not intervene) to kill him since he is [legally] considered a born person and we may not push aside one life on account of another life. One may ask that in the ש.ב.ב. episode, where (<i>Shmuel II 20</i> states) "His head shall be thrown to you," they pushed aside one life (i.e., ש.ב.ב.'s life) on account of other lives (i.e., the townspeople's lives)?</p> <p><i>Answer: The ש.ב.ב. episode has two unique distinctions from the 'partially-emerged fetus' case:</i></p> <p>(1) There, even if they did not hand him (i.e., ש.ב.ב.) over, he would have been killed in the city when יואב would capture it and they (i.e., the townspeople) would have been killed along with him. But if he could have been saved (i.e., if he could escape), even though the townspeople would consequently be killed, they would not have been permitted to hand him over to save themselves.</p> <p>(2) Another answer is: [They were permitted to hand over ש.ב.ב.] because he revolted against the kingdom. So it is explained in the תוספתא.</p>	<p><u>רש"י סנהדרין דף עב ע"ב, ד"ה יצא ראשו:</u> באשה המקשה לילד ומסוכנת. וקתני רישא החיה פושטת ידה וחותרתו ומוציאתו לאברים, דכל זמן שלא יצא לאויר העולם לאו נפש הוא וניתן להורגו ולהציל את אמו. אבל יצא ראשו אין נוגעים בו להורגו דהוה ליה כילוד ואין דוחין נפש מפני נפש. ואם תאמר מעשה דשבע בן בכרי (שמואל ב' כ') הנה ראשו מושלך אליך דדחו נפש מפני נפש? התם משום דאפילו לא מסרוהו לו היה נהרג בעיר כשיתפשנה יואב והן נהרגין עמו אבל אם היה הוא ניצול אף על פי שהן נהרגין לא היו רשאים למסרו כדי להציל עצמן. אי נמי משום דמורד במלכות הוה והכי מפרש לה בתוספתא.</p>
<p>[Heaven is pursuing] the mother.</p>	<p><u>רש"י ד"ה משמיא קא רדפי לה:</u> לאמיה.</p>

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2. The first answer mentioned in רש"י was previously discussed (see cross-references below). Two approaches were presented to explain the permissibility (היתר) to hand over a *'fugitive without escape capability'*:
 - A. The חסדי דוד (Section V-2; pp. 11-12) understands the היתר to hand over a *'fugitive without escape capability'* through the prism of the "מאי חזית" logic which is the basis of the obligation to sacrifice one's life rather than commit murder (described as: "יהרג ואל יעבור"; see "coerced murder" case, Section II-1; pp. 2-5). In the *'fugitive without escape capability'* case, the מאי חזית logic is inapplicable because the fugitive will be killed whether he is handed over or not. Therefore, the prohibition against מסירה is pushed aside for the sake of the townspeople's נפש פיקוח (imperative to save an endangered life).
 - B. Rav Moshe Feinstein ("Rav Moshe") explains that the היתר to hand over a *'fugitive without escape capability'* is based on the דין רודף which sanctions killing a pursuer (רודף) to save the life of the pursued person (נרדף). This understanding is based on the following premises established by Rav Moshe:
 - (1) The דין רודף applies even in the absence of any volition to harm (i.e., an unintentional רודף);
 - (2) The fugitive and townspeople are engaged in mutual (bidirectional) pursuit after each other; and
 - (3) The fugitive only has potential for שעה חיי, i.e., temporary life extension until the hooligans destroy the entire city, if he is not handed over. Therefore, the pursuit of the fugitive after the townspeople is greater than their pursuit after him since he pursues after their עולם חיי (normal life expectancy), while they only pursue after his שעה חיי. Consequently, the fugitive is deemed the "definitive רודף"Accordingly, although the fugitive has no intention to harm the townspeople, the דין רודף authorizes them to push aside his life to save their own lives (see Sections VI, 1-4, pp. 14-15 and VI-7 & 8, pp. 20-23).
3. Rav Shmuel Rozovsky ("Rav Shmuel"; Source D-2) asks, why did רש"י develop his question about the ב.ב.ש episode based on the Mishna's אין דוחין ruling in the *'partially-emerged fetus'* case. Even without this Mishna, the ב.ב.ש episode poses a difficulty, "It is obvious that we cannot kill one person to save another person?" The "obvious" aspect to Rav Shmuel's question may be: Why did רש"י need the Mishna's אין דוחין ruling to prompt him to ask about the ב.ב.ש episode? רש"י could have asked the same question by invoking the מאי חזית logic: Just as the מאי חזית logic prohibits killing one person to save another in the "coerced murder" case, it should also prohibit handing ב.ב.ש over to save the townspeople? Rav Shmuel offers the following answer: Without the Mishna's ruling of אין דוחין, we would have assumed that the דין רודף applies even to an unintentional רודף, and this was the basis for the townspeople's היתר to hand ב.ב.ש over. However, once the Mishna ruled אין דוחין in the *'partially-emerged fetus'* case, it is evident that the דין רודף does not apply to an unintentional רודף per the Gemara's statement, משמיה קא רדפי לה ("she is pursued from Heaven"; Source 8, p. 8) which is interpreted by Rav Shmuel that the fetus is not deemed a רודף because he lacks volition to harm. Accordingly, רש"י was troubled, why was the ב.ב.ש episode treated differently than the *'partially-emerged fetus'* case? In both cases there is no volition to harm and thus, the דין רודף should not apply to either case? Rav Shmuel explains רש"י's first answer in the same manner as the חסדי דוד. Since everyone would be killed even if they did not hand ב.ב.ש over, the מאי חזית logic did not apply and therefore, it was permitted to hand him over to save the townspeople.

