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Please kindly dedicate the מְצִנָּה of תּוֹרָה לִימוּד involved in reading this essay, as a זְכוּת for a שְׂרָאֵל יוֹסֵף אֱלִיָּהוּ בֶן בִּילָא, רַפּוּאָה שְׁלִימָה

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

Teacher's Guide: Multifetal Pregnancy Reduction in *Halacha*

I. Introduction

The focus of this presentation is to explore the *Halachic* permissibility of performing multifetal pregnancy reduction (MPR), by applying the teachings of the Talmud (Mishna and Gemara), *Rishonim* (medieval-period commentators), *Acharonim* (more recent commentators) and *Poskim* (Halachic decisors).

MPR is an interventional procedure performed by obstetricians in cases of multifetal pregnancies (for our purposes, we will characterize multifetal pregnancy as a triplet or higher order gestation) to reduce the number of fetuses *in utero*, thus increasing the survival probability of the remaining fetuses through a full-term pregnancy. Multifetal pregnancies are associated with several undesirable outcomes including complete pregnancy loss (miscarriage and stillbirth) and preterm birth which is often complicated by neonatal death and long-term disabilities. Reducing the number of fetuses *in utero* to a twin pregnancy leads to improved outcomes, as measured by lower rates of miscarriages, pre-term births and perinatal mortality (see Appendix A). MPR is usually performed between weeks 9 to 12 of gestation and would be medically considered for triplet or higher order pregnancies.

It is understood that the goal of MPR is to optimize the survival chances of the remaining fetuses in cases where there is a high risk of total fetal death without intervention. Yet, since MPR by definition, terminates one or more fetal lives, contemporary *Poskim* and religious physicians have toiled to understand how *Halacha* views this predicament. This dilemma falls into the rubric of the universal question: can we end a life to save another life? Generally, taking a life cannot be justified even if it is the very (and only) means for promoting the survival of another life. This principle is described in the Mishna Ohalot as *Ain Dochin Nefesh Mipnei Nefesh* (אין דוחין נפש מפני נפש) - we may not push aside one life on account of another life). Nonetheless, in very limited applications discussed below, we are instructed to save a life even if this will lead to the demise of another life. The following discussion describes applications and limits of *Ain Dochin Nefesh Mipnei Nefesh* (which will henceforth be referred to as: "*Ain Dochin*") and the relevance to the *Halachic* permissibility of MPR.

In the course of this discussion, we will be exploring two different approaches that may open the door for permitting MPR in cases where the failure to intervene will lead to a high risk of total fetal death. One approach paradoxically is derived from the discussion in the Talmud concerning the ruling that one must give up his or her life not to violate murder (*Yeherag V'al Yaavor*). This is an application of the general principle of *Ain Dochin*. Perhaps the basis for the *Yeherag V'al Yaavor* ruling, which the Talmud describes as a logical reasoning that one may not presume one life is more valuable than any other life, may not apply in a case of multifetal pregnancy if all fetuses are likely to perish without intervention. If this is true, perhaps *Ain Dochin* also will not apply under these conditions and MPR may therefore, be permitted. The second approach for permitting MPR is a derivation of the law of *Rodef* (pursuer), akin to the American legal concept of "justifiable homicide" where a person's life is threatened by another, in which case, the life of the 'pursued' party may be saved even at the expense of the life of the 'pursuer'. We develop this approach through the brilliant writings of Rav Moshe Feinstein, זצ"ל, (who was a leading Halachic decisor, *Posek*, spanning a half-century period in

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America; henceforth referred to as: "Rav Moshe"), in his magnum opus, *Igros Moshe*. These approaches are built on two Talmudic sources about which prodigious commentary has been written, in particular, the 'obstructed labor' and the 'fugitive' cases, which will be explained below with different interpretations and their applications to MPR.

II. Two approaches to potentially permit multifetal pregnancy reduction:

Notwithstanding the general rule of *Ain Dochin*, we look at two approaches that could potentially be applied to permit MPR in certain cases. These approaches originate from two different "life vs. life" discussions in the Talmud: 1) the "coerced murder" case, and 2) the law of the pursuer – "*Rodef*" (רודף).

1. The 'coerced murder' case and the "*Mai Chazit*" (מאי חזית) reasoning:

Key:

α : The coerced person: The Jewish person who was ordered by the governor (hooligan) to kill another Jew (**β**) under the pain of being killed if he refuses.

β : The hooligan's target: The person who **α** is ordered to kill.

- A. The Gemara Sanhedrin (Source 1) states that the transgression (*Aveirah*) of לא תרצח ("thou shall not kill", *Lo Tirtzach*) is one of the three prohibitions for which one must sacrifice his or her own life rather than transgress. This ruling is called *Yeherag V'al Yaavor* ("be killed rather than transgress"). We shall refer to the case mentioned in the Gemara as the 'coerced murder' case in which there were two Jews named " **α** " and " **β** " and one hooligan (the governor). The hooligan coerced **α** : "either you kill **β** or I shall kill you". The *Halacha* is *Yeherag V'al Yaavor*, i.e., **α** must allow himself to be killed rather than kill **β** .

Source 1: Talmud Bavli - Sanhedrin 74a: Three cases where *Halacha* requires one to sacrifice his life to avoid transgressing - *Yeherag V'al Yaavor*:

Rav Yochanan said in the name of Rav Shimon son of Yehotzadak:
They took a vote and decided in the attic of Nitzah's home in Lod:
Concerning all prohibitions in the Torah, if they tell a person:
"transgress and you will not be killed (but if you refuse to do so, we will kill you)", he should transgress and not allow himself to be killed, except for idol worship, illicit relations and murder (for which a person must sacrifice his life rather than commit any of these three sins).

סנהדרין דף עד עמוד א:
אמר רבי יוחנן משום רבי שמעון בן יהוּצָדָק
נִמְנָנוּ וְנִגְמְרוּ בְעֵלְמֵית בֵּית נִצְחָה בְּלוֹד: כָּל
עֲבִירוֹת שְׁבִתוֹרָה אִם אוֹמְרִין לְאָדָם עֲבוֹר
וְאֵל תִּהְרַג יֵעָבוֹר וְאֵל יִהְרַג, חוּץ מֵעֲבוֹדַת
כּוֹכָבִים וְגִלּוּי עֲרִיּוֹת וְשִׁפְכֵי דָמִים.

- B. The Talmud Bavli - Yoma (Source 2) states that the Rabbis deduced the *Halacha* of *Yeherag V'al Yaavor* by *Shfichat Damim* (murder) through a logical reasoning (סברא) which the Gemara refers

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to as “*Mai Chazit*” (מאי חזית) - “for what reason do you presume that your blood is redder?
Maybe that man’s blood is redder”.

