

# **MACHON PUAH**

## **Embryo Ownership - Conclusions**

Last time we saw that the embryos do not belong to either the father or the mother and belong to both of them together. If they are unable to agree how to use them neither of them can force the other to use them to have a baby.

However there are opinions that disagree and cite sources that suggest a different approach. Rachel said to Yaakov "give me children or else I am dead" (B'reishit 30:1) and Rashi deduces from here that someone without children is considered like a dead person. The Maharal explains that someone without children feels disconnected from God and therefore the obligation to have children is a halachic and a moral one. A couple is obligated to do whatever they can to have children, and, indeed couples go to great lengths to have children, investing time, effort and a great deal of emotional energy. The husband is obligated to help his wife have children and he can definitely not prevent her from doing so.

But we could well argue that this is only in the case of a married couple; when dealing with someone who is single the halacha is different. While the person would very much like to have children and has a halachic obligation to do so, they are not able to have children since this can be done within the framework of marriage.

Even though the couple created the embryos when they were married with the intention that they would be implanted and potentially grow into babies, they have subsequently

divorced. It is clear that the situation has changed and the halacha would seem to change accordingly. In the same way that a single man has no obligation to a single woman to have a child with her, so does this couple have no obligations to each other. As such the embryos cannot be used by one or the other and should be destroyed.

Another option would be for the divorced couple to agree to sell them to another couple who need a sperm and egg donor. Even though embryos in the body cannot be seen as an item that can be bought and sold, outside of the body the embryos can be considered property that is jointly own and can be sold.

The sad and complex case of the Nachmanis who argued about using the frozen embryos has given rise to a halachic debate and a legal discussion as to how we look at embryos, ownership and use. Technology has enabled us to create and use embryos, but it is the halacha that guides us to how and when they can be used.

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