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Source D-2: Rav Shmuel Rozovsky's explanation of רש"י (Source D-1):

<p>Regarding the Mishna's statement, "If his head has emerged, we may not touch him because we may not push aside one life on account of another life," רש"י wrote, "In the ב.ב.ש episode, why did they push aside one life on account of another life? There, even if they did not hand him over, he would have been killed along with the people in the city when יואב captured it." This appears difficult – why was רש"י's difficulty [with the ב.ב.ש episode] based on the Mishna's statement, אין דוחין נפש מפני נפש, regarding the 'partially-emerged fetus'? Even without this Mishna, the ב.ב.ש episode is difficult to explain – it is obvious that we cannot kill one person to save another person? Perforce, the ב.ב.ש episode is different [than the "coerced murder" case] because everyone (including ב.ב.ש) would be killed in any event [even if they refused to hand him over]. Accordingly, why was [the ב.ב.ש episode] more difficult [for רש"י to reconcile] with the Mishna [than with the "coerced murder" case]?</p>	<p align="center"><u>ספר זכרון שמואל סימן פג:</u></p> <p>... דבהא דתנן יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש, כתב רש"י ואם תאמר מעשה דשבע בן בכרי הנה ראשו מושלך אליך דדחו נפש מפני נפש, התם משום דאפילו לא מסרוהו לו היה נהרג בעיר כשיתפשנה יואב והן נהרגין עמו ... ולכאורה קשה מה דהעמיד רש"י קושייתו אהא דתנן בעובר שיצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש, והלא בלאו האי מתניתין קשה איך נפרש מעשה דשבע בן בכרי דהא פשיטא דאין הורגין את האחד כדי להציל את השני? ובעל כרחך דהתם שאני משום דבלאו הכי יהרגו כולם, ואם כן מאי קשיא ליה טפי אמתניתין?</p>
<p>To understand רש"י, [at first glance], we might have understood [the ב.ב.ש episode as follows]: When a person is designated (i.e., "hand him over or else everyone will be killed"), he has the status of a רודף. Although he is considered a complete אונס (victim of circumstance) since Heaven, rather than the fugitive, caused the threat [to the townspeople], nonetheless, the fugitive can be [legally defined as] a רודף. (Thus, we might have assumed that ב.ב.ש was classified as a רודף). However, after the Mishna taught us (based on the Gemara's answer, "משמיא קא רדפי לה"), that the דין רודף is not applied when the pursuit has come "from Heaven" (i.e., the fetus is a complete אונס, without volition to harm), the ב.ב.ש episode was difficult [for רש"י to reconcile - why was it permitted to hand ב.ב.ש over?]</p>	<p>ונראה בכוונת רש"י משום דהיה אפשר לפרש דכל שיחזוהו הוה ליה רודף, ואף על פי שהוא אונס גמור ומשמיא קרדפי לה, מכל מקום הוה רודף. אולם אחר דתנן כאן דכל היכא דמשמיא קרדפי לה אין עליו דין רודף, שפיר קשה מעשה דשבע בן בכרי.</p>
<p>This is the question that רש"י answers [by creating a distinction, i.e., the ב.ב.ש episode] is unlike [the Mishna's case of אין דוחין] because everyone would be killed if they did not hand ב.ב.ש over to יואב's army]. Accordingly, the מאי חזית logic did not apply, as the כסף משנה said in the name of the רמ"ך (Supplemental Source 8b, p. 56), and therefore it was permissible to hand him over for the sake of the townspeople's פיקוח נפש. (However, in the Mishna's אין דוחין case, the מאי חזית logic applies because the 'partially-emerged fetus' could be saved if we remain passive, and thus, we may not push aside his life even for his mother's נפש פיקוח נפש).</p>	<p>ועל זה תירץ רש"י דשאני התם דאם לא ימסרוהו להם כולם יהרגו וכיון שכן לא שייך הסברא דמאי חזית וכמו שכתב הכסף משנה בשם הרמ"ך, ולפיכך שרי למוסרו משום פיקוח נפש.</p>

