



RABBI GIDEON

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

WEITZMAN

Are Eggs a Legal Entity?

Last time we discussed whether one partner can “force” the other to have children or use frozen fertilized eggs, as was the circumstance in the Nachmani case. What is the halacha regarding selling such eggs? Can one partner take the frozen fertilized eggs and sell them to another couple without the knowledge or against the wishes of the other spouse?

At the time of the Nachmani case, Rabbi Shaul Yisraeli wrote an article that discussed ownership of embryos. The question is whether we can view embryos as a commercial entity. While it is difficult and appears callous to discuss potential life in such stark financial terms, as a legal model it is important to enable us to establish the importance of such an entity.

The Torah (Shemot 21:22) writes that “if two men argue and one pushes a pregnant woman who miscarries but no calamity occurs, he will be punished as the woman’s husband claims.” Two men fought each other and during their altercation one of them hits the other man’s wife who miscarries. While this is itself a tragedy, the woman survived and, in the words of the verse, “no calamity occurs”. The attacker

must pay the husband for the “cost” of the unborn children. The husband makes a claim in the Beit Din for the damages and they exact an appropriate monetary punishment. Were the injury to have resulted in the wife’s fatality, the punishment would have been much more severe.

From here we can deduce that embryos have a financial value and can be defined as a fiscal commodity. The Rambam (Laws of Injury and Damages 4:1) understands that the offender pays damages to the amount corresponding to the value of the damaged embryos. In this view, the embryos are considered a legal item that carry a monetary value. If that is correct, then they belong to someone and can be bought and sold.

But there is another way to understand the verse and the punishment administered to the person who smote the woman and caused her to miscarry. The Raavad and Rabbeinu Asher view this law differently. They explain that the man does not pay damages; rather he has to pay a fine for his actions. The difference between the two is that damages relate to the value of the item damaged, in this case the embryos. Whereas a fine is a set amount that is irrespective of the actual monetary amount of the damage caused. The fine does not **necessarily** confer an intrinsic monetary value on the item destroyed.

More on this next week. ■