

## THE CONJOINED TWINS DILEMMA:

### Shnayim Mehalchin B'derech, T'nu Lanu Echad Mi'khem and Rodef

#### Teacher's Guide

In fall 1977, conjoined (often referred to as “Siamese”) twin girls were born to a Jewish couple in New Jersey. The twins were connected from the shoulder until the pelvis and shared a six-chambered heart and a liver. A team of twenty leading doctors and nurses was assembled in Philadelphia at Children’s Hospital to separate the twins in a difficult surgery that raised serious halachic and ethical issues. The players in this dramatic episode included a pair of fragile, newborn “Siamese” twins, a young couple, some of the finest surgeons in the United States, and one of the world’s greatest halachic authorities, the saintly Rabbi Moshe Feinstein, of blessed memory (1895-1986). A painful and tragic decision needed to be made since the twin’s shared heart could fail at any moment; without surgically separating the twins there was no hope for survival for either one. Was it permitted to separate the two babies, resulting in the immediate death of one, in order to save the life of the other?

In this class we will debate the moral and ethical issues raised by analyzing three Talmudic discussions that were reviewed to arrive at the landmark decision: *Shnayim Mehalchin B'derech, T'nu Lanu Echad Mi'khem* and *Rodef*.

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#### KEY QUESTIONS

- Is it permitted to kill one person in order to save someone else?
- Is there a difference between actively causing a death and passively causing a death?
- What should be done if one person’s death can save many lives?
- Does the legal status (*halachah*) change if one person is pursuing another?
- How are the legal principles implemented in a real-life situation?

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#### CLASS OUTLINE

##### **Section I. Background to the Case**

##### **Section II. How Many People Are Here?**

##### **Section III. The Analogy of Two Desert Travelers, Only One Has Water**

##### **Section IV. The Dilemma of Handing Over One Person to Save a City**

##### **Section V. Rodef – Killing a Pursuer to Save a Potential Victim**

##### **Postscript. The Operation and its Aftermath**

**Note:** This shiur is not intended as a source of practical *halachic* (legal) rulings. For matters of *halachah*, please consult a qualified *posek* (rabbi).

**עב:                      בן סוור ומורה    פרק שמיני    סנהדרין**

**עב:**

## בן סורר ומורה פרק שמיני סנהדרין

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## SECTION I    Background – The Case

### ***The Agonizing Question: Separate the Conjoined Twins?***

*On September 15, 1977, a pair of Siamese twins was born to a Jewish family in Lakewood, New Jersey. These twins, unfortunately, shared some internal organs, including a unique six-chambered heart. Shortly after their birth the twins were flown by helicopter to the Children's Hospital in Philadelphia, where Dr. C. Everett Koop, who subsequently became the highly regarded Surgeon General of the United States, was the Chief of Surgery.*

*It became obvious to the entire team of physicians that the twins would die in a relatively short time unless they were separated. The only way by which one child could be viable was if the twins were surgically separated, resulting in the immediate death of the more dependent baby. Dr. Koop informed the family of the ethical dilemma they faced: **Are they willing to give the medical staff a green light to go through with surgery on their twins, effectively killing one to save the other?***

*The deeply religious family, themselves prominent teachers of Torah, referred the question to Rabbi Moshe Feinstein, of blessed memory, one of the greatest halachic authorities of his time, living in the Lower East Side of New York City.*

*Rav Feinstein consulted with the team of medical experts and rabbinic scholars during ongoing sessions lasting late into the night. After great deliberation, he approved the surgery on October 6 with the operation scheduled for October 11. While awaiting the decision, Dr. Koop had to quiet his group of experts, who were anxious over the lapse of time – the babies' six-chambered heart was showing signs of failure due to the load of supplying blood to the two infants.*

*Dr. Koop calmed his team with the following statement (as quoted by Rabbi M. D. Tendler, ASSIA, Vol. IV, No 1, February 2001): "The ethics and morals involved in this decision are too complex for me. I believe they are too complex for you as well. Therefore I referred it to an old rabbi on the Lower East Side of New York. He is a great scholar, a saintly individual. He knows how to answer such questions. When he tells me, I too will know."*

Rabbi Feinstein's 1977 Conjoined Twins ruling was not included in his responsa, Igrot Moshe. The halachic analysis was subsequently documented by Rabbi Moshe Tendler, who discussed the Conjoined Twins case at length with Rabbi Feinstein and the medical team, as well as by Rabbi David Bleich, a bioethicist at Cardozo School of Law. This shiur is centered upon what has been attributed to Rabbi Feinstein's analysis, as well as additional proposed solutions (see also Additional Resources).

## SECTION II How Many People Are Here?

The first step of the decision-making process was to determine whether the twins were considered one human being or two. The following report demonstrates how this question was mulled over for a number of days.

**Source 1. “The Surgery: An Agonizing Choice - Parents, Doctors, Rabbis in Dilemma,” by Donald C. Drake, The Philadelphia Inquirer (October 16, 1977) – Are the conjoined twins one person or two?**

*Time and again Rabbi Tendler put the same question to Dr. Koop in different ways, because the answer would be so important to the rabbinical discussion that would ensue.*

*Are the twins one baby or two babies? ...*

*Each time Rabbi Tendler asked the question in a different way, Dr. Koop would come back with the same unequivocal reply: With the exception of the chest connection at which their livers were joined, as well as their hearts, the girls were separate human beings with their own separate brains and nervous systems.*

### What would you propose: are the conjoined twins one person or two?

If the twins were defined as one person, the halachic decision would be relatively simple: Tragic though it remains, an endangering limb can and should be amputated to save the person's life. However, the doctor defined these twins as two people.

There is also a Talmudic precedent (though the cases might not be identical) indicating that they should be treated as two individuals.

### Source 2. Menachot 37a – A child was born with two heads.

Pleimo asked Rebbe [Yehuda the Prince], “If a man has two heads, on which one should he place his *tefillin* (phylacteries)?” Rebbe said to him, “Either go into exile or you will be excommunicated!” (Rashi explains that Rebbe assumed the question was extremely irreverent and mocking.) Just then a man walked in and said to Rebbe Yehuda the Prince, “Our baby that was just born has two heads. How much do I have to give the Kohen (priest) for *pidyon haben* (redemption of the first born – usually five silver pieces for a baby)?” A certain elderly man came and taught him, “You are obligated to give him ten silver pieces.”