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4. Thus, according to Rav Shmuel, the דין רודף is inapplicable in any of the fetus and fugitive cases because the “pursuer” lacks volition to harm. The reason for the distinction in Halacha between the *‘partially-emerged fetus’* case (in which we must remain passive) and the *‘fugitive without escape capability’* (who we may actively hand over) is that the מאי הזית logic applies to the former but not to the latter. Furthermore, according to Rav Shmuel’s explanation, the Gemara’s statement, משמיא קא רדפי לה, does not come to elucidate the Mishna’s אין דוחין ruling, but rather, משמיא קא רדפי לה is a separate concept. The אין דוחין ruling works through the מאי הזית logic (*Why do you presume that the mother’s blood is redder than the fetus’ blood?*), whereas משמיא קא רדפי לה is the reason why the דין רודף is not applied, i.e., because the fetus lacks volition to harm. Accordingly, רש”י’s question was not prompted by the Mishna’s אין דוחין ruling, but rather, by the Gemara’s משמיא קא רדפי לה statement which precludes applying the דין רודף in cases of unintentional pursuit.
5. However, Rav Moshe understands the משמיא קא רדפי לה concept differently than Rav Shmuel. Rather than saying the דין רודף does not apply to an unintentional רודף, Rav Moshe explains that משמיא קא רדפי לה means that both the *‘partially-emerged fetus’* and his mother are equal participants in an impasse in which each one’s survival is dependent on the other’s demise, thus rendering both of them mutually equal (bidirectional) pursuers after each other (Source D-3). Since we have no basis to declare the fetus’ pursuit after his mother greater than her pursuit after him, we cannot apply the דין רודף to kill the *‘partially-emerged fetus’* and consequently, we must remain passive (see Sections VI-5 & 6, pp. 16-19 and VI-8a&b, pp. 20-21).
6. According to Rav Moshe, the דין רודף would apply to an unintentional רודף if he is considered the “definitive רודף” (or, the greater רודף), as opposed to a situation where the opposing parties (e.g., fetus vs. mother, or fugitive vs. townspeople) are mutually equal pursuers. If there is mutually equal pursuit, e.g., in the *‘partially-emerged fetus’* and the *‘fugitive with escape capability’* cases, the משמיא קא רדפי לה concept dictates that the דין רודף cannot be applied since there is no “definitive רודף”. However, in the *‘non-emerged fetus’* and *‘fugitive without escape capability’* cases, the mutual pursuit is not equal; the fetus and fugitive are each deemed the “definitive רודף” in their respective cases. The *‘non-emerged fetus’* pursues after his mother’s complete נפש, while she only pursues after his incomplete נפש. Similarly, the *‘fugitive without escape capability’* pursues after the townspeople’s חיי עולם, while they only pursue after his חיי שעה. Therefore, the דין רודף will permit feticide and מסירה in the *‘non-emerged fetus’* and *‘fugitive without escape capability’* cases, respectively. Based on Rav Moshe’s explanation, the following two observations may be made:
 - A. The Mishna’s אין דוחין principle is not a separate concept from the Gemara’s statement, משמיא קא רדפי לה. Rather, אין דוחין נפש מפני נפש provides the reason we must remain passive, i.e., because both the *‘partially-emerged fetus’* and his mother have an identical “נפש level”. The Gemara’s statement, משמיא קא רדפי לה provides further explanation of the Mishna’s אין דוחין ruling, i.e., the fact that the emerging fetus and his mother have an identical “נפש level”, in turn, determines that their mutual pursuit is equal and thus, the דין רודף cannot be applied (i.e., there is no “definitive רודף”; see Source D-3 to see how Rav Moshe understands the phrase, “משמיא קא רדפי לה”, denotes mutually equal pursuit). Accordingly, רש”י’s question was indeed prompted by the Mishna’s אין דוחין principle which is the

