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A SUPREME LEAK: ABORTION RIGHTS (AND WRONGS), PART II

Adapted from the writings of Dayan Yitzhak Grossman

In the previous article, we noted that the Torah discussion of abortion comprises two closely intertwined questions: the theoretical and conceptual question of the basis and rationale for the general prohibition of abortion, and the practical and concrete question of under what circumstances abortion is permitted. In the final section of that article, we briefly addressed the former; here, we address the latter.

In American political discourse, within the camp that maintains that abortion is not a fundamental right and that abortion on demand should be prohibited, exceptions that are commonly granted include situations of rape, incest, and danger to the life and health of the mother. We shall see that halacha has roughly analogous discussions, but with substantial differences.

(It should be understood that the halachic literature on this topic is voluminous and complex, and our article is but a brief survey of a few of the particularly important and interesting rulings on the topic. Additionally, many authorities distinguish between various stages of pregnancy, and are more lenient during earlier stages than in later ones; this article only mentions these distinctions in passing.)

LIFE OF THE MOTHER

As we mentioned in the previous article, it is universally accepted that a fetus may be aborted in order to save the life of the mother. This is explicit in the Mishnah:

If a woman is having trouble giving birth, they cut up the child in her womb and take it out limb by limb, because her life comes before the life of [the child].¹

The Mishnah proceeds to qualify this dispensation:

Once most of it has emerged, they do not touch it, for one may not push aside one soul for another.

The Gemara in Sanhedrin cites a *breisa*: Once its head has emerged, they do not touch it, for one may not push aside one soul for another. The Gemara asks: Why, he is a pursuer (who may be killed to save the life of his quarry)! The Gemara answers: It is different there, because it is Heaven that is pursuing her.²

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¹ Ohalos 7:6.

² Sanhedrin 72b. See R' Y.D. Bleich, Abortion In Halakhic Literature, Tradition Winter 1968 Issue 10.2, pp. 87-94.

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PARSHAS BEHAR FAMILY BUSINESS

Excerpted and adapted from a shiur by
 HaRav Yecheiel Biberfeld

When you make a sale to your fellow (amisecha), or purchase from the hand of your fellow, do not aggrieve one another.

Vayikra 25:14

According to Rashi, the word *amisecha* teaches that a Jew should preferentially do business with a fellow Jew. Although some maintain that this rule is not applicable today when we live among non-Jews (Yaskil Avdi Vol. 6), many say it is. When the Maharam Padua reprinted the Rambam's Mishneh Torah with his own notes and a non-Jew copied it (including the notes, without permission) and sold it for less, the Rama (Teshuvos 10) ruled that no Jew could purchase the work, for the above reason and others.

The Chasam Sofer (C.M. 79) and Chafetz Chaim (Ahavas Chessed 1:5:6-7) rule in accordance with the Rama, but the Chafetz Chaim adds two conditions: a) The price difference must be relatively small, and b) the Jew's price must not be significantly above the market price.

The Maharsham questions the Rama based on the Shulchan Aruch (C.M. 175:40-41), which says that one may sell his field to a non-Jew even if the Jew living next

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Ordered Pair

- Q** When I put my tzitzis back on after bathing for Shabbos, do I make a *bracha*? If not, what if I change to a different pair?
- A** The Rama (O.C. 8:14) writes that one who removed his tallis with the intent to put it back on does not make a new *bracha* upon doing so. The Mishnah Brurah says that this is so even if he wasn't wearing a tallis *katan*. It follows that the same would apply to a tallis *katan*; if it was removed with intent to put it back on, no

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HEALTH OF THE MOTHER

Some infer from "because her life comes before the *life* of [the child]" that abortion is only permitted when the mother's life is in danger, but otherwise the fetus's life must be respected,³ and there are major authorities, one of the most prominent of which is R' Moshe Feinstein,⁴ who indeed insist that nothing short of danger to the mother's life, not even danger to her health and well-being, can justify abortion.

Other authorities, however, do maintain that a therapeutic need of the mother can justify abortion even in the absence of any danger to her life. One of the most important of these is R' Shneur Zalman Fradkin (of Lublin, author of *Toras Chesed*), whose lenient stance R' Ovadia Yosef considered to constitute "considerable basis (*makom rav*) to permit [abortion] at least in case of illness, even when there is no danger to the mother."⁵ R' Ovadia accordingly permits abortion in such a case within the first three months of pregnancy.⁶

R' Eliezer Yehudah Waldenberg (the Tzitz Eliezer), perhaps the most lenient major recent halachic authority on the subject of abortion in general, rules:

Even when the state of the woman's health is very precarious, and in order to heal her, or to assuage her great pains, it is necessary to abort her fetus, although there is no actual danger, there is also basis (*makom*) to permit doing so, in accordance with the ruling authority's judgment of the situation that is before him.⁷

R' Moshe Tzuriel goes so far as to claim that "most of the *poskim* of our generation have permitted abortion even when there is no danger to the mother."⁸

RAPE AND INCEST

A number of authorities have discussed the possibility of permitting the abortion of a fetus conceived out of wedlock, by either a single or a married woman, based on a variety of considerations which are beyond the scope of this article.⁹ Particularly intriguing is the ruling of R' Yosef Chaim of Baghdad (the Ben Ish Chai), who prefaces his response to a question of this nature with the caveat that he is "unwilling to respond in the form of *hora'ah*, neither to

prohibit nor to permit," then briefly cites the major early precedents on the question, and concludes by reiterating that