בָּעָא מִיְנֵיהּ פְּלִימוֹ מֶרְבִּי, “מִי שֵׁישׁ לוֹ שְׁנֵי רִאשִׁים בְּאַיְזָה מִהֵן מְנִיחַ תְּפִילִין?” אָמַר לֵיהּ, “אוֹ קוֹם גָּלִי אוֹ קְבֵל עֲלֶיךָ שְׁמָתָא!” אֲדָהֳכִי אָתָּא הֵהוּא גִבְרָא, אָמַר לֵיהּ, “אֲתִילִיד לִי יְנוּקָא דְּאִית לֵיהּ תְּרֵי רִישֵׁי. בְּמָה בְּעִינָן לְמִיתָב לְכֹהֵן?” אָתָּא הֵהוּא סְבָא תָנָא לֵיהּ, “חֲזִיב לִיתָן לוֹ עֶשְׂרֵה סָלְעִים.”

The obligation to give ten silver pieces (for *pidyon haben*) for a baby with two heads indicates that he is considered two separate people, so that five silver pieces must be paid for each.

All of the subsequent ethical and halachic deliberations thus assumed that the twins were to be treated as two individuals and the single question was now: **“Can one twin be sacrificed to save the other?”**

Jewish law stipulates a general principal: “Ein dochin nefesh mipnei nefesh” – one may not sacrifice one life to save another (see Source 17). Judaism views each person as having infinite value, and we do not prioritize to say that one life has a greater quality of life than another.

### Source 3. Mishnah Sanhedrin 4:5 – The sanctity of the life of every human.

Man was created alone (whereas other creatures were created in groups) to teach that one who destroys a single Jew is regarded as one who has destroyed an entire world. Whereas one who saves a single life is regarded as having saved an entire world.

נִבְרָא אָדָם יְחִידִי לְלִמְדָּה שֶׁכָּל  
הַמַּאֲבֵד נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל  
מַעֲלָה עָלָיו הַכְּתוּב כָּאֵלּוּ אֶבֶד  
עוֹלָם מְלֵא וְכָל הַמַּקְיִים נֶפֶשׁ  
אַחַת מִיִּשְׂרָאֵל מַעֲלָה עָלָיו  
הַכְּתוּב כָּאֵלּוּ קָיָם עוֹלָם מְלֵא.

The value that Judaism places on life – on each and every life – is immeasurable.

### Source 4. Rabbi Shlomo Zalman Auerbach, Minchat Shlomo 1:91:24 – We have no way of measuring the value of life.

Regarding the matter of “life,” we have no means of measuring its worth and importance, not even from the standpoint of Torah and mitzvot. We must violate the Sabbath even for an elderly, ill man – even if he is completely insane and deaf and cannot perform a single mitzvah, (even if his) life is a massive load and burden upon his family, which distracts them from Torah and mitzvot and adds to their troubles...Even in such a case, the greatest among Israel are commanded to make efforts and get involved in his healing and violate the Sabbath to save him.

כִּי הָעֵנָנִן שֶׁל “חַיִּים” אֵין  
לָנוּ שׁוֹם קֶנֶה - מִדָּה כַּמָּה  
לְמִדּוֹד אֶת יוֹקְרָם  
וְחִשְׁבֻּיָּתָם אֲפִילוּ לֹא  
בְּתוֹרָה וּמִצְוֹת, שֶׁהָרִי מְחַלְלִין  
אֶת הַשַּׁבָּת גַּם עַל זֶקֶן חוֹלָה  
מְכָה שֶׁחִין אֵף עַל פִּי  
שֶׁהוּא חֶרֶשׁ וְשׁוֹטָה גָּמוּר,  
וְאֵינוּ יָכוֹל לַעֲשׂוֹת שׁוֹם מִצְוָה  
וְחַיּוֹ הֵם רַק לְמַשָּׂא וְסָכָל  
גָּדוֹל עַל מִשְׁפַּחְתּוֹ וְגוֹרָם לָהֶם  
בְּטוֹל תּוֹרָה וּמִצְוֹת, וְנוֹסֵף  
לַעֲרָם הַגָּדוֹל הָרִי הֵם אֲזֵלִי  
וּמַדְלִדִּלִי, אֲפִילוּ הִכִּי מִצְוָה  
בְּגִדּוּלִי יִשְׂרָאֵל לְהַשְׁתַּדֵּל  
וּלְעֲסוֹק בְּהַצֵּלָתוֹ וּלְחַלֵּל עָלָיו  
אֶת הַשַּׁבָּת.



Based on this principle, which values human life beyond all other value, can there be any basis to kill or sacrifice one twin to save the other?

## KEY THEMES OF SECTION II

- **The first decision that had to be made is whether the twins were considered one person, or two. If they were one, the question of separation would have been compared to amputating a limb. However, the Talmud considers an apparently similar case of conjoined twins as two distinct people.**
- **Under the assumption that two people are present, sacrificing one for the sake of another is a grave question. A basic tenet of Torah Law states that in general one person is never sacrificed for the sake of another.**
- **This tenet draws from the overarching sanctity of human life in Torah Law. In this case, however, mere inaction would have led to the death of both twins, further deepening the dilemma of how to act.**

## SECTION III The Analogy of Two Travelers with One Water Can

A primary Talmudic source dealing with the issue of sacrificing one life for saving another is the case of two desert travelers, where only one of them carries a single can of water – enough for his own survival to reach civilization, but not for both.

### Should the person who owns the water drink it himself or share?

**Source 5. Talmud Bavli, Bava Metzia 62a – Two people in the desert and only enough water for one.**

Two people were walking on a journey in a desert, and in the hand of one of them was a flask of water. If both of them drink, they will both die, but if one of them drinks all the water, that person will reach civilization and live. Ben Petura said, “It is better that both of them drink and die, rather than one of them seeing the death of the other.” Until Rabbi Akiva came and taught from the verse (Vayikra/Leviticus 25:36), “Your brother shall live with **you**” – your life takes precedence over your fellow’s life.

