

Halachic Perspective on Conjoined Twins

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Conjoined twins are twins that are born connected to one another, occurring when the embryo does not separate completely. Since identical twins are the result of one early embryo splitting at about eight to twelve days after fertilization, it is hypothesized that the formation of conjoined twins occurs because the early embryo might start splitting too late, causing an incomplete division. Another possibility is that the two embryos might somehow merge together [1]. Most conjoined twins do not survive pregnancy; only 18% of conjoined twins do not result in a miscarriage or stillbirth. About 75% births of conjoined twins die within 24 hours of birth [2]. Depending on where the babies are connected, surgery may be performed to disconnect the twins. The most common areas for conjoined twins to be connected are at the abdomen, base of the spine, length of spine, trunk, head, and chest [1].

One of the first mentions of conjoined humans is in an opinion in the *Gemara Eruvin* (18a) that *Adam* and *Chava* were created conjoined, and then they were separated. *Rabbi Yaakov Resiher* in his *sefer* the *Shevut Yaakov* I no. 4, mentions this *Gemara* when discussing conjoined twins. Based on this *Gemara*, he says that we can deduce that conjoined twins are considered individual people according to *halacha*. *Rabbi Resiher's* reasoning is because the *Torah* refers to conjoined *Adam* and *Chava* in the plural, as it says, “Male and female did He create them... and He called their name *Adam*” (*Bereishis* 5:2). *Rabbi Reisher* notes that conjoined twins cannot get married according to *halacha*, because male conjoined twins would have to share a bed with each other's wife. With this reasoning alone, it seems permissible for female conjoined twins to get married if they live in countries excluded by *Rabbenu Gershom's* decree prohibiting polygamy. However, marital relations are prohibited when a third person is in the same room. Therefore, even those female conjoined twins would not be able to get married [3, 4].

R' Yaakov Hagiz in his *sefer Halachos Ketanos I* talks about his encounter with male conjoined twins. One of the twins was larger than the other and the smaller one

did not experience sensations, and was dependent on the larger twin. *R' Hagiz* said that they were considered two individuals according to *halacha*, but the smaller one was considered a *goses* (a person that is in the process of dying) [3, 4].

Noted in *Gemara Menachos* (37a), *R. Yehuda* was questioned if a person has two heads, on which head would he put his *tefillin*? *R. Yehuda* dismissed the question. Thereafter, another person asked *R. Yehuda* how much money should be given to the *cohen* to redeem the first-born son if the baby was born with two heads. The normal amount of money to give the *cohen* is five *selâ'im*. However, it was decided that in the case of conjoined twins, one should give ten *selâ'im* for each boy [3-5].

Tosfos on this *Gemara* brings down a *midrash* about *Shlomo Halmelach* watching *Ashmedai* “bringing forth from the ground” a two headed man. The man had both normal children as well as children with two heads. The father died and the children with two heads wanted a double inheritance from their father, and so they brought the case to *Shlomo Hamelech* [3] [5]. The *Shittah Mekubezes* notes the solution developed by *Shlomo Hamelech*. He covered one of the twin's heads, and then poured hot water on the other twin's head. Both twins screamed when he poured the water, therefore he concluded that the twins were a single person [3, 5].

In modern times we have not encountered conjoined twins that share a nervous system as described in this *midrash*. The *Shittah Mekuzbetes*, therefore, concludes that conjoined twins that do not share a nervous system are considered separate people according to *halacha*. Additionally, according to the *Halachos Ketanos I* it seems that even if one of the twins is dependent on the other, they are each considered individual people. This is demonstrated even when the smaller twin is dependent on the larger twin, but the smaller one is a *goses* [3, 4].

Dicephalus twins share a heart and cannot survive because the heart cannot provide sufficient circulation for both bodies. The successful separation of diceph-

alus twins normally requires that one of the twins be killed. In 1977, there was a case of Orthodox Jewish dicephalus twins. The twins had a 6-chambered heart; on the side of one of the twins there was a normal four-chambered heart and on the side of the other twin there was a two-chambered heart. The two-chambered heart and four-chambered heart were fused together. The wall connecting the two hearts was very thin so the hearts could not be divided. Even if the hearts were successfully divided, the twin with the two-chambered heart would not survive. Additionally, the twin with the two-chambered heart would not survive if the hearts were divided [3-6]. Another concern was that splitting the hearts could cause their connection to the nervous system to be severed, and resulting in the fatal disruption of the heart's electrical conduction.

The case was brought to *R' Moshe Feinstein* ruled in favor of the surgery. Although he never formally published the answer, others recorded his analysis. One approach was based on a *breisa* in the *Terumot* (8:10). The *breisa* says that if a group of Jews travelling is stopped by bandits, and the bandits say that they must either sacrifice one of the Jews or all will be killed, then they should all be killed. However, if the bandits designate a specific person that they will kill, then the Jews can allow them to kill that person. In the case of the conjoined twins, one of the twins was already designated to die, so if it will save the life of the other then the surgery can be performed.

