

## **MACHON PUAH**

### **Who Can Be a Surrogate?**

Last time we discussed whether it is permissible for a woman to act as a gestational carrier for another woman who is incapable of carrying a pregnancy. This is connected to the argument as to whether the mother is the woman who gives the genetic material or whether it is the woman who carries the pregnancy and delivers the baby.

There are many opinions on both sides but the weight of halachic literature seems to support the birth mother being considered the halachic mother, however there are many who disagree. Rav Shlomo Zalman Auerbach is quoted as saying that he found a source for every question that he was asked in the enormous body of rabbinic and halachic texts and therefore he was able to render a clear and decisive opinion. Only in the case of a gestational carrier was there no explicit source and therefore he felt that we would have to be strict in both directions. If the genetic mother was not Jewish then the child would need to undergo a conversion out of doubt as to his halachic status and the same would be the case if the birth mother was not Jewish even if the genetic mother was Jewish. This would also determine that it would be halachically problematic for a married woman to act as the surrogate as we explained last time.

In light of this, the only woman who could be a gestational carrier for a Jewish couple would be a single Jewish woman to ensure that there would be

no halachic problem with the status of the child. Legally in Israel, and other countries, a woman who has never given birth cannot act as a surrogate. This is due to the tragic cases in which the birth mother refused to give up the baby over to the genetic parents. Such cases have gone to court and some have even been decided in favor of the gestational carrier. Therefore the law is that a woman who has never given birth before cannot act in this capacity and only woman who has experienced birth, and is thus less likely to refuse to hand over the baby, can act as a surrogate. Women who want to act as a gestational carrier also undergo extensive testing and psychological assessment to ascertain that they know what they are about to undergo and to ensure that they are not being forced into it.

These limitations severely limit the number of women who are able to be gestational carriers and it is difficult to find a surrogate.

There are other considerations as well. More on this next time.

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