שְׁנַיִם שֶׁהָיוּ מְהֻלְכִין בַּדֶּרֶךְ  
וּבְיַד אֶחָד מֵהֶן קֵיתוֹן שֶׁל מַיִם.  
אִם שְׁוֹתִין שְׁנֵיהֶם מָתִים, וְאִם  
שׁוֹתֶה אֶחָד מֵהֶן מִגֵּיעַ לְיִשׁוּב.  
דָּרַשׁ בֶּן פֶּטוּרָא: מוּטָב שִׁישְׁתּוּ  
שְׁנֵיהֶם וְיָמוּתוּ וְאֵל יִרְאֶה אֶחָד  
מֵהֶם בְּמִיתָתוֹ שֶׁל חֲבֵירוֹ. עַד  
שֶׁבָּא רַבִּי עֲקִיבָא וְלָמַד: “וְיָחִי  
אֶחֱיךָ עִמָּךְ” חֲיֵיךָ קוֹדְמִים  
לְחַיֵּי חֲבֵירְךָ.

To place the dilemma in a different context, consider the scenario of a sinking boat, which does not have enough lifeboats for all passengers – as was the case in the famous sinking of the Titanic. The ruling of Rabbi Akiva whereby “your life takes

precedence over your fellow's life" is readily applicable: Someone with a seat in a lifeboat doesn't have to give it up.

Returning to the case of the twins, the question of "sharing" the heart appears to be identical to the question of sharing the water. Just like the single can of water, the single shared heart was unable to sustain both twins, and could only keep one of the twins alive.

Yet, the question is whether the single heart "belongs" to one of the twins, so that she can justifiably "claim" it for herself – just like the can of water in the case of the travelers – or whether the heart does not belong to either twin, so that the cases might be fundamentally different.

Upon questioning, the chief surgeon reported that only one of the two infants could plausibly keep the heart and survive:

**Source 6. Drake, *op. cit.* – Only one infant could survive.**

*Dr. Koop reported that there was no doubt that the only infant who could be helped by surgery was Baby B, since Baby A was dependent upon Baby B for heart function, and suffered from poor blood circulation. Moreover, there was no way that the six-chamber heart could be given to Baby A, nor was it possible to separate two chambers of the heart and give them to Baby A. The only hope was to save Baby B.*

Based on this prognosis, we can assume that Baby B was indeed "in possession" of the heart. The heart could not be given to Baby A, and only Baby B could go on to live with it.

However, there still remains room for a fundamental distinction between the cases. In the case of the travelers and the water can, the person making the decision is the person holding the water can – it is up to him to decide whether or not to keep the water for himself, or share it with his fellow traveler. In the case of the twins, however, the decision was for the parents or the surgeon to make. Baby B might have been considered in possession of the heart, but it was not in his powers to keep it from Baby A.

Rabbi Avraham Yeshayahu Karelitz, in his comments on the Gemara, writes that this point should not make an essential difference.

**Source 7. Rabbi Avraham Yeshayahu Karelitz, Chazon Ish, Likkutim to Bava Metzia (Siman 20), 62a – A third party should also give water to one traveler, and not share it among both.**

It appears that if a third party has water, and two thirsty people are before him, the halachah depends on the same dispute. According to Ben Petura the water is given to both, and both will die, for even if he gives the water to one of them, the receiver will have to share it with the other. But according to Rabbi Akiva he should give the water to whomever he chooses. Though the third party is not under the instruction of “your life takes precedence,” the person he gives it to will justifiably save himself, and it is therefore permitted to give the water to him. Moreover, it seems that the third party is obligated to give the water to one of them, because the instruction “your life takes precedence” implies that one person’s long-term life takes precedence over both of their short-term lives, so that even a third party should ensure that one of them will live a long-term life.

חזון איש, ליקוטים לבבא  
מציעא סב, א ונראה דאם יש  
לאחד מים ולפניו שני צמאים  
נמי תלוי בפלגתא, דלכך  
פטורא נותן לשניהם  
וימותו שניהם דהא אף אם  
יתן לאחד יתחייב לחלוק  
עם חברו, ולרבי עקיבא יתן  
לאחד שירצה, ואף על גב  
דהננותן ליכא משום חייך  
קודמין, מפל מקום פיון שזה  
שירצה יציל עצמו בדין, רשאי  
הנותן ליתן לו. ונראה דחייב  
ליתן לאחד פיון דבשביל חייך  
קודמין אמרה תורה דחיי  
עולם שלו קדם לחיי שעה  
של שנים, גם הנותן צריך  
להשתדל טפי בהצלת חיי  
עולם.

A surgeon can be compared to a third party holding a can of water, and the twins to two travelers who require water to live. According to Rabbi Karelitz it is correct for the third party to give the water to one of the two travelers; thus it is apparently correct for the surgeon to give the heart to one of the infants, and specifically to Baby B, who is the only infant able to keep the heart and live.

Yet, some commentaries have disputed Rabbi Karelitz’s assertion, positing that a third party in possession of the water cannot select one of the travelers over the other, and must rather share the water between the two travelers. In fact, Rabbi Karelitz himself writes elsewhere (Annotations to Chidushei Rabbeinu Chaim Halevi, Hilchot Yesodei Ha-Torah, Chap. 5) that this is the case, explaining that the third party may not watch one of the travelers die while helping the other survive.

Moreover, the cases are not completely comparable. In the case of the travelers and the water, the question is whether to **actively** save one of the travelers thereby causing the **passive** death of the second traveler, or allow both to die. In the case of the infants, the question is not only of saving one infant, but of **actively** (and immediately) taking away the life support of the other. Even if we assume, as noted above, that the heart is “the possession” of Baby B, it is possible that the active



separation of the twins is different from the passive act of withholding the water from one of the travelers.

The case of the travelers and the water was mentioned in the rabbinic analysis of the conjoined twins (Rabbi Akiva Tatz, MD, [simpletoremember.com](http://simpletoremember.com)). Yet, whether due to the questions raised above, or for other considerations, the case did not play a major part in reaching the final decision.