Source 2: Talmud Bavli - Yoma 82b: Reason for *Yeherag V'al Yaavor* in the ‘coerced murder’ case:

“*Mai Chazit*” - מאי חזית:

<p>From where do we know that a would-be (coerced) murderer must sacrifice his life rather than commit murder? It is based on logic (סברא) as we see from the following incident: A certain person (α) came before <i>Rava</i> and told him, “The governor of my village said to me, ‘Go kill So-and-so (β), and if you do not (kill him), I will kill you.’” <i>Rava</i> replied to him (α) “Let him kill you and do not kill (β). <u>For what reason do you presume that your blood is redder (than β's blood)? Perhaps the blood of that man (β) is redder.</u>”</p>	<p>יומא דף פב, עמוד ב: ורוצח גופיה מנא לן? סברא היא. דההוא דאתא לקמיה דרבה ואמר ליה אמר לי מרי דוראי זיל קטליה לפלגיא ואי לא קטלינא לך אמר ליה לקטלוך ולא תקטול מי יימר דדמא דיך סומק טפי דילמא דמא דההוא גברא סומק טפי?”</p>
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- C. What is the meaning of the reasoning of “*Mai Chazit*” and how does it dictate the *Halacha* of *Yeherag V'al Yaavor* by *Shfichat Damim* (the ‘coerced murder’ case)? The following two approaches are presented:
- i. Approach 1: “*Mai Chazit*” operates from a perspective of uncertainty (ספק-perspective), i.e., since we do not know whose life is more valuable, therefore the uncertainty dictates that one must maintain a passive approach (שב ואל תעשה) to avoid arbitrarily selecting who should be allowed to live versus who should be killed, even at the pain of his own death (Talmedi Rabbeinu Yonah, Avodah Zara 28b) (Reference 1). Rav Nochum Partzovitz (Reference 2) attributes this approach to Tosfot in Sanhedrin 74b.
 - a. According to this approach, in cases of multifetal pregnancy where there is a high probability of total fetal death, perhaps MPR may be permitted because the logic of “*Mai Chazit*” should be inapplicable in a situation where everyone is likely to otherwise die since we are not selecting between two parties - who should live and who should die. This will be discussed further below.
 - ii. Approach 2: “*Mai Chazit*” operates from a perspective of certainty (ודאי-perspective), i.e., since α 's life and β 's life are deemed equal, the “*V'Chai Bahem-dispensation*” does not apply in the ‘coerced murder’ case. This is the approach of Rashi, as explained by Rav Moshe.
 - a. The “*V'Chai Bahem-dispensation*” refers to the ruling that we suspend nearly all *Mitzvot* for the preservation of human life. This ruling is derived from the words “ווחי בהם” (“and he shall live by them”) as seen in Source 3. The aforementioned Rashi is found in Source 4 and explained in Figure 1.

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Source 3: Basis for the dispensation to suspend nearly all *Mitzvot* for the preservation of human life:

V'Chai Bahem (וְחַי בָּהֶם) – Vayikra 18:5 and Talmud Bavli - Yoma 85b:

<p>You shall observe my statutes and ordinances which a man shall do and live by them, I am Hashem.</p>	<p><u>וַיִּקְרָא פֶּרֶק יח: פסוק ה:</u> וְשָׁמַרְתֶּם אֶת חֻקֹּתַי וְאֶת מִשְׁפָּטַי אֲשֶׁר יַעֲשֶׂה אִתְּכֶם הָאֱדֹמ וְחַי בָּהֶם אֲנִי יְקוּק.</p>
<p>Rav Yehuda said in the name of Shmuel: The words “וְחַי בָּהֶם” teach us that <i>he shall live by them (the Mitzvot), and he shall not die by them.</i></p>	<p><u>יומא דף פה עמוד ב:</u> אמר רב יהודה אמר שמואל ... וחי בהם ולא שימות בהם.</p>

Source 4: Rashi's explanation of the “*Mai Chazit*” reasoning: The “*V'Chai Bahem-dispensation*” will not apply in the ‘coerced murder’ case (Talmud Bavli - Sanhedrin 74a):

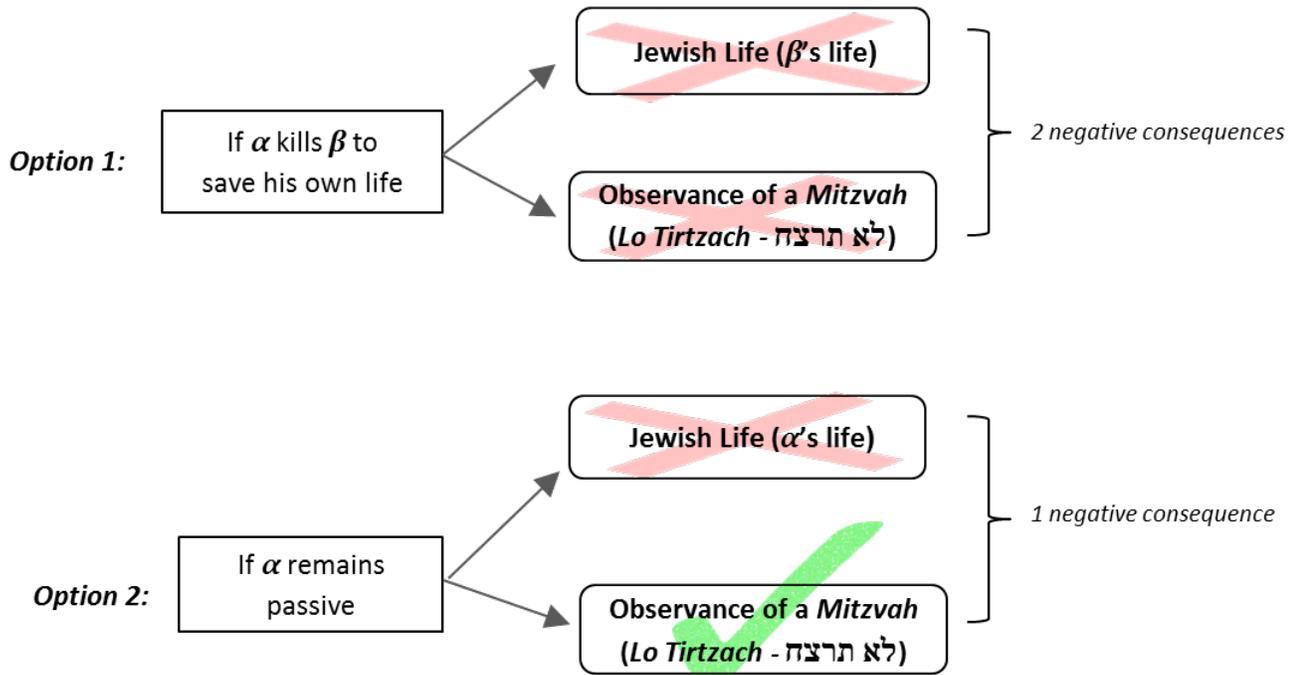
<p>The reason why α may not push aside β's life (to save his own life) is: If α kills β, there will be two negative consequences (“תרת”): β's death and a transgression of an <i>Aveirah</i> (sin). However, if α remains passive, there will be one negative consequence (“חדא”): α's death, but he will not transgress an <i>Aveirah</i>.</p>	<p><u>רש"י סנהדרין דף עד ע"א:</u> ד"ה סברא הוא: שלא תדחה נפש חבירו דאיכא תרתי אבוד נשמה ועבירה מפני נפשו דליכא אלא חדא אבוד נשמה והוא לא יעבור.</p>
<p>The Torah only permitted us to violate <i>Mitzvot</i> based on the “<i>V'Chai Bahem-dispensation</i>” because a Jewish life is precious to Hashem (more than <i>Mitzvot</i>).</p>	<p>דכי אמר רחמנא לעבור על המצות משום וחי בהם משום דיקרה בעיניו נשמה של ישראל.</p>
<p>However, here, if α kills β, (the “<i>V'Chai Bahem-dispensation</i>” won't apply for the following reason): Since one Jewish life will be anyway lost in the end, why should it be permitted to transgress the <i>Aveirah</i>?</p>	<p>והכא גבי רוצח כיון דסוף סוף איכא איבוד נשמה למה יהא מותר לעבור?</p>
<p>Who says (<i>lit.</i> who knows) that your (α's) life is more dear to Hashem than your friend β's life?</p>	<p>מי יודע שנפשו חביבה ליוצרו יותר מנפשו חבירו?</p>
<p>Therefore, the words of Hashem (<i>Lo Tirtzach</i>) may not be pushed aside.</p>	<p>הלכך דבר המקום לא ניתן לדחות.</p>