The *Amoraim* argue about the *breisa*. *R' Simeon ben Lakish* says that this case only applies if the designated person deserves the death penalty. However, *R' Yochanan* disagrees and says that the person does not need to deserve the death penalty [3]. The *Ran* and the *Gemara Yoma* (82b) seem to agree with *R' Yochanan*. However, the *Rambam* in *Hilchos Yesodei Hatorah* (5:5) rules according to *R' Simeon Ben Lakish*. The *Rema* in *Yoreh De'ah* (157:1) cites both opinions. This makes the analogy of this case to the conjoined twins difficult to understand because the twin designated for death is not deserving of the death penalty [3].

The other opinion as to why *R' Moshe Feinstein* paskined that the surgery was permissible is because the twin is acting like a pursuer [7, 8]. Based on *Kesubos* 33b, *R' Akiva Eger* argued that each twin is acting as a pursuer for the other, so that logic cannot stand. The only case

where this logic could be applied is if one could identify that the healthy heart belongs to one of the twins over the other. The doctor said that the four-chambered heart belonged to one of the twins, and the two-chambered heart belonged to the other. However, according to *halacha*, and modern science, the fact that one heart is in closer proximity to one twin does not mean it belongs to that twin. Blood passed from the four chambered heart to the two chambered heart, which seems to indicate that this was a six chamber heart. It was not one developed heart and one underdeveloped heart [3].

Rav Dovid Baruch Povarsky, one of the *Roshei Yeshiva* of *Ponivzeh*, wrote in *Bad Kodesh* IV no. 52 *Ve-Shamati* that he was informed that the reason *Rav Moshe* allowed surgery was due to the pursuer logic. However, *R' Povarsky* disagreed with this logic. The *Mishna* in *Ohalot* (7:6) says that a fetus can be killed in order to keep the pregnant mother alive. Nevertheless, once the head of the fetus is out of the mother one cannot kill it. The *Gemara* questions the *Mishnah's* conclusion as it seems like the fetus is acting like a pursuer. The *Gemara* says the *halacha* of pursuer doesn't apply in this case because the mother is being "pursued by heaven." The *Rambam* in *Hilchos Rozeach* says that the fetus is not considered a pursuer because the birth process is natural, and therefore, the risk to the mother is the result of a natural process. *R' Povarsky* applied the same logic to the twins. The twin considered a "pursuer" does not actually fall under the category of pursuer because becoming a conjoined twin is also a natural process.[4]. Additionally, since the heads of both twins are already out of the mother, they are considered a human according to *halacha*, so you cannot sacrifice one twin for the other twin [3].

R' Povarsky posits his own rationale as to why the second twin could be sacrificed. According to the *Gemara Shabbos* (135a) a *nefel*, which is a baby that will not survive for more than 30 days, is not considered a living person. In this case since the second twin is dependent on the first twin's circulatory system, this twin is considered a *nefel*. Even though the twin did survive for more than 30 days, he argues that if not for external medical equipment the twin would not have survived, so she is still considered a *nefel* [3].

R' Mordechai Winkler seems to agree with this logic as he writes in *Teshuvot Levushei Mordechai* that a preemie that was in an incubator and survives for longer than

30 days is only not considered a *nefel* if he survives 20 years. In contrast, *Rav Shlomo Zalman Auerbach* says that a baby that needs an incubator should be redeemed (if it is a first born baby boy) in the usual way [3]. *R' Moshe Stern* in *Teshuvot Be'er Mosheh* I says that a premature baby may be redeemed after 30 days even if it is still dependent on an incubator as long as it has hair and fingernails. According to the *Rambam*, even if the hair and fingernails have not formed, the baby that survives for 30 days in the incubator can be redeemed. Therefore, everyone agrees that babies that are not premature, even if they are in the incubator for 30 days, are not a *nefel*. Thus, the twin that survived 30 days shouldn't be considered a *nefel* [3].

One could argue in favor of *Rav Povarsky's* opinion by saying that the twin with the underdeveloped heart is considered a premature baby and can be characterized as a *nefel* because there was not enough cell division to create two hearts. However, this would require saying that the four-chambered heart belongs to one twin and the two-chambered heart belongs to the other twin, and as mentioned earlier, we can not make that conclusion. Therefore, the twin cannot be considered a *nefel* [3].

As demonstrated, conjoined twins can raise a tremendous amount of *halachic* issues. Although this issue is rare and tragic, the *halachos* are fascinating, and the conclusions drawn highlight the value that the *chachamim* placed on every life.

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