**KEY  
THEMES  
OF  
SECTION  
III**

- **The Talmud teaches that someone with the capacity to save himself need not sacrifice his life for the sake of others.**
- **This principle is taught concerning sharing a can of water with a fellow traveler, where sharing it leads to the death of both travelers. Under the assumption that the single heart of the conjoined twins is in the possession of one of them, the cases appear to be readily comparable.**
- **It is possible that the reasoning mentioned by the Talmud applies even to a third party who can intervene and offer water (i.e. a surgeon who can give the heart) to one of the twins who has a greater chance for survival.**
- **Nonetheless, this Talmudic source was not a major factor in reaching the final halachic decision, possibly because the active separation of twin B resulting in the immediate death of twin A is different from the passive act of withholding the water from one of the travelers.**

## SECTION IV The Dilemma of Handing Over One Person to Save a City

The question of taking the life of the twin to save the other needed to be addressed. The general principle is that one human life is never sacrificed for the sake of another life. The reason for this is the sanctity of life, which Judaism elevates beyond all other values. On account of the value of life, nearly all religious obligations are waived in the face of danger to one's life.

### Source 8. Sanhedrin 74a – Besides three exceptions, one should transgress a commandment to save one's life.

Said Rabbi Yochanan in the name of Rabbi Shimon son of Yehotzadak, "They took a head-count and decided in the second floor of the house of Nitza in Lod, 'Concerning all sins in the Torah if they tell you to transgress and you will thereby not get killed, one should transgress rather than get killed, except for idolatry, forbidden sexual relationships, and murder.'"

סנהדרין דף עד. אמר רבי יוחנן משום רבי שמעון בן יהוצדק נמנו וגמרו בעלית בית נתזה בלוד: כל עבירות שבתורה אם אומרים לאדם עבור ואל תהרג יעבור ואל יהרג, חוץ מעבודת כוכבים וגלוי עריות ושפיכות דמים.

The principle of preferring life to death is based on the biblical expression, "You shall live by them (the commandments)." The Sages explain: "They [the mitzvot] should not bring about your death" (Tosefta Shabbat 16:14).

In light of the sanctity of human life, the prohibition against murder is so severe that it is forbidden to take another's life even to save one's own (unless in self-defense against an individual who is directly attacking).

### Source 9. Sanhedrin 74a – Forfeiting one's life rather than killing a non-threatening individual.

A certain person came before Rabba and told him, "The governor of my village said to me, 'Kill such and such a person or else I will kill you.'" Rabba replied to him, "Let yourself be killed and do not kill him. Who says that your blood is redder? Maybe that man's blood is redder."

סנהדרין דף עד. שהיה דאָטאָ לְקַמִּיה דְּרַבָּה וְאָמַר לִיה אָמַר לִי מָרִי דּוֹרְאִי זִיל קְטֹלִיה לְפָלְגִינָא וְאִי לֹא קְטֹלִינָא לָךְ אָמַר לִיה לְקְטֹלוֹךְ וְלֹא תִקְטֹל מִי יִימַר דְּדָמָא דִּידָךְ סוּמָק טְפִי דִּילְמָא דְּמָא דִּיהוּא גְבָרָא סוּמָק טְפִי.

Thus, a person threatened to be killed unless he kills someone else, must refrain from the act of murder. We cannot weigh one life against another, and therefore one must never act to take one life in order to save another.

The question, however, is what happens where inaction will mean that both parties will die. Is it permitted to take one life in order to save the lives of many?

A key source for this question is the following passage from the Jerusalem Talmud.

**Source 10. Talmud Yerushalmi Terumot 8:4 (47a) – Can a named individual be handed over to an aggressor to save a city?**

We learn (in Tosefta Terumot 7:23):

This is the ruling for groups of people who were traveling and were accosted by non-Jews, who said: “Give us one of you and we will kill him; and if not, we will kill all of you.” Even if all of them will be put to death, they should not hand over even one person of Israel. But if they singled out someone, as in the Sheva son of Bichri episode (Shmuel/Samuel II, Ch. 20, see below), they should hand him over and not get killed. Rabbi Shimon son of Lakish said, “This is providing he is subject to the death penalty like Sheva son of Bichri was.” But Rabbi Yochanan said, “This applies even if he was not deserving of the death penalty like Sheva son of Bichri was.”

תלמוד ירושלמי תרומות מז.  
תני סיעות בני אדם שהיו  
מהלכין בדרך פגעו להן גוים  
ואמרו, “תנו לנו אחד מכם  
ונהרוג אותו ואם לאו הרי אננו  
הורגים את כולכם:” אפילו  
כולן נהרגים לא ימסרו נפש  
אחת מישראל. ייחדו להן אחד  
כגון שבע בן בכרי, ימסרו אותו  
ואל יהרגו. אמר רבי שמעון בן  
לקיש, “והוא שיהא חייב מיתה  
כשבע בן בכרי.” ורבי יוחנן  
אמר, “אף על פי שאינו חייב  
מיתה כשבע בן בכרי.”

Both Rabbi Yochanan and Rabbi Shimon b. Lakish agree that unless a specific member of the group has been singled out by aggressors, it is not permitted to kill someone for the sake of saving many. Necessity – even the necessity of saving several lives – is not sufficient to waive the prohibition of murder.

Moreover, even if one person has been singled out, Rabbi Shimon b. Lakish maintains that it is only permitted to give him over to die if he has been singled out with justification – meaning that he is actually deserving of the penalty. According to Rabbi Yochanan, however, his being singled out is sufficient, even if he is not guilty.

Why does it make a difference if a person has been singled out or not, even where he is not guilty? The opinion of Rabbi Yochanan is difficult to understand.

**Source 11. Rabbi Yehoshua Leib Diskin, Shut Maharil Diskin, Kuntress Acharon, no. 146 – Maharil Diskin explains why singling out makes a difference.**

The rationale behind [the halachah of] singling out has not yet been clarified, and it is difficult to say that [the person singled out] is considered to be a pursuer [who is viewed as threatening the others.] But, we can say that it is in their hands to kill all of them.

טעמא דייחודו לא נתבאר  
עדיו, ודוחק לומר שהוא  
כרוף, אך יש לומר שבגדם  
להרוג את כולם.

As we have noted, it is forbidden to kill somebody in order to save oneself (or to save someone else), because we are unable to weigh the value of lives against each other. Apparently, the singling out of an individual (according to Rabbi Yochanan) means that we need not make the choice – his being singled out selects him for death, and it is permitted to hand him over to save others.