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operative ruling that precludes applying דין רודף in cases of mutually equal pursuit, and משמיה קא רדפי is merely an elucidation of this concept.

B. The rule of אין דוחין works outside the purview of the standard the מאי הזית logic which dictates the דין of יהרג ואל יעבור in the "coerced murder" case. The מאי הזית logic alone would not have prevented us from killing the fetus to save his mother since the מאי הזית logic never prevents us from killing a רודף to save the נרדף. The only reason we rule אין דוחין in the 'partially-emerged fetus' case is because both parties are mutually equal pursuers due to their identical "נפש level", and therefore, the דין רודף cannot be applied. Consequently, Rav Moshe would not agree with Rav Shmuel's explanation of רש"י's question since (according to Rav Moshe), אין דוחין merely limits the applicability of the דין רודף to cases where there is a "definitive רודף" (i.e., the pursuit of one רודף is greater than the pursuit of the opposing רודף), but certainly the Mishna does not preclude applying the דין רודף to unintentional pursuit in general.

7. It appears that Rav Shmuel's difficulty with רש"י's question about the ש.ב.ב. episode, would not present the same difficulty to Rav Moshe. Since the דין רודף can apply to an unintentional רודף (according to Rav Moshe), רש"י certainly understood that the handover of ש.ב.ב. was sanctioned because of his status as a רודף. Therefore, the מאי הזית logic would not prevent handing over ש.ב.ב. just as the מאי הזית logic never prevents us from killing a רודף. Thus, רש"י could not have invoked the מאי הזית logic to question the townspeople's decision to hand over ש.ב.ב. Only after the Mishna qualified the דין רודף, i.e., it is inapplicable to the 'partially-emerged fetus' case because it is a case of mutually equal pursuit, רש"י then questioned why the ש.ב.ב. episode was treated differently since it also appears to be a case of mutually equal pursuit. רש"י's first answer, which is the position of רבי יהודה in the Tosefta, explains that ש.ב.ב. was a 'fugitive without escape capability' and therefore, the mutual pursuit was not equal, thus, distinguishing the ש.ב.ב. episode from the 'partially-emerged fetus' case where the mutual pursuit is equal.

Source D-3: Rav Moshe explains the Gemara's לה רדפי קא רדפי statement and רש"י's understanding of אין דוחין נפש מפני נפש: (See Supplement 2, pp. 65-66, for more extensive excerpts).

I have written that משמיה קא רדפי לה does not mean that the fetus is not a רודף. Rather, this statement indicates that both the mother and the 'partially-emerged fetus' are considered [equal] רודפים ... [The Gemara's expression, משמיה קא רדפי לה, denotes that] it was arranged by Heaven that it would be impossible for both of them to live, for if the fetus will be born alive, his mother will die and conversely, [only] if the fetus will be dismembered, his mother will live. Therefore, we remain passive after his head emerges since both are equally [engaged in] pursuit. ... Therefore, רש"י only wrote that the 'non-emerged fetus' is not a נפש [but did not write, "and consequently, feticide is a less severe prohibition (than murder), which may which may be pushed aside for the mother's נפש].