I have already said that I am not adding anything of my own on this subject, and I am not revealing my opinion, and I have merely presented the aforementioned words before the questioner, and he shall show these words of mine to some scholar, and he will teach him what to do.¹⁰

ABNORMAL FETUSES

In a lengthy and comprehensive article on the topic of abortion, the Tzitz Eliezer states his opinion that

If there is a well-founded concern that the child that will be born will emerge deformed and suffering, one may take the side of permitting (*yeish lezadeid lehatir*) the performance of an abortion before forty days have passed since her conception, and even before three months have passed and there is not yet fetal movement.¹¹

In a subsequent ruling on the specific case of a fetus diagnosed with Tay-Sachs disease, he allows its abortion until seven months into the pregnancy, provided that the procedure does not entail any danger to the mother.¹²

R' Moshe vehemently rejects this ruling of the Tzitz Eliezer (in uncharacteristically sharp language, presumably due to his conviction that we are dealing with murder):

It is clear and obvious as I have written, the clear halacha according to our teachers, the *Rishonim*, the commentaries, and the *poskim*, that it is absolutely prohibited under the law of murder, [to abort] any fetus, whether legitimate or *mamzeir*, whether ordinary fetus or one known to [be afflicted with] the disease of Tay-Sachs, and they are all absolutely prohibited according to the law, and one should not err and rely on the responsum of this scholar (the Tzitz Eliezer), and may his Master forgive him for this.¹³

R' Yehuda Dovid Bleich (writing in 1968, and so aware only of Rav Waldenberg's remarks in his earlier *teshuvah*, but not his later ruling regarding Tay-Sachs, which is dated 5735 (1974)) comments:

Rav Waldenberg is the only authority who deems abnormality of the fetus to be justification for interruption of pregnancy and even he stipulates that the abortion must be performed in the early stages of pregnancy...Rav Waldenberg permits such termination of pregnancy within the first three months following conception

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bracha is made. (It seems (see Ma'adanei Shlomo p. 189) that Sefardim follow the Rama in this matter.)



The Rama's reason, as the Mishnah Brurah explains, is that since the wearer meant to put the garment back on soon, he wasn't *meisiach da'as* from the mitzvah. (The Shulchan Aruch Harav writes (8:23-24) that within two or three hours is soon enough.) Though the Biur Halacha (s.v. *Veyesh omrim*) wonders why people don't make a new *bracha* on tzitzis after bathing, Siach Halacha (63) says in the name of R' Shlomo Zalman Auerbach that today, when people spend less than two hours bathing, no *bracha* is made.

If you change to another pair of tzitzis, however, there is great debate among contemporary *poskim*. It is advisable to obviate this problem by having in mind when making the *bracha* on your tzitzis in the morning to cover only the current pair.

If one dons his second pair of tzitzis in a place unfit for a *bracha* or with unclean hands, he should wait until that is resolved, then touch his tzitzis and make a *bracha*.

provided there is yet no fetal movement.¹⁴ R' Moshe Tzuriel, however, argues that the positions of the numerous authorities who are lenient in other contexts of abortion support the possibility of aborting a fetus diagnosed with a severe illness, and he accordingly concludes: It is therefore appropriate for us to provide support to those parents who are brought by the pressure of circumstances to seek out a *heter* to abort the fetus. It is not appropriate to publicize with excessive resolution and vehemence that the prohibition is unanimously absolute...¹⁵

3 See Shu"t Maharit *cheilek 1 siman 97*. Cf. n. 5 in the previous article.
4 Shu"t Igros Moshe C.M. *cheilek 2 siman 69* end of *os 2 s.v. Velachein ledina*.
5 Shu"t Yabia Omer *cheilek 4 E.H. siman 1* os 8.
6 Ibid. *os 10*.
7 Shu"t Tzitz Eliezer *cheilek 9 siman 51* end of *sha'ar 3* end of *perek 3* summary *os 10*. Cf. Rav Bleich *ibid.* pp. 94-96.
8 *Hapalas Ubar She'uvchanah Etzlo Machalah Kashah*, *Techumin 25* *os 5*.
9 See the discussions and surveys of earlier sources in Tzitz Eliezer *ibid. perek 3*, and Rav Bleich *ibid.* pp. 102-104.

10 Shu"t Rav Pe'alim *cheilek 1 E.H. siman 4*.
11 Tzitz Eliezer *ibid.* end of *os 9*.
12 Ibid. *cheilek 13 siman 102*.
13 Igros Moshe *ibid.* at the end. Rav Waldenberg responded to R' Moshe and vigorously defended his position in Tzitz Eliezer *cheilek 14 siman 100*, and cf. *ibid. simanim 101-02*.
14 Rav Bleich *ibid.* p. 105.
15 Rav Tzuriel *ibid.* *os 7* III.



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door wishes to buy it, if the non-Jew's offer is even slightly higher

than the Jew's. The Maharsham therefore maintains that one need only sell to or buy from a Jew if his price is equivalent to that

offered by the non-Jew. The Chafetz Chaim responds that although one is not obligated to do business with a Jew if the non-Jew's offer is better, it is preferable that he do so, even at a small cost.

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