Yet, although the halachah usually follows the opinion of Rabbi Yochanan, in this case the Rambam rules in accordance with Rabbi Shimon b. Lakish. This means that singling only helps if the person singled out is actually guilty.

**Source 12. Rambam (Maimonides) Hilchot Yesodei Hatorah (Laws of the Foundations of the Torah) 5:5 – The Rambam seems to rule according to Resh Lakish.**

If gentiles tell [a group of] women: “Give us one of you to defile. If not, we will defile all of you,” they should allow themselves all to be defiled rather than give over a single Jewish soul to [the gentiles].

Similarly, if gentiles told [a group of Jews]: “Give us one of you to kill. If not, we will kill all of you,” they should allow themselves all to be killed rather than give over a single soul to [the gentiles].

However, if [the gentiles] single out [a specific individual] and say: “Give us so-and-so, or we will kill all of you,” [different rules apply]: **If the person is deserving of death like Sheva ben Bichri, they may give him over to them.**

Initially, however, this instruction is not conveyed to them. If he is not obligated to die, they should allow themselves all to be killed rather than give over a single soul to [the gentiles].

רמב"ם יסודי התורה ה:ה  
נשים שאמרו להם עובדי כוכבים, תנו לנו אחת מכן ונטמא אותה, ואם לאו, נטמא את כלכן - יטמאו כלן, ואל ימסרו להם נפש אחת מישראל.  
אם אמרו להם גוים, תנו לנו אחד מכם ונהרגנו, ואם לאו, נהרג את כלכם--יִהְיֶה גו כָּלֶם, ואל ימסרו להם נפש אחת מישראל.  
ואם יחדוהו להם ואמרו, תנו לנו פלוני או נהרג את כלכם-- אם היה מחזיק מיתה כשבע בן בכרי, יתנו אותו להם, ואין מורין להם בן, לכתחלה; ואם אינו חזק--יִהְיֶה גו כָּלֶם, ואל ימסרו להם נפש אחת מישראל.

The Rema (Rabbi Moshe Isserlis) brings both the approach of Rabbi Yochanan and Resh Lakish in his comments on the Shulchan Aruch.

**Source 13. Rema Yoreh Dei'ah 157:1 – The Rema cites both approaches.**

If idolaters said to Jews, “Give us one of you, and we will kill him,” they should not hand him over unless he was singled out and they said, “Give us so-and-so (and they named an individual)” (based on the Mishnah in Terumot and the Rambam in Hilchot Yesodei Hatorah). There are those who say that even in such a situation they should not hand him over unless he is deserving of the death penalty like Sheva ben Bichri.

הנה עובדי כוכבים שאמרו  
לישראל תנו לנו אחד מהם  
ונחרגנו לא יתנו להם אחד מהם  
אלא אם כן יחדוהו ואמרו תנו  
לנו פלוני (משנה פרק ח'  
דתרומות והרמב"ם פרק ה'  
מהלכות יסודי התורה) ויש א'  
מרים דאפילו בכי האי גוונא אין  
למסרו אלא אם כן חייב מיתה  
כשבע בן בכרי (ב"י בשם רש"י  
ר"ן)

As mentioned before, Dr. Koop reported as a matter of certainty that the only infant for whom surgery could possibly help was Baby B, since Baby A was dependent on Baby B for heart function, and suffered from poor blood circulation. Baby A would die regardless of surgery, and the only hope was to save Baby B. Can this situation be considered as though Baby A was singled out for death?

Although we can suggest that Baby A had been singled out, **it certainly cannot be said that she was deserving of death**. Therefore, the Talmudic precedent of handing somebody over to save a group was not sufficient to permit the operation.

**Source 14. Rabbi J. David Bleich, in “Conjoined Twins,” Bioethical Dilemmas: A Jewish Perspective, p. 295 – The “handing over” case was not sufficient basis to sanction the operation.**

In light of the unresolved controversy between early-day authorities with regard to this matter, a rabbinic decisor would find grave difficulty in sanctioning an overt act designed to extinguish the life of one of the twins on the basis of this consideration alone.

**KEY  
THEMES  
OF  
SECTION  
IV**

- Even for the sake of saving an entire city from death, it is only permitted to hand over a single individual for death if he is singled out by the aggressor.
- The Talmud cites a dispute over whether singling out helps even when the singled out party is not guilty of any crime and not deserving of death.
- In the case of the conjoined twins, the weaker of the twins could be considered “singled out” for death, because there was no way she could have survived.
- However, the Talmudic precedent was not sufficient to decide the case, because the twin was surely not “guilty” of any crime, and not “deserving” of death. Due to the dispute mentioned in the Talmud, and the subsequent halachic debate over the halachic ruling, another precedent had to be found.



## SECTION V **Rodef** – Killing a Pursuer to Save a Potential Victim

A different Talmudic concept is reported to have formed the basis of Rabbi Feinstein's ruling: The principle of killing a Rodef, a deadly pursuer.

### What would you advise in the following case?

**Source 15. “The Surgery: An Agonizing Choice - Parents, Doctors, Rabbis in Dilemma,” by Donald C. Drake, The Philadelphia Inquirer (October 16, 1977) – Two parachutists plunge to their deaths.**

*“Two men jump out of a burning airplane,” Rabbi Tendler said in one discussion, using an analogy. “The parachute of the first man opens and he falls slowly and safely to earth.  
“The parachute of the second man does not open. As he plunges past his friend, he manages to grab onto his foot and hold on. But the parachute is too small to support both of them. Now they are both plunging to their death.*

*“It is morally justified,” Rabbi Tendler concluded, “for the first man to kick his friend away...”* What is this based on? Is this not murder?

The principle behind this is the law of **Rodef**, “the pursuer,” which sanctions and commands killing the deadly pursuer.

**Source 16. Mishnah on Sanhedrin 73a – Save the victim by killing the pursuer.**

The following can be saved by taking a life: one who pursues another to kill him...

סנהדרין עג.  
ואלו הן שמציילין אותן בנפשו  
הרודף אחר חבירו להרגו ...

In spite of the great emphasis the Torah places on human life, the case of the Rodef is an exception to the rule. When confronted with a deadly pursuer, it is permitted – and even obligatory – to kill the Rodef.

Why is this true? Is the blood of the Rodef “less red” (see above, Section IV, Source ) than the blood of his victim?