אגרות משה חושן משפט ח"ב, סימן סט' אות ב':
דהרי כתבתי שטעם משמיה קא רדפי לה אינו טעם
לומר שאינו רודף, אלא דבשביל זה שניהם
רודפין ... היינו דמשמיה נעשה שאי אפשר שיחיו
שניהם דכשילוד הולד תמות האשה, וכשלא יולד חי,
שיצא אברין אברין תחיה האשה. שלפיכך מניחין
הדבר כמות שהוא, שזה הוי בהוציא ראשו שוון
תרוייהו בהרדיפה ולכן כתב רש"י רק דלאו
נפש הוא,

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[The reason רש"י stated the 'non-emerged fetus' is not a נפש was to contrast this case with the 'partially-emerged fetus' case]. Since the משנה's sole basis to prohibit killing the 'partially-emerged fetus' to save his mother is because of נפש מפני נפש, אין דוחין נפש מפני נפש, this implies that one could have rationalized a היתר to kill the 'partially-emerged fetus' due to his status as a רודף [after his mother]. However, this logic would also apply for the mother, i.e., she is considered a רודפת after the fetus, because this pursuit situation is a result of Heaven arranging that both parties cannot survive (i.e., their respective survivals are mutually exclusive). Accordingly, his pursuit [after her, which is manifested by the fact that] if the fetus will emerge alive, his mother will not live, cannot serve as a basis to choose that she should live and he should be killed, because they are both equally [engaged in] pursuit. Accordingly, prior to the emergence of the fetus' head, since he is not yet a [complete] נפש, we push aside his life because their respective pursuits are not equal, i.e., the fetus alone pursues after the mother's advantage (i.e., the 'נפש-differential') that she is a [complete] נפש while he is not. This is the reason it is permitted to kill the 'non-emerged fetus' to save his mother ... It follows that רש"י also believes [the דין רודף is the basis for killing the 'non-emerged fetus'].

היינו כיון דכל הדין ביצא ראשו דאסור להורגו להצלת האם תנן לפי שאין דוחין נפש מפני נפש, שמשמע דאיכא בעצם טעם להתיר להורגו שהוא מחמת שהוא רודף. אבל כיון שטעם זה איכא גם על האם שהיא גם כן נחשבת רודפת את העובר, מטעם דהרדיפה הוא מחמת שמשמיה עשו שלא יוכלו שניהם לחיות, שלכן איננו יכולין לדחות נפש הולד מחמת רדיפתו בזה שאם הוא יצא שלם לא תחיה האם - מפני נפש האם לבחור שהיא תחיה והולד יהרג, שהרי אין לנו טעם לזה מצד הרדיפה דשניהם שוין. ולכן קודם שיצא ראשו דלאו נפש הוא, דוחין העובר מפני שאין שוין ברדיפתו, שהעובר רודף היתרון שבאם שהיא נפש והוא אינו נפש עדיין, שלכן ניתן להרגו ולהציל את אמו ... ונמצא שגם רש"י סובר כן.

8. רש"י's question about the ב.ב.ש episode is in the paragraph with the ד"ה (heading) of "יצא ראשו" (Source D-1). The ד"ה of paragraph of רש"י that follows immediately afterward is "משמיה קא רדפי לה". In the first paragraph, רש"י raised the question about the ב.ב.ש episode immediately after discussing the principle in the 'partially-emerged fetus' case. It would, therefore, appear that רש"י's question was prompted by the אין דוחין ruling. According to Rav Shmuel, the Mishna's אין דוחין ruling posed no difficulty to רש"י. Rather, רש"י's question was only prompted after the Gemara's statement, משמיה קא רדפי לה, which disallows the דין רודף in cases of unintentional pursuit. Rav Shmuel's approach appears difficult to fit into the order of רש"י's presentation. However, according to Rav Moshe's approach, the logical flow in רש"י appears more cogent since רש"י's question was prompted by the אין דוחין rule which disallows the דין רודף in cases of equal pursuit and משמיה קא רדפי לה is merely an elucidation of that rule.
9. Rav Shmuel explained רש"י's first answer to mean that ב.ב.ש's inability to escape rendered the מאי חזית logic inapplicable. Perhaps the reason Rav Moshe did not explain רש"י's answer in this way is because Rav Moshe understands that the מאי חזית logic is linked to the "תרת-נגד-הדא" ("two vs. one") argument of רש"י (which renders the "והי בהם-dispensatio" inapplicable to murder; see Appendix B, #1, pp. 43-44). Although ב.ב.ש would be killed even if he was not handed over, the "תרת-נגד-הדא" argument and thus, the מאי חזית logic, may nonetheless apply (according to Rav Moshe) regardless of the survivability of the situation.