Explanation of Rashi: The basis for the ruling of *Yeherag V'al Yaavor* in the ‘coerced murder’ case is that the “*V'Chai Bahem-dispensation*” is not applicable for the following reason: If α would murder β to save his own life (*Figure 1, Option 1*), this would result in two negative consequences: the loss of a life (β 's life) and the transgression of an *Aveirah* (*Lo Tirtzach*). On the other hand, if α remains passive (*Figure 1, Option 2*), only one negative consequence would occur: the loss of α 's life, but no *Aveirah* will transgressed. The entire reason for the “*V'Chai Bahem-dispensation*” is that Hashem prefers to forego His *Mitzvot* rather than to lose a Jewish life (נפש ישראל) since a Jewish life is more dear to Him than His *Mitzvot*. However, in the ‘coerced murder’ case, since a Jewish life will be lost whether or not α transgresses, therefore it is better that α should die without violating His *Mitzvot*. Rashi's argument is referred to by Rav Moshe as: “תרת-נגד-חדא” – “two negative consequences vs. one negative consequence”.

Figure 1: Rashi's explanation for the *Halacha* of *Yeherag V'al Yaavor* in the 'coerced murder' case, based on the inapplicability of the "*V'Chai Bahem-dispensation*".

'Coerced Murder' Case According to Rashi:

"תרתִי-נגד-הדא" - two negative consequences vs. one negative consequence



"~~✗~~": Denotes the "abrogation of ...", such as the loss of a Jewish life or a violation of a *Mitzvah*.

"~~✓~~": Denotes the fulfillment of a *Mitzvah*.

- **Option 1:** Consequences of (theoretically) utilizing the "*V'Chai Bahem-dispensation*".
- **Option 2:** Consequences of not utilizing the "*V'Chai Bahem-dispensation*".

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2. Concept of Pursuer - *Rodef* (רודף):

Key:

Pursuer - *Rodef* (רודף): Person who is in the process of endangering the life of a prospective victim

Pursued person - *Nirdaf* (נרדף): The victim, whose life is endangered by the *Rodef*

- A. A pursuer who attempts to kill a victim is called a *Rodef*. The Torah authorizes the victim or anyone else to preemptively take the *Rodef's* life to save the victim (Source 5). This is called the law of *Rodef*.

Source 5: Law of *Rodef*: Saving the victim by killing the pursuer (Mishna - Sanhedrin 73a):

These are to be saved at the cost of their (attackers') lives: One pursuing his fellowman to kill him ...	סנהדרין דף עג, עמוד א: וְאֵלּוּ הֵן שְׂמֵצִי לֵין אוֹתָן בְּנִפְשָׁן הָרוֹדֵף אֶחָד תְּבִירוֹ לְהַרְגוֹ ...
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- B. For the purposes of this discussion, we will divide pursuit (*Redifah*) into two categories:
- i. Intentional pursuit: This category refers to the classical *Rodef* who intends to kill or endanger another. This category may perhaps be expanded to a situation where a person displays blatant disregard for another's life by engaging in an activity with the awareness that it may result in loss of a life even if he does not necessarily want anyone dead.
 - ii. Unintentional pursuit: This category refers to the *Rodef* who has no intention to endanger another, but nonetheless unwittingly poses a threat to another's life. This type of 'pursuer' may be a passive participant in a process that leads to endangerment of another, without knowledge nor intent of any potential harmful consequences. Examples of this category of 'pursuer' are discussed below.
- C. There are two schools of thought whether the law of *Rodef* applies only in cases of intentional pursuit or to both cases of intentional and unintentional pursuit.
- i. Intentional pursuit only: The law of *Rodef* applies only to cases of intentional pursuit. This approach is taken by Rav Yehoshua Falk (author of the *Sefer Meirat Einayim*), Rav Yosef Babad (author of *Minchat Chinuch*), among many other Talmudic scholars (Reference 3).
 - ii. Intentional and unintentional pursuit: The law of *Rodef* applies to both intentional and unintentional pursuit. This approach is taken by Rav Avrohom Yeshaya Karelitz (author of the *Chazon Ish*) and Rav Moshe, among many other Talmudic scholars (Reference 4).
 - a. However, Rav Moshe adds the following stipulation: In order to apply the law of *Rodef* to the 'unintentional *Rodef*', there may not be mutual, opposing pursuit between the two parties. As will be discussed below, there are situations in which the two parties are considered mutual "opposing" unintentional pursuers after each other. In the latter

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case, we say: "*Mai Chazit*" – "why do you presume that party # 1 is more of a pursuer against party # 2 than the converse?" and we must remain passive, even if as a result, some or all people will die through our inaction. Rather, there must be a clear determination that only one party is the definitive *Rodef* before we may apply the law of *Rodef* to actively push aside his life in order to save the other party.

- b. According to the approach that the law of *Rodef* is applied to unintentional pursuit, in cases of multifetal pregnancy where there is a high probability of total fetal death, perhaps it would be permitted to reduce one or more of fetuses based on the premise that they are pursuers after the lives of the remaining fetuses. This will be discussed further below

III. Derivation for differing positions whether the law of *Rodef* applies to unintentional pursuit:

We mentioned that there are two schools of thought whether we apply the law of *Rodef* only in cases of intentional pursuit or to both cases of intentional and unintentional pursuit. These two schools derive their positions based on different interpretations of the Talmud Bavli - Sanhedrin 72b (Source 7) concerning the 'obstructed labor' case. The Gemara, which discusses the laws pertaining to a *Rodef*, quotes the following Mishna in Ohalot:

1. Mishna - Ohalot: The 'obstructed labor' case (Source 6):

The Mishna discusses the case of a woman in mortal danger during obstructed labor. The only way to save her life would be to take the life of the fetus. The Mishna rules that as long as the fetus' head has not emerged (henceforth described as the '*non-emerged fetus*'), the fetus should be cut out to save his mother's life. The Mishna's stated reason for sacrificing the fetus to save his mother is "because her life takes precedence over his life". The Mishna then states that once the fetus' head has emerged (henceforth described as the '*partially emerged fetus*'), we must allow the childbirth to proceed because of the principle of *Ain Dochin*, i.e., we may not push aside the baby's life to save his mother. Since we may not choose between the mother's life and the baby's life, we must remain passive even though the mother will thereby die.