One way of understanding the law is that the permission to kill the pursuer is a form of punishment – the would-be murder is punishable by death. Based on this understanding, the law will not apply to somebody who has no malicious intent.

However, another way of understanding the law is that it is permitted to save the victim from his aggressor: In the case of one person chasing another, the blood of the victim *is redder* than the blood of the pursuer. Based on this understanding, the

law will apply even without malicious intent.

Think now of the parachute case cited at the beginning of this section, in which the second parachutist grabbed the first in desperation after realizing his own parachute was not opening. Assume also that the second parachutist will somehow be able to save his life at the expense of the first; he clearly has no malicious intent, but only wishes to save his life.

Is it permitted for the first parachutist to kick him off and send him to his death?

In addressing a similar ethical dilemma, the Gemara quotes a Mishnah in Ohalot about a tragic situation of a woman whose life is endangered during a difficult labor.

**Source 17. Mishnah Ohalot 7:6 – Once a baby has emerged it cannot be killed to save the mother.**

A woman whose life is endangered during childbirth, we cut the fetus within the womb and remove it limb by limb, because her life takes precedence over its life. However, if most of the baby has come out, we do not touch it, for we may not push aside one life because of another.

הָאִשָּׁה שֶׁהִיא מְקַשָּׁה לִילָד,  
מְחַתְּכִין אֶת הַוּלָד בְּמַעֲיָה  
וּמוֹצִיאִין אוֹתוֹ אֶבְרִים אֶבְרִים,  
מִפְּנֵי שֶׁחַיִּיהָ קוֹדֶמִין לְחַיֵּיו. יֵצֵא  
רַבּוֹ, אֵין נוֹגְעִין בּוֹ, שְׂאֵין דּוֹחִין  
נַפְשׁ מִפְּנֵי נַפְשׁ.

The Gemara quotes this case in the context of the “Law of the Pursuer.”

**Source 18. Sanhedrin 72b – Rav Huna: a child pursuer can also be killed to save the victim.**

Rav Huna said, “When the pursuer is a child, the potential victim can be saved by taking the child’s life.” Rav Huna takes the position that a pursuer requires no forewarning, whether child or adult. Rav Chisda raised an objection based on the Mishnah in Ohalot: “If most of the baby has come out we do not touch it, for we may not push aside one life because of another.” The Gemara answers: That case does not prove that the Law of the Pursuer does not apply to children, because it is fundamentally different. There, they are pursuing her from Heaven.

סנהדרין עב:  
אמר רב הונא קטן הרוֹדֵף נִתֵּן  
לְהַצִּילוֹ בְּנַפְשׁוֹ קֶסֶר רֹדֵף אֵינוֹ  
צָרִיף הַתְּרָאָה לֹא שָׂנֵא גְדוֹל וְלֹא  
שָׂנֵא קָטָן אֵיתִיבִיהָ רַב חֲסִידָא  
לְרַב הוֹנָא יֵצֵא רֹאשׁוֹ אֵין נוֹגְעִין  
בּוֹ לְפִי שְׂאֵין דּוֹחִין נַפְשׁ מִפְּנֵי  
נַפְשׁ וְאַמַּאי רֹדֵף הוּא שְׂאֵין  
הֵתֵם דְּמַשְׁמִיָּא קָא רְדִפִּי לָהּ.

Let us follow the dialogue of this passage in Gemara Sanhedrin. Rav Chisda challenges Rav Huna’s position by quoting the Mishnah in Ohalot. Here, he said, I have found a case of a child pursuer – the infant threatening the mother – who is **not**

killed to save the mother, the potential victim. This, says Rav Chisda, proves that Rav Huna is wrong, and that the Law of the Pursuer does **not** apply to a child.

But the Gemara then comes to Rav Huna's defense with the words **שְׁאֵי הֵתֵם דְּמִשְׁמִיָּא קָא** **רַדְפֵי לָהּ**. Were it not for the special rationale of “they are pursuing her from Heaven,” it would have been permitted to kill the baby even after the head emerged, based on the Law of the Pursuer. The assumption of the Gemara is still intact: an unborn or newly-born infant threatening his mother **does** fit the paradigm of a Rodef. Rav Huna's position is also still intact: it is **permitted** to kill a child pursuer. The concept of killing the Rodef is not understood as a form of punishment – for a minor is not punishable for criminal offenses – but as an act of saving the victim's life, which applies to children and adult pursuers alike.

Thus, in the case of the parachutists, it will be permitted for the first to shake off the second, despite of the lack of malicious intent.

However, in the case of a birth, where nature itself creates the situation of pursuit, it is forbidden to kill the baby. The Gemara explains that this case is different because “they are pursuing her [the mother] from Heaven.”

This halachah seems to prohibit performing the operation on the twins. Like the case of a natural birth, the circumstance of the twins was also natural – the very existence of Baby A is endangering Baby B. If we define the case as “pursuit from Heaven” it will be forbidden to kill Baby A for the sake of saving Baby B.

Yet, Rabbi Moshe Feinstein felt that in the case of the twins the Law of the Pursuer *is still applicable*, and gave Dr. Koop the go-ahead to perform the operation. Why?

A possible source for this landmark decision is the following extract from the Jerusalem Talmud, which offers a deep insight into the case of the emerging baby.

#### **Source 19. Talmud Yerushalmi, Shabbat 14:4 – Who is pursuing whom?**

Rav Chisda asked, “Can you save an adult by killing a child?” Rabbi Yirmiya answered, “Is this not addressed in the following Mishnah? ‘If most of the baby came out we cannot touch it because we may not push aside one life because of another.’” Rabbi Yosse son of Rabbi Bon, quoting Rav Chisda said, “That case (the emerging baby) is different because **we do not know who is pursuing whom.**”

רב חסדא בְּעֵי מַהוּ לְהַצִּיל נַפְשׁוֹ  
שֶׁל גְּדוֹל בְּנִפְשׁוֹ שֶׁל קָטָן. הֵתִיב  
ר' יִרְמְיָה וְלֹא מִתְנִי' הִיא יֵצֵא  
רֹבּוֹ אֵין נוֹגְעִין בּוֹ שְׂאֵין דּוֹחִין  
נַפְשׁ מִפְּנֵי נַפְשׁ. ר' יוֹסֵה בִּי ר'  
בּוֹן בְּשֵׁם רַב חֲסֵדָא שְׁנִיָּיא הִיא  
תַּמָּן שְׂאֵין אֶת יוֹדֵעַ מִי הוֹרֵג אֶת  
מִי.