Appendix D: אין דוחין נפש מפני נפש: Rav Moshe Feinstein's Explanation of Rashi

10. רש"י (Source D-1), when discussing the *'non-emerged fetus'*, states: "As long as the fetus has not emerged into the air of the world, he is not a נפש and it is permitted to kill him to save his mother." Previously, two interpretations of רש"י's statement were presented (see cross-references below):
- A. The ספר מאירת עיניים (סמ"ע) and the מנחת חינוך (Section V-1, p. 11) interpret רש"י's statement, "he is not a נפש", to mean that the *'non-emerged fetus'* is not deemed a life; consequently, feticide is not considered murder (i.e., it is not a transgression of ללא תרצח). The *'partially-emerged fetus'*, on the other hand, is deemed a life and therefore, killing him is a transgression of murder. Accordingly, the operative Halachic determinant whether or not to rescue the mother at the fetus' expense, is: Does the דין of יהרג ואל יעבור apply or not? The דין of יהרג ואל יעבור applies to the transgression of murder; therefore, killing the *'partially-emerged fetus'* is prohibited even to save the mother, and this is the very intent of the Mishna's אין דוחין statement. However, since killing the *'non-emerged fetus'* is not a transgression of murder (according to these opinions), the דין of יהרג ואל יעבור does not apply; consequently, feticide is permitted for the mother's פיקוח נפש just as nearly all prohibitions are pushed aside for פיקוח נפש. According to this approach, the question that Rav Shmuel raised on רש"י would pose a difficulty. If the effective difference between the *'non-emerged fetus'* and the *'partially-emerged fetus'* is whether the דין of יהרג ואל יעבור applies or not, why was רש"י's question about the ב.ב.ש episode prompted by the Mishna's *'partially-emerged fetus'* case; his question would fit more logically in the *Sugya* (Talmudic discussion) of יהרג ואל יעבור (Sanhedrin 74a-b)?
- B. However, Rav Moshe maintains that an unborn fetus is deemed a Halachic life (Section VI-1-6, pp. 14-17). Consequently, if not for his status as a רודף, it would have been forbidden to kill the *'non-emerged fetus'* even for his mother's פיקוח נפש. According to Rav Moshe, the intent of רש"י's statement, "he is not a נפש", is to contrast the "נפש-level" of the *'non-emerged fetus'* with the "נפש-level" of the *'partially-emerged fetus'*. In the *'non-emerged fetus'* case, the mutual pursuit is not equal because the fetus only has a "incomplete נפש" while his mother has a "complete נפש" (Source D-3). Therefore, the fetus is considered the "definitive רודף" and the דין רודף is applied to kill him. By contrast, in the *'partially-emerged fetus'* case, both the fetus and his mother have a "complete נפש" level; therefore, the mutual pursuit is equal. Since there is no "definitive רודף", the דין רודף is not applied. (Note: The Gemara only discussed the *'partially-emerged fetus'* case to explain why the דין רודף is not applied, but never mentioned the *'non-emerged fetus'* case. Therefore, based on Rav Moshe's explanation, I would suggest that רש"י's purpose for mentioning the *'non-emerged fetus'* case is to define the "definitive רודף" criterion for applying the דין רודף in cases of mutual pursuit, thereby laying the logical foundation why the דין רודף is not applied in the *'partially-emerged fetus'* case).
11. It is noteworthy that the ריטב"א (Source D-4) explains the concept, "the fetus is not a נפש", which was written by other Rishonim including the רמב"ן (on Mesechet Niddah 44b), as follows: When we are deliberating whether to refrain from saving the mother's life because of the אין דוחין principle, we say that the *'non-emerged fetus'* is not deemed a נפש, and therefore his life is pushed aside to save his mother. Similarly, we say that, "the fetus is not a נפש", to exempt one who kills him from capital punishment. This explanation is consistent with the approach of

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Rav Moshe, i.e., the “*non-emerged fetus*” level” of the ‘*non-emerged fetus*’ is lower than that of his mother, since killing the former does not invoke capital punishment while killing the latter is punishable by death.