Source 6: Obstructed labor case: When can we save the mother at the expense of the fetus' life?

Mishna - Ohalot 7:6:

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 the baby's *head has emerged, we do not touch it, for we may not push aside one life on account of another life.

*According to the text in Talmud Bavli - Sanhedrin 72b

אהלות פרק ז, משנה ו:
האשה נשחיה מקשה לילד, מסתכין את הנלד
במעיה ומוציאין אותו אברים אברים מפני
שחיה קודמין לחייו. יצא *ראשו, אין נוגעין
בו שאין דוחין נפש מפני נפש.

Table 1: Obstructed labor: What is the Halacha when only the mother or the baby can be spared?

Case	Description	What is the Halacha?	Whose life is spared?	Reason stated in the Mishna
'non-emerged fetus'	Fetus is still totally <i>in utero</i>	Cut out the fetus	Mother	The mother's life takes precedence over fetus' life
'partially-emerged fetus'	Baby's head has emerged during birth process	Remain passive	Baby	We may not push aside one life at the expense of another life (<i>Ain Dochin Nefesh Mipnei Nefesh</i>)

2. Talmud Bavli - Sanhedrin 72b (Source 7):

In this Gemara, Rav Huna states that a minor who pursues another may be killed to save the prospective victim. Rav Chisda posed the following challenge to Rav Huna from the above Mishna in Ohalot: Since the Mishna rules that we may not kill the 'partially emerged fetus' to save his mother even though he is the cause of her endangerment, therefore obviously, we do not apply the law of *Rodef* to a minor? The Gemara answers "שאני התם דמשמיה קא רדפי לה" – "that (obstructed labor) case is different because they are pursuing her from Heaven."

Source 7: Does the law of *Rodef* apply only to an intentional pursuer or even to an unintentional pursuer? Talmud Bavli - Sanhedrin 72b.

<p>Rav Huna said, If a child pursues his fellow, (the fellow) may be saved at the cost of the child's life Rav Chisda challenged Rav Huna from a Mishnah: If the (baby's) head has emerged we may not touch him for we may not push aside one person's life on account of another person's life. But why not kill the baby – he is a pursuer? The Gemara answers: that (obstructed labor) case is different because they are pursuing her from Heaven.</p>	<p>תלמוד בבלי סנהדרין דף עב, עמוד ב: אמר רב הונא קטן הרודף ניתן להצילו בנפשו.... איתיביה רב חסדא לרב הונא יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש. ואמאי רודף הוא? שאני התם דמשמיה קא רדפי לה.</p>
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3. There are two approaches to explain "שאני התם דמשמיה קא רדפי לה" – "they are pursuing her from Heaven":

- A. 'Intentional pursuit only' school of thought: The *Sefer Meirat Einayim* and the *Minchat Chinuch* (Source 8) understand the phrase "שאני התם דמשמיה קא רדפי לה" to mean that the law of *Rodef* does not apply to the 'partially emerged fetus' because physiology, rather than volition, has forced the baby to endanger his mother's life (per Rabbi Dr. Zalman Levine, Reference 5). Accordingly, the Gemara answers the above question on Rav Huna by differentiating between the minor pursuer and the 'partially emerged fetus' by stating that the law of *Rodef* applies to the former case because the minor pursuer intends to kill but not to the latter case because the emerging baby lacks volition.

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Source 8: Minchat Chinuch, Mitzvah 296: The law of *Rodef* does not apply to unintentional pursuit.

It is explained in the Gemara Sanhedrin that even in the case of a minor pursuer, the victim may be saved at the expense of the pursuer's life. The Gemara asks from [the 'partially-emerged fetus' case in] the Mishna Ohalot: Why [don't we save the mother after the baby's head emerges] since the baby is a *Rodef* after his mother? The Gemara answers "שאני התם דמשיא קא רדפי לה" – *that (obstructed labor) case is different because they are pursuing her from Heaven* – which means to say that the baby is not a *Rodef* and therefore it is forbidden to save one life by taking another life since *Shfichat Damim* (murder) is not pushed aside (to save a life).

מנחת חינוך, מצוה רצו:

דהנה מבואר בסנהדרין שם דאף קטן הרודף ניתן להצילו בנפשו. ומקשה הש"ס ממשנה דאהלות ... יצא ראשו, אין נוגעין בו מפני שאין דוחין נפש מפני נפש. ואמאי הא הוי ליה רודף? ומשני הש"ס שאני התם דמשיא קא רדפי לה, ואם כן לא הוי רודף ואסור להציל נפש עם נפש אחר כי שפיכת דמים אינו נדחה.

- B. 'Intentional and unintentional pursuit' school of thought: Rav Moshe explains "... *the phrase 'they are pursuing her from Heaven' (מ'שמיא קא רדפי לה) should not be interpreted that the fetus is not a Rodef. Rather it means that because of this (Heaven's pursuit), both parties (mother and the emerged baby) are mutual pursuers. Accordingly, it is not known who is killing whom.*" As mentioned above, Rav Moshe stipulates that in order to apply the law of *Rodef* to an 'unintentional pursuer', there must be a clear determination that only one party is the definitive *Rodef*. However, after emergence of the baby's head, neither party can be determined as the definitive *Rodef* since both parties (mother and baby) pursue each other equally and therefore, we must remain passive. In the case of the minor pursuer, however, clearly there is a definitive *Rodef*: the minor pursues the victim while the victim does not pursue anyone.

IV. Obstructed labor case: Reasons for the difference in Halacha between the 'non-emerged fetus' and the 'partially emerged fetus':

We present two approaches to understand the reason why the mother's life is prioritized over the 'non-emerged fetus', while in the 'partially emerged fetus' case, we do not prioritize any life and instead allow the birth to proceed:

1. The first approach, taken by the *Sefer Meirat Einayim* and the *Minchat Chinuch*, is that the unborn ('non-emerged') fetus does not have the *Halachic* status of a living human being, according to the standard interpretation of *Rashi* who states that "*until a fetus emerges into the air of the world, it is not deemed a 'Nefesh' (נפש) – a living being*" (Source 9). As such, feticide does not constitute *Shfichat Damim* (murder) and therefore his life may be pushed aside to save the mother, just as the imperative to save lives (*Pikuach Nefesh*) pushes aside all *Mitzvot* (other than murder, idolatry and illicit relations). However, once the fetus' head emerges, he now has the full *Halachic* status of a living being, in which case, terminating it constitutes murder and thus, the principle of *Ain Dochin* applies.