The reason why the emerging baby cannot be killed to save the mother is because

the mother and the child are pursuing each other, and we cannot decide who is pursuing whom. This is the reason that no onlooker can act.

The Law of the Pursuer permits killing one pursuer to save a potential victim, but is frozen when two are pursuing each other; how can an onlooker decide whom to kill and whom to save?

Yet, before the fetus has emerged from the birth canal, it is permitted to kill the fetus to save the mother. Why is this so? Are they not both pursuing one another even at this stage?

A number of contemporary rabbis write that the answer to this question formed the basis for Rav Moshe's ruling.

Here is Rabbi J. David Bleich's formulation (his presentation is based on a printed responsum Rav Moshe wrote decades earlier, published in Igrot Moshe, Yoreh De'ah 2:60).

**Source 20. Rabbi J. David Bleich, in "Conjoined Twins," Bioethical Dilemmas: A Jewish Perspective, p. 306 – The mother's and fetus's pursuit is not identical.**

However, the aggression of the mother vis-à-vis her unborn fetus is not qualitatively identical to that of the fetus against the mother. Homicide is a capital offense whereas feticide is not; hence, the threat against the mother is qualitatively more serious than the threat to the fetus. Accordingly, since the fetus is engaged in a qualitatively greater act of aggression, there is an objective reason to eliminate the fetus that renders nugatory (irrelevant or insignificant) the consideration "How do you know that the blood of one is redder than the life of the other?"

Although it is forbidden to take the life of one pursuer where both parties are pursuing one another, this is only true insofar as the pursuit of both parties is on the same level. This is the case after the baby emerges from the birth canal, and therefore it is forbidden to intervene. Yet, before the emergence there is a qualitative difference between the two forms of pursuit, and it is therefore permitted to kill the fetus in order to save the mother.

Rabbi Feinstein asserts that this is how the expression "She is pursued from Heaven" should be interpreted: Since nature causes mother and child to become locked in mutual pursuit of one another, they are regarded as mutual pursuers, and the law of the pursuer becomes inoperative.

Finally, this is how Rabbi Feinstein will explain why Baby A can be separated to allow Baby B a chance to survive. Even though the two are in a situation of mutual pursuit

– the presence of each causes the other to die – there is a qualitative distinction between the two pursuits. Baby A pursues a baby that has a chance to live, and Baby B pursues a baby with no practical chance of life.

**Source 21. Rabbi J. David Bleich, in “Conjoined Twins,” Bioethical Dilemmas: A Jewish Perspective, p. 305 – Baby A can be killed to save Baby B based on the Law of the Pursuer.**

Iggrot Moshe's thesis is readily applicable to the case of dicephalus (two-headed) twins. At the time that Rabbi Feinstein's ruling was issued, medical experience indicated that, if not separated, conjoined twins sharing a single heart could survive for a maximum of nine months. Moreover, in the particular case addressed by Rabbi Feinstein, the twins were experiencing heart failure and, had they not been separated, they both would have expired in a relatively short period of time. In the case of dicephalus twins, there is medical evidence indicating that, generally speaking, it is the left twin that has a chance for survival; the indications are that the right twin will not survive even if assigned a full complement of organs. In the case under discussion, it is clear that only one twin had a chance for survival. For unexplained reasons, the right twin usually has complex cardiovascular anomalies that are not amenable to surgical correction. In the conjoined state, the twins are certainly mutual aggressors. The right twin unintentionally threatens the normal longevity anticipation of the left twin. The right twin, however, because of its congenital anomalies, cannot survive for a period of more than twelve months. Such an individual, it may well be argued, must be regarded as a *treifah* (a person whose physical state is such that he cannot survive for twelve months). As is the case with regard to feticide, murder of a *treifah* is not a capital offense. Accordingly, although both are pursuers, the right twin is engaged in an act of pursuit that is qualitatively of greater magnitude than the pursuit in which the left twin is engaged. Hence, according to Iggrot Moshe's analysis, the right twin may, and indeed must, be eliminated in order to preserve the life of the left twin.

The difference between the two infants, of whom only one had a reasonable chance of survival, creates a qualitative difference between each one's pursuit of the other. This is the difference that permitted their separation, in the hope that Baby B will indeed be given a chance to live.



**KEY  
THEMES  
OF  
SECTION  
V**

- Although it is generally forbidden to take one life in order to save another, where one person is pursuing another to kill him, it is permitted to kill the pursuer - the Rodef - to save the victim.
- The Talmud applies the rationale of the law even to a child pursuer. This proves that the rationale behind the law is not a “punishment” for the pursuer, but rather draws from the need to save the victim from death.
- It was possible to see the weaker of the twins as a Rodef (a pursuer), because she was the cause of the other twin’s death. Yet, the Talmud mentions “natural circumstances” as an exception to the rule, an exception that apparently applied to the case of the twins.
- Yet, Rabbi Feinstein ruled that it was permitted to separate the twins. The case of the twins can be seen as a case of mutual pursuit: Both parties are chasing each other. For cases of mutual pursuit, Rabbi Feinstein showed that we opt for a course of inaction only where the two parties are qualitatively equal, such as a mother and a child. Where the two parties are not qualitatively equal, such as a mother and an unborn child (killing an unborn fetus is less severe than a born child), it is permitted (and required) to intervene (to save the mother by killing the unborn child). The same idea applies to the twins, who were qualitatively distinct (since the weaker twin had no chance of living).

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**POSTSCRIPT The Operation and its Aftermath**

Baby B was separated from Baby A on October 11 causing the tragic, immediate death of Baby A. Sadly, the surviving twin died forty-seven days later, unrelated to the surgery, due to a Hepatitis-infected blood transfusion.

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**CLASS  
SUMMARY**

The episode of the conjoined twins, though painful and ultimately tragic, is an important illustration of how Torah and Talmudic principles and law – anchored in the Divine giving of the Torah to the Jewish nation at Mount Sinai 3500 years ago, are applied to the complexities of modern life. Applying the halachah necessitated a clear understanding of the medical reality, and medical intervention was ultimately guided by the wisdom and ethics of Torah law.