12. According to Rav Moshe’s approach, רש”י’s question on the ב.ב.ש episode was indeed prompted by the Mishna’s ruling because this precisely is the source that precludes applying the דין רודף in cases of mutually equal pursuit. רש”י, therefore, questioned why the ב.ב.ש episode, which appeared to also be a mutually equal pursuit situation, was treated differently than the ‘*partially-emerged fetus*’ case. Thus, according to Rav Moshe’s understanding, the logical flow of רש”י’s arguments appears more precise than according to the commentaries who interpret רש”י to mean that a fetus has no life.

Source D-4: Mishna, Gemara and Ritvah, Tractate Niddah 43b-44b

<p>A one-day old baby boy ... inherits and bequeaths and one who kills him is liable (i.e., he incurs capital punishment).</p>	<p><u>משנה מס' נדה דף מג' ע"ב - מד' ע"א:</u> תינוק בן יום אחד ... ונוחל ומנחיל וההורגו חייב.</p>
<p>And one kills who him is liable: Because it is written “If a man kills any human being, <i>he shall be put to death</i>” (Vayikra 24: 17) – <i>this teaches us that the murder of any victim, even of a minor, is liable to capital punishment.</i></p>	<p><u>גמרא מס' נדה דף מד ע"ב:</u> <u>וההורגו חייב:</u> דכתיב (ויקרא כד, יז) ואיש כי יכה כל נפש, מכל מקום.</p>
<p>The explanation is that even a one-day old child is considered a נפש (i.e., in reference to Vayikra 24:17: “One who strikes any person, ‘כל נפש’, shall be put to death”). תוספות ask: From here, it appears that a fetus is not considered a נפש [since killing someone prior to his birth does not incur capital punishment].</p> <p>Similar inferences are deduced from: 1) One who hits a pregnant woman causing her to miscarry, only pays monetary restitution for the fetus based on the sale value of maidservant; 2) From [the Mishna recorded in] Sanhedrin, “If a woman is having a difficult childbirth, we cut out the fetus limb by limb. If his head has emerged, we do not touch him because one life is not pushed aside on account of another life.”</p> <p>Thus, we see that a fetus is not considered a נפש, since:</p> <p>1) <i>There is no capital murder punishment for killing a fetus prior to birth; and</i> 2) <i>The ‘non-emerged fetus’ does not qualify as “one life on account of another life”.</i></p> <p>If so, why do we say in Erchin (7a-b), “If a woman sat on the birthstool and died on Shabbat, we bring a knife [through the public domain, violating Shabbat] to cut her open and extricate the fetus (i.e., to save his life).” If the fetus is not deemed a נפש, why are we permitted to violate the Shabbat for his נפש פיקוח?</p> <p>תוספות answer, when we say “the fetus is not a נפש”, this is [intended] so that [we will not] sentence one who kills a fetus [to capital punishment] or [so that we not] protect the fetus’ life at the expense of his mother’s life. However, with regard to [violating] Shabbat to save the fetus’ life, he is legally treated as a נפש. This is because [the derivation to permit violating Shabbat for נפש פיקוח], “Violate one Shabbat so that he will observe many Shabbatot,” also applies to a fetus.</p>	<p><u>חידושי הריטב"א, ד"ה דכתיב ואיש כי יכה:</u> פירוש ואפילו קטן בן יום אחד קרוי נפש. הקשו בתוספות דאלו הכא משמע דעובר לא חשיב נפש וכן משמע מהכה את האשה ויצאו ילדיה שאין שם אלא תשלומי ממון דמי ולדות כשפחה הנמכרת בשוק כדאיתא בפ"ק, והכי נמי משמע מהא דאמרין בסנהדרין האשה שהיא מקשה לילד חותכין את הולד ומוציאין אבר אבר יצא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש אלמא עובר לאו נפש הוא ... ואיכא למידק אם כן היכי אמרינן בפ"ק דערכין האשה שישבה על המשבר ומתה בשבת מביאין סנין וקורעין אותה ומוציאין את הולד וכיון דלאו נפש הוא היכי מחללין עליה את השבת? ותירצו דאף על גב דלאו נפש הוא היינו לחייב ההורגו או לדחות נפש אמו כדי שלא יגעו בו, אבל לענין הצלתו בשבת דינו כנפש דהא שייך לומר כן טעמא דאמרין גבי בן קיימא חלל עליו שבת אחת כדי שישמור שבתות הרבה (יומא פה ע"ב).</p>