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Source 9: Rashi's explanation of the rulings in the obstructed labor case. Talmud Bavli - Sanhedrin 72b:

<p>As long as he (the fetus) has not emerged into the air of the world, he is not a <i>Nefesh</i> (living being) and it is permitted to kill him (and) to save his mother. However, once his head has emerged, one may not touch him since he is considered a born person and we may not push aside one life for the sake of another life.</p>	<p>רש"י סנהדרין דף עב ע"ב, ד"ה יצא ראשו: <u>דכל זמן שלא יצא לאויר העולם לאו נפש הוא</u> <u>וניתן להורגו ולהציל את אמו.</u> אבל יצא ראשו אין נוגעים בו להורגו דהוה ליה כילוד ואין דוחין נפש מפני נפש.</p>
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- A. However, Rav Moshe points out that the Mishna's reasoning for permitting feticide in the 'non-emerged fetus' case, "because her life takes precedence over his life", is problematic according to this approach. If the fetus does not have *Halachic* life, why does the Mishna state that the mother's life takes precedence over the fetus' life? Only she has life while the fetus has none? Furthermore, why does the Mishna need to make any comparison between the two lives when the permissibility for feticide in this case is based on the general rule of *Pikuach Nefesh* setting aside *Mitzvot*?
2. The second approach, which is derived by Rav Moshe from the Rambam (Source 10), is that the dispensation for killing the 'non-emerged fetus' is based on the law of *Rodef*. Similar approaches are taken by Rav Chaim Soloveitchik and Rav Elazar Menachem Man Shach (References 6 and 7).

Source 10: Rambam's view: The 'non-emerged fetus' is viewed as a *Rodef* against the mother. Hilchot Rotzeach U'Shmirat Nefesh 1:9.

<p>This is one of the negative commandments not to take pity on the life of a <i>Rodef</i>. <u>On this basis, our Sages ruled regarding a woman in the throes of life-threatening labor, that it is permitted to cut out the fetus <i>in utero</i>, either medicinally or manually, because the fetus is considered a <i>Rodef</i> after her to kill her.</u> However, once the fetus' head emerges, one may not touch it since we may not push aside one life on account of another life and this is the nature of the world.</p>	<p>רמב"ם, פרק א הל' רוצח ושמירת הגוף, הלכה ט': הרי זו מצות לא תעשה שלא לחוס על נפש הרודף. <u>לפיכך הורו חכמים שהעובר שהיא מקשה לילד</u> <u>מותר לחתוך העובר במיעיה בין בסם בין ביד מפני</u> <u>שהוא כרודף אחריה להורגה.</u> ואם משהוציא ראשו, אין נוגעין בו שאין דוחין נפש מפני נפש וזהו טבעו של עולם.</p>
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- A. Rav Moshe deduces from the Rambam that a fetus is deemed a living being to the extent that feticide is generally forbidden under the commandment against murder (*Lo Tirtzach*) unless the mother's life is threatened. If not for the law of *Rodef*, even in the case of the 'non-emerged fetus', we would be required to remain passive due to the principle of *Ain Dochin* just as in the 'coerced murder' case. If feticide was forbidden under a lesser prohibition than *Lo Tirtzach*, the fetus' life would have been pushed aside for the sake of the mother's *Pikuach Nefesh* without requiring the law of *Rodef* to authorize it.

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- B. Accordingly, Rav Moshe explains: Prior to the emergence of the fetus' head, the pursuit between the two parties is unequal and only the fetus is deemed the definitive *Rodef*. This is due to the differential in the נפש (*Nefesh*)-status between the fetus and the mother: The mother is a complete *Nefesh* while the fetus is not. "Therefore, regarding the advantage ('*Nefesh differential*') that the mother has over the fetus – that she is a complete *Nefesh* while he is not yet a complete *Nefesh* - only the fetus is a *Rodef* and his mother is not a *Rodefet*" (Source 11). Therefore, the law of *Rodef* may be applied to save the mother at the expense of the fetus' life. However, after emergence of the head, the baby has the same *Halachic* status of a complete life (*Nefesh*) as his mother. Consequently, the situation becomes one of mutual (equal and opposing) pursuit. "Therefore, there is no basis to choose the fetus' life to be pushed aside to save his mother's life over than the converse option since their respective 'pursuits' against each other are equal." The same reasoning was advanced by the Talmud Yerushalmi - Shabbat (Sources 12-13) as follows: " שאין את יודע מי מי יהרג את מי – "because we do not know who is killing (pursuing) whom". Therefore, since there is no definitive *Rodef*, we cannot apply the law of *Rodef* to the baby and we must remain passive due to *Ain Dochin*.

Source 11: Rav Moshe: Basis for differentiating between the 'non-emerged fetus' and the 'partially emerged fetus': Law of *Rodef*. *Igros Moshe - Yoreh Deiah, Chelek 2, Siman 60 (2)*.

I have written that (when the Gemara states that) the prohibition to kill him (the 'partially-emerged fetus') is due to "מזשמיא קא רדפי לה" (*they are pursuing her from Heaven*) it is incorrect to interpret (that the reason) that we do not apply the law of *Rodef* is because the danger occurred through natural means without (the baby's) intent. Rather, since it is Heaven that pursues her, it is considered that both parties are as mutual pursuers after each other since (we see that Heaven has declared that) it is impossible for both to live. Consequently, it is forbidden to kill the baby due to "Mai Chazit" ("why do you presume that the baby is any more of a *Rodef* after his mother than she is *Rodefet* after the baby?").

However, this applies only when both parties are equal pursuers, as in the case of the 'partially emerged fetus' who has the identical full *Nefesh* (life) status as his mother. However, prior to birth, the 'non-emerged fetus' has an incomplete *Nefesh* status, as we deduce from the fact that one is not liable for capital punishment for killing a fetus. Therefore, regarding the advantage (i.e., the '*Nefesh differential*') that the mother has over the fetus – that she is a complete *Nefesh* while he is not yet a complete *Nefesh* - only the fetus is a *Rodef* and his mother is not a *Rodefet*. Therefore, we apply the law of *Rodef* to the fetus because of the advantage that the mother has over him.

אגרות משה, יורה דעה ח"ב, סימן ס, ענף ב:
דהא כתבתי שהא דאסור להרגו משום דמשמיא קא רדפי לה, אינו מחמת שאינו בדין רודף כיון שהוא דרך טבעי שלא בכוונת רדיפה, אלא כיון דמשמיא רדפי לה נחשבו שניהם כרודפים זה את זה מאחר שאי אפשר שיחיו שניהם שלכן אסור מטעם מאי חזית.

ואם כן לא שייך זה אלא כשהם רודפים שוים כהא דיצא ראשו שהיא נפש גמור כמו האם. אבל בעובר שעדיין אינו נפש גמור כדחזינן שאינו נהרגין עליו, ונמצא שעל היתרון של האם מהעובר שהיא נפש גמור והוא אינו עדיין נפש גמור, הוי רק העובר רודף ואם אינה רודפת. לכן יש להעובר דין רודף מחמת היתרון זה שיש להאם עליו.

