



RABBI GIDEON

**Machon Puah for Fertility and
Gynecology in Accordance with Halacha**

WEITZMAN

The Surplus Egg

Last week we discussed the status of a child born from a married woman and another man, other than her husband. Such a child would not be permitted to marry other Jews. This has a bearing on the question of whether a couple is permitted to “adopt” and use a fertilized egg from another married couple.

We saw that Rabbi Moshe Feinstein was of the opinion that this halachic status is not conveyed through fertility treatment. Accordingly, there is no problem of using fertilized eggs from a married woman. But some poskim disagree with Rabbi Feinstein and do not permit the use of such eggs. There are other options that would solve this problem even according to the latter opinion.

One solution would be to use fertilized eggs from a non-Jewish couple. The problem of a child born from a married woman only applies if she is Jewish. If the donating couple are not Jewish then this particular problem does not exist. Of course, if eggs are used from a non-Jewish couple, then we would encounter the question of whether the child conceived and born would be Jewish. This can be solved by a process of conversion.

Another possible solution is that the couple can adopt fertilized eggs from a

woman who is no longer married. If the couple divorce or the husband passed away, then the woman would not be married and this problem would not exist.

This, of course, seriously limits the availability of possible fertilized eggs, but there are plenty of couples who unfortunately divorce after their own fertility treatment. They still have fertilized eggs cryopreserved, but they are not going to use them. They may agree to give them to another couple, and this would seem to solve the problem of the child’s halachic status.

This raises another problem; some years ago, there was a famous legal battle in Israel called the Nachmani Case. Ruth and Daniel Nahmani, a married couple, were unable to have a child and decided to undergo fertility treatment using a gestational carrier who would bear the pregnancy and deliver the child. After the fertilized eggs were created Daniel left Ruth and went to live with another woman, and they had a child together. Ruth applied to the hospital to release the fertilized eggs into her possession for the purpose of the surrogacy procedure, but Daniel opposed this. The hospital refused to release the fertilized eggs, and Ruth applied to the District Court for an order against the hospital to release the fertilized eggs, the District Court agreed but Daniel appealed the judgment of the District Court to the Supreme Court.

More on this next week. ■