Let us now return to the questions with which we opened.

**Is it permitted to kill one person in order to save somebody else?**

We have seen that in general the Torah places the highest value on human life, and we are instructed to do all that we can to preserve a life. Even when one's own life is at risk, it is forbidden to kill somebody else; as the Talmud explains, we cannot know "whose blood is redder" (see Source 10). Under normal circumstances, it is thus not permitted to kill somebody, even if by doing so another life will be saved.

**Is there a difference between actively causing a death and passively causing a death?**

The Talmudic case that deals with this point is the case of two people walking in the desert with only one water can between them (Source 5). The halachic ruling is that the person in possession of the water has the right to keep it for himself, and doesn't have to share it with his friend (in which case both will die), because "your life takes precedence over your fellow's life."

Due to this principle, there is no obligation to save somebody else at the expense of one's own life (you don't have to give the water away to the other traveler). In the case of the conjoined twins, there was room to apply the rationale, because the heart could be seen as "belonging" to one of the twins rather than the other.

Yet, it was not ultimately a central part of the decision, possibly because the act of separation is seen as actively "killing" the other twin, differentiating it from the case of passively allowing the other party to die.

**What should be done when one person's death can save many lives?**

Even when one person's death can save many lives, there is no halachic permission to commit murder; even the dire circumstances of others dying is not sufficient to permit it.

However, a central Talmudic source (Source 11) teaches that when a person is singled out for death (i.e. an aggressor demands that a person should be handed over; otherwise the entire population of the city will be killed), it is permitted to hand him

over (to his death), thereby saving the lives of others.

Talmudic authorities dispute whether it is permitted to hand over any person who was singled out for death, or whether it is only permitted to hand over a person who is justifiably singled out (he is guilty of a crime and deserving of death).

Due to this question, which also involves a dispute among later authorities, it would be hard to decide the case of the conjoined twins based on this precedent. Although it was possible to see one of the twins as being “singled out” for death (due to her having being unable to survive even if she would have been given the shared heart), she was certainly not “guilty” of any offense, and not “deserving” of death.

### **Does the legal status (halachah) change if one person is pursuing another?**

It does, and this is the halachic principle of Rodef, the deadly pursuer (Source 17). Where one person is chasing after another (with intent of killing him), it is permitted (and obligatory) to kill the pursuer, thereby saving the would-be victim's life.

The fact that the Talmud applies the rationale of Rodef even to children, even to an unborn and newborn infant, proves that the permission to kill the Rodef is not a punishment, but rather a preference of the victim's life to that of the pursuer. However, the principle does not apply to “natural circumstances” (such as a birth), where it can be said that the victim is being pursued “from Heaven.”

Although this restriction appears to be readily applicable to the situation of the conjoined twins, Rabbi Moshe Feinstein nonetheless used the Rodef rationale to permit the separation, based on an intrinsic inequality between the two twins.

In the case of a mother giving birth to an emerging baby, mother and child are “pursuing each other,” each being the cause of the other's death. Unlike the case of an unborn child (where the baby and its mother have different statuses, and therefore it is permitted to kill the baby to save its mother), the killing of a mother and the killing of a child carry the same legal status, and therefore we are unable to intervene.

In the case of the conjoined twins, the two twins did not have the same status, because one could theoretically live whereas the other could not. The “mutual pursuit” was therefore unequal, and Rabbi Feinstein concluded that the separation could be performed.

### **How are the legal principles implemented in a real-life situation?**

The case presents an example of applying ancient legal principles to modern scenarios. This is what the job of a posek – a halachic authority – is all about.

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**ADDITIONAL RESOURCES:** “Medical Halacha (Law) – The Twins Decision,” by Rabbi Akiva Tatz, M.D., at: <http://www.simpletoremember.com/media/a/the-twins-decision/>

**AUDIO**

“Split Decision: Separating Conjoined Twins in Halacha,” by Rabbi Daniel Z. Feldman, online at: <http://www.yutorah.org/lectures/lecture.cfm/723474/Rabbi%20Daniel%20Z.%20Feldman/Split%20Decision:%20Separating%20Conjoined%20Twins%20in%20Halacha> – includes a lecture on the medical background by pediatric surgeon Dr. Gerard Weinberg, on the legal and secular ethical issues by Mr. David Wassermen, and on the halachic issues by Rabbi Daniel Feldman

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**BOOKS AND ARTICLES** “Conjoined Twins,” in Bioethical Dilemmas: A Jewish Perspective, by Rabbi J. David Bleich, pp. 283-328 (Ktav, 1998).

Conjoined Twins, Rabbi J. David Bleich, Tradition Magazine, Fall 1996.

“So One May Live” – Siamese Twins, Unpublished Responsum by Rav Moshe Feinstein zt”l, translated and annotated by Rabbi Moshe Dovid Tendler, appearing in Care of the Critically Ill, Vol. 1, by Moshe Tendler, available online at: <http://www.jlaw.com/Articles/ravmoshe.html>

“The Status of Two-Headed Babies and/or Conjoined Twins,” by Rabbi Yitzchak Breitowitz, available online at: [http://judaiclaw.org/Questions\\_Answers\\_014.html](http://judaiclaw.org/Questions_Answers_014.html)

“The Laws of Rodef : The Matter of Conjoined Twins,” by Rabbi Yehoshua Pfeffer, appears online at: <http://www.dinonline.org/2012/07/08/parshas-pinchas-the-laws-of-rodef-the-matter-of-conjoined-twins/>

Siamese Twins: Rav Feinstein’s Ruling and The Subsequent Controversy, by Mordechai Halperin, M.D., Director, Dr. Falk Schlesinger Institute for Medical-Halachic Research, appears in ASSIA - Vol IV, No 1 February 2001, and available online at: [http://www.daat.ac.il/daat/kitveyet/assia\\_english/halperin2-1.htm](http://www.daat.ac.il/daat/kitveyet/assia_english/halperin2-1.htm)

See the Maharsha, Chidushei Aggadot Bava Metzia 62a, when the container of water belongs to both travelers, then the ruling of Ben Petura is followed to share the water.