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Source 12: The law of *Rodef* does not apply to the 'partially emerged fetus': Talmud Yerushalmi - Shabbat 14: 4:

<p><i>Rav Chisda</i> asked, Can you save an adult (who is being pursued) by killing a child (pursuer)? <i>Rav Yirmiya</i> answered, Is this not addressed in the following <i>Mishnah</i> (in <i>Ohalot</i>, above)? "If most of the baby came out we cannot touch it because we may not push aside one life on account of another life." <i>Rav Yosse son of Rav Bon</i>, quoting <i>Rav Chisda</i> said, That case (the emerging baby) is different because you do not know who is killing (pursuing) whom.</p>	<p>תלמוד ירושלמי תרומות פרק ח, הלכה ד: רב חסדא בעי מהו להציל נפשו של גדול בנפשו של קטן? התיב ר' ירמיה ולא מתני' היא, "יציא רובו אין נוגעין בו שאין דוחין נפש מפני נפש?" ר' יוסה בי ר' בון בשם רב חסדא שנייא היא תמן שאין את יודע מי הורג את מי.</p>
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Source 13: Explanation of the above Talmud Yerushalmi by the P'nei Moshe commentary:

<p>That case is different as we do not call the emerging baby a <i>Rodef</i> because we do not know who is killing (pursuing) whom. The explanation is: just as the mother is endangered and facing imminent death on account of the baby, so too the baby faces imminent death due to her difficult labor. <u>Consequently, we could call her a <i>Rodefet</i> after the baby just as easily as we could call him a <i>Rodef</i> after her.</u> As a result, we leave things as they are (i.e., we allow nature to takes it course) without touching the baby.</p>	<p>פני משה, ירושלמי סנהדרין פרק ח הלכה ט: שנייא היא תמן דלא קרי ליה רודף שהרי אין את יודע מי הורג את מי. כלומר כמו שהיא מסוכנת ועומדת למות מחמת הולד כן נמי הולד עומד למות מחמת קושי לידתה. <u>ויש לקרוא לה רודפת אחריו כמו שהוא רודף אחריה,</u> הילכך מניחין כמות שהוא ואין נוגעין בו.</p>
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Table 2: Summary of the obstructed labor case: Two different explanations for the *Halachot* pertaining to the 'non-emerged fetus' and the 'partially-emerged fetus' in different situations:

		Fetal Position	
		Prior to emergence of the head (<i>'non-emerged fetus'</i>)	Following emergence of head (<i>'partially-emerged fetus'</i>)
Halacha Stated in the Mishna		We cut out the fetus to save the mother	We remain passive and allow the birth to proceed
Reason Stated in the Mishna		The mother's life takes precedence over the fetus' life	אין דוחין נפש מפני נפש One life may not be saved at the expense of another life
Explanation of the Mishna's Reason, by:	Minchat Chinuch and Sefer Meirat Einayim	Since the fetus is not a <i>Nefesh</i> (a living being), feticide does not constitute murder. Therefore, the imperative for mother's <i>Pikuach Nefesh</i> (saving her life) overrides the prohibition of feticide.	Since the baby is now a full <i>Nefesh</i>, it is forbidden to save the mother at the expense of the baby's life (which would constitute murder). Thus, we must remain passive.
	Rav Moshe (<i>Similar approaches are presented by Rav Soloveitchik and Rav Shach</i>).	The law of <i>Rodef</i> overrides the principle of <i>Ain Dochin</i> . The fetus is pursuing his mother's complete <i>Nefesh</i> , while she is only pursuing his partial <i>Nefesh</i> . Due to the '<i>Nefesh-differential</i>', the fetus is deemed the definitive <i>Rodef</i>.	Since the baby is now a full <i>Nefesh</i> , both the baby and mother are mutual and equal pursuers. Therefore, neither may be viewed as the definitive <i>Rodef</i> and we must remain passive.

V. Fugitive case (1): When can the townspeople save themselves at the expense of the fugitive?

Key:

Fugitive: Refers to the individual hiding in the city that the hooligans wish to kill. The hooligans order the townspeople to hand the fugitive over to them.

Townspeople: Refers to the remainder of the people in the city who are ordered by the hooligans to either hand over the fugitive or else they will all be killed.

1. Situation description: A band of hooligans surround a city and demand that the townspeople hand over an individual (fugitive) in the city over to them to be killed or else they will all be killed. The Tosefta Terumot (Source 14) and the Talmud Yerushalmi - Terumot (Source 15) distinguish between a case where the hooligans designate (single out) a specific fugitive to be handed to them versus a case where they simply demand that the townspeople hand any person over to them. If the hooligans do not single out a specific victim, it is forbidden for the townspeople to hand over anyone even though everyone will then be killed. However, if the hooligans single out a specific fugitive to be handed over, under specified conditions, the townspeople may hand him over to save themselves. The paradigm

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presented by the Tosefta was the Sheva ben Bichri episode in II Samuel 20. After Sheva ben Bichri, a fugitive from justice for leading a revolt against King David, took refuge in the city Aveil-Macha, the townspeople killed him to appease Yoav's sieging army, thereby saving the lives of the townspeople. Clearly, Sheva ben Bichri was a designated fugitive (and liable to the death penalty for rebelling) as Yoav stated (ibid, Verse 21) "*Sheva the son of Bichri has lifted his hand against the king, against David; give us him alone and I will depart from the city.*"

Source 14: Fugitive case (I): When can the townspeople save themselves by handing over the fugitive to the hooligans? Tosefta - Terumot 7:20:

<p>This is the ruling for a group of people to whom the non-Jews said: "Give us one of you and we will kill him; and if not, we will kill all of you": Let them all be put to death rather than hand over (even) one person of Israel (<i>even if the non-Jews singled him out - per the Matnot Kehuna, Bereishis Rabboh, Perek 94, and Chasdei Dovid on the Tosefta</i>).</p>	<p style="text-align: center;"><u>תוספתא מסכת תרומות פרק ז הלכה כ:</u> סיעה של בני אדם שאמרו להם גוים "תנו לנו אחד מכם ונהרגהו ואם לאו הרי אנו הורגין את כולכם" - יהרגו כולן ואל ימסרו להן נפש אחת מישראל.</p>
<p>But if the non-Jews singled out someone (e.g., a "fugitive") in the manner that Sheva ben Bichri was singled out, the townspeople should hand him over rather than all being put to death.</p>	<p>אבל אם ייחדוהו להם כגון שייחדו לשבע בן בכרי, יתנו להן ואל יהרגו כולן.</p>
<p>Rebbi Yehuda said when does this apply (that we may not hand a person over even if he was singled out)? Only if the fugitive is in the interior (and less susceptible to capture) while the city dwellers are in the exterior (and will likely be killed). However, if both the fugitive and the city dwellers are in the interior, since they will all be killed together, they may hand him over so that all will not be killed.</p>	<p>אמר רבי יהודה במה דברים אמורים בזמן שהוא מבפנים והן מבחוץ. אבל בזמן שהוא מבפנים והן מבפנים הואיל והוא נהרג והן נהרגין, יתנוהו להן ואל יהרגו כולן.</p>
<p>As it states "And the woman approached all the people with her wisdom" (Samuel II, Ch. 20). She said to them "since he will be killed and you will be killed, give him over to them so that all of you will not be killed."</p>	<p>וכן הוא אומר ותבא האשה אל כל העם בחכמתה. אמרה להן "הואיל והוא נהרג ואתם נהרגין תנוהו להם ואל תהרגו כולכם."</p>
<p>Rebbi Shimon said so she said to them "anyone who rebels against the kingdom of David, is liable to execution."</p>	<p>רבי שמעון אומר כך אמרה להם "כל המורד במלכות בית דוד חייב מיתה."</p>

2. Yet, the hooligans' designation of a specific victim (in most cases) is not sufficient to permit handing the fugitive over. In the Tosefta (third statement), Rebbi Yehuda states that the second requirement for permitting handover (*'Mesirah'*) is that the fugitive must be unable to escape (*'fugitive without escape capability'*) even if they do not hand him over. However, if the fugitive would be able to escape (*'fugitive with escape capability'*), then it is forbidden to hand him over even though he was designated by the hooligans.
3. The dispensation to hand over the 'fugitive without escape capability' is further qualified in the Talmud Yerushalmi (Source 15), where there is a dispute between Rav Yochanan and Rav Shimon son of Lakish (Raish Lakish). Raish Lakish maintains that the fugitive must be deserving of the death penalty in order

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to permit handing him over. Rav Yochanan argues, stating that even if the fugitive was not deserving of the death penalty, it is permitted to hand him over.

Source 15: Fugitive case (II): When can the townspeople save themselves by handing over the fugitive to the hooligans? Talmud Yerushalmi - Terumot 8:9

<p>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 the non-Jews singled out someone, as in the Sheva ben Bichri episode, they should hand him over and not get killed. Rav Shimon ben Lakish said, This is providing he is subject to the death penalty like Sheva ben Bichri was. But Rav Yochanan said, This applies even if he was not deserving of the death penalty like Sheva ben Bichri was.</p>	<p style="text-align: center;"><u>תלמוד ירושלמי תרומות פרק ח, הלכה ד:</u></p> <p style="text-align: center;">תני סיעות בני אדם שהיו מהלכין בדרך פגעו להן גוים ואמרו "תנו לנו אחד מכם ונהרוג אותו ואם לא תרי אנו הורגים את כולכם", "אפילו כולן נהרגים לא ימסרו נפש אחת מישראל. ייחדו להן אחד כגון שבע בן בכרי, ימסרו אותו ואל יתרגו. אמר רבי שמעון בן לקיש והוא שיהא חייב מיתה כשבע בן בכרי. ורבי יוחנן אמר אף על פי שאינו חייב מיתה כשבע בן בכרי.</p>
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Table 3: Summary of the fugitive case, per the Tosefta and Talmud Yerushalmi:

Case	Description	Is the fugitive deserving of the death penalty?	Name of the ruling Rabbi	Is handover permitted or forbidden?	Whose life is spared?
<i>'fugitive with escape capability'</i>	Fugitive is able to escape if the townspeople do not hand him over	*No	All	**Forbidden	Fugitive
<i>'fugitive without escape capability'</i>	Fugitive is unable to escape even if the townspeople do not hand him over	No	Rav Yochanan	Permitted	Townspeople
			Raish Lakish	Forbidden	No one
		Yes	Rav Yochanan and Raish Lakish	Permitted	Townspeople

*If he was deserving of the death penalty, there may be an allowance to hand him over under certain circumstances.

**Rashi in Sanhedrin states the reason handover is forbidden is because we may not push aside one life at the expense of another life (i.e., *Ain Dochin*).

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VI. Fugitive case (2): Reason for the difference in Halacha between the 'fugitive with escape capability' and the 'fugitive without escape capability':

We present two approaches to understand the reason that it is prohibited to hand over a 'fugitive with escape capability' while it is permitted to hand over a 'fugitive without escape capability':

1. The first approach, by Rav Dovid Pardo (in his treatise on Tosefta, *Chasdei Dovid*) (Source 16), is based on the logic of "*Mai Chazit*." If the fugitive is able to escape, the townspeople have two theoretical options: (1) they could either allow the fugitive to escape and they will all be killed, or (2) they could save themselves by handing over fugitive to be killed. This is the standard "*Mai Chazit*" dilemma, i.e., "*For what reason do you presume that the townspeople's blood is redder than the fugitive's blood?*" Accordingly, the townspeople must remain passive and forfeit their lives while the fugitive may escape. However, if the fugitive has no capability to escape, the reasoning of "*Mai Chazit*" does not apply since even if they do not hand him over, the fugitive will die with everyone else. The entire basis for *Yeherag V'al Yaavor* by *Shfichat Damim* is "*Mai Chazit*." Therefore, if the reasoning of "*Mai Chazit*" does not apply to the 'fugitive without escape capability', it would be permitted to hand him over.

Source 16: Chasdei Dovid on the above Tosefta: Basis for differentiating between the 'fugitive with escape capability' and the 'fugitive without escape capability': Inapplicability of "*Mai Chazit*".

<p>Rebbi Yehuda (in the Tosefta) is, in fact, stating - when is it forbidden to hand over even a singled-out fugitive? Only if the fugitive is hidden in the inner sector and concealed from the non-Jew's line of sight so that they cannot find him, while the townspeople are in the outer sector (and are more exposed to attack). Thus, if they don't hand him over, they will be killed and he will escape. In such cases, even though the hooligans singled him out, it is still forbidden to hand him over based on the reason of "<i>Mai Chazit</i>" (<i>why do you presume your blood is more red, maybe that person's blood is more red?</i>).</p> <p><u>However, if the two parties are in equal danger (if the passive option would be chosen), e.g., they all are in the inner sector ... the primary point being that all of them are in the same situation such that if the hooligans would come, they would kill the fugitive along with the townspeople – then if the hooligans singled out the fugitive, it is permitted to hand him over. ... since the reason of "<i>Mai Chazit</i>" does not apply when they all are in an equal state of danger.</u></p>	<p style="text-align: center;"><u>חסדי דוד על תוספתא תרומות, ז': כ':</u></p> <p>והכי קאמר רבי יהודה: במה דברים אמורים שאסור על כל פנים למוסרו? בזמן שהוא בפנים שהוא טמון וסמוי מן העין שהעכו"ם אינם יכולים למצאו והן מבחוץ, ונמצא שאם לא ימסרו אותו, הן נהרגים והוא נמלט, אז אפילו יחזוהו להם אסור מטעמא דמאי חזית דדמא דידך סומק טפי דילמא דמא דההוא גברא סומק טפי כדאמרינן בעלמא ...</p> <p><u>אבל אם כולם שוין בסכנה כגון שכולם מבפנים ... שאם יבאו עכו"ם הורגים אותו ואותם, אז אם יחזוהו הוא דשרי ... דהא לא שייך טעמא דמאי חזית וכו' כשכולם שוין בסכנה.</u></p>
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- A. On a deeper level, the Chasdei Dovid's understanding can be explained as follows: Perhaps the *Halacha* of *Yeherag V'al Yaavor* only dictates that one must remain passive (i.e., in the 'coerced murder' case) when only one of the two parties will be killed and the only question is which of the two shall be killed. Since we don't know whose life is more valuable, the reasoning of "*Mai*

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Chazit dictates that we must remain passive rather than (actively) arbitrarily choose one party to be killed. However, here since the 'fugitive without escape capability' will be killed regardless of which option the townspeople choose, there is no longer any reason to remain passive since we are not choosing any person for death. The only choice is whether to have all the townspeople killed along with the fugitive or to spare them, for which we may argue that "*Mai Chazit*" does not pertain to.

- B. This explanation would perhaps only be valid according to Tosfot's approach that "*Mai Chazit*" operates from a perspective of uncertainty, which states that we may not choose one person over the other to be killed because of the uncertainty about the relative worth of two lives (page 3, paragraph C). Accordingly, if the fugitive is destined to be killed anyway, the logic of "*Mai Chazit*" is inapplicable. However, Rashi understands that the basis for *Yeherag V'al Yaavor* by *Shfichat Damim* (murder) is that the "*V'Chai Bahem-dispensation*" is not applicable when we have a situation of "תרת־נגד-הדא" – "*two negative consequences vs. one negative consequence*" and the logic of "*Mai Chazit*" is merely an adjunct. According to this approach, perhaps the "*V'Chai Bahem-dispensation*" would not be applicable even in the 'fugitive without escape capability' situation for the following reason: If the townspeople remain passive, even though both they and the fugitive will die, this would still be classified as "הדא" ("*one negative consequence*") without transgression of an *Aveirah*. However, if the townspeople hand over the fugitive, there will be "תרת־י" ("*two negative consequences*"): the fugitive's death and a transgression of an *Aveirah*. Accordingly, the "*V'Chai Bahem-dispensation*" would be inapplicable and it would be forbidden to hand over the 'fugitive without escape capability'.

Table 4: Understanding the "*Mai Chazit*" basis for *Yeherag V'al Yaavor* by *Shfichat Damim* (murder) and its relevance to permit handing over the 'fugitive without escape capability'

Basis for <i>Yeherag V'al Yaavor</i> by <i>Shfichat Damim</i>			Reason to permit handing over the 'fugitive without escape capability'	
Proponent	Logical Basis	Is " <i>Mai Chazit</i> " the primary logic?	Because " <i>Mai Chazit</i> " does not pertain?	Why "yes" or "no" (from previous column)?
Approach 1: Tosfot	" <i>Mai Chazit</i> "	Primary logic	Yes (<i>Chasdei Dovid</i>)	We are not choosing who should live versus who should die
Approach 2: Rashi	Inapplicability of the " <i>V'Chai Bahem-dispensation</i> "	Adjunct logic	No (<i>Rav Moshe</i> ?)	The " <i>V'Chai Bahem-dispensation</i> " does not apply because of "תרת־נגד-הדא" (" <i>two negative consequences vs. one negative consequence</i> ")

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- C. The Chasdei Dovid understands that the reason Raish Lakish permits handing over the fugitive if he deserves the death penalty is that the reasoning of “*Mai Chazit*” no longer applies. The Chasdei Dovid does not state exactly why deserving the death penalty nullifies the reasoning of “*Mai Chazit*”. Perhaps the rationale is since his criminal behavior caused this crisis, therefore, the fugitive’s claim to life is less legitimate than that of the townspeople. Thus, the Chasdei Dovid would likely interpret the words “*This is providing he is deserving of the death penalty*” to mean that the fugitive truly was deserving of the death penalty.
2. The second approach, by the Chazon Ish and Rav Moshe, is based on the law of *Rodef*. Rav Moshe (Source 17) explains that if the fugitive is able to escape, since it is impossible for both parties to survive, the situation is one of mutual pursuit, just as described above regarding the ‘partially-emerged fetus’ (page 11, paragraph B). Therefore, we say “*Mai Chazit (why do you presume) that the fugitive is more of a Rodef after the townspeople than the townspeople are pursuers after the fugitive*”? Accordingly, we have no basis to assign the definitive *Rodef* status to either party and consequently, the fugitive may not be handed over due to *Ain Dochin*. However, if the fugitive is unable to escape, the pursuit between the two parties is unequal and only the fugitive is deemed the definitive *Rodef* just as described above regarding the ‘non-emerged fetus’. This is due to the differential in the remaining life expectancy between the townspeople and the fugitive: The fugitive only has temporary life, (*Chayei Sha’ah*, i.e., short stay of execution until the hooligans invade the city and kill everyone even if the townspeople do not hand him over), while the townspeople have the potential for normal life expectancy (*Chayei Olam*). Accordingly, “*regarding the advantage (‘life expectancy-differential’) that the townspeople have over the fugitive’s Chayei Sha’ah, the fugitive pursues after them whereas they do not pursue after him at all.*” Therefore, the law of *Rodef* may be applied to save the townspeople at the expense of the fugitive’s life.

Source 17: Rav Moshe: Basis for differentiating between the ‘fugitive with escape capability’ and the ‘fugitive without escape capability’: Law of *Rodef*. *Igros Moshe* (ibid).

<p>We must say that “מִשְׁמִיא קָא רַדְפֵי לֵה” only works (to protect the fugitive) if he could escape and hide, for the following reason: Since the fugitive has no intent to pursue, it is only Heaven that has arranged the situation such that it is impossible for both parties to survive ...</p> <p>Consequently, <i>Ain Dochin Nefesh Mipnei Nefesh</i> determines that we must remain passive. ...</p> <p><u>The above logic only applies when both parties are equal pursuers, as in the case where the fugitive could escape if they do not hand him over. For if he flees and is thereby spared, the townspeople will be killed and conversely, if they deliver him to be killed, the townspeople will be spared, which is exactly like the ‘partially-emerged fetus’ case (where both parties are deemed equal “pursuers” and we must remain passive).</u></p> <p><u>However, if it is evident that everyone will die (even if they do not hand him over), as in the episode of <i>Sheva ben Bichri</i> where no one would not survive beyond several hours or days when <i>Yoav</i> would capture the city,</u></p>	<p><u>אגרות משה, יורה דעה ח"ב, סימן ס', ענף ב':</u></p> <p>צריך לומר שמועיל טעם זה רק באם היה הוא ניצל כגון שיכול לברוח ולתחבא, שהטעם הוא דמחמת שאין כוונתו לרדוף רק שמשמיא נזדמן כן שאי אפשר להו להתקיים שניהם... ואין דוחין נפש מפני נפש. ...</p> <p><u>ואם כן לא שייך זה אלא בששניהם רודפים שוים כגון שיכול לברוח אם לא ימסרוהו דשיברח הוא וינצל, יהרגו בני העיר. וכשימסרוהו ליהרג ינצלו בני העיר, דהוא ממש כהא דעובר שיצא ראשו.</u></p> <p><u>אבל באם ברור שימותו כולם כהעובדא דשבע בן בכרי לאחר איזה שעות וימים כשיתפשנה יואב, נמצא שהם</u></p>
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then the townspeople only pursue after the fugitive's *Chayei Sha'ah* (temporary life) while he pursuers after all their life (*Chayei Olam*-normal life expectancy). Thus, regarding the essential life – which is the '*life expectancy differential*' that the townspeople have over the fugitive's *Chayei Sha'ah* - the fugitive is a *Rodef* after them while they do not pursue after him at all. Thus, the law of *Rodef* is applied to the fugitive despite his lack of intent to harm, since he nevertheless is the cause of their impending danger.

רודפים אותו רק על חיי שעה והוא רודף אותם בכל חייהם. הרי נמצא שעל עיקר החיים שהוא היתרון מחיי שעה. הוא רודף אותם והם אינם רודפים אותו כלל, יש לו דין רודף אף שהוא שלא בכוונה כיון שעל כל פנים הוא הסבה. וזהו טעם נכון וברור.

3. We mentioned that Raish Lakish stipulates that a 'fugitive without escape capability' must be deserving of the death penalty in order to permit handing him over. Rav Moshe (Source 18) interprets "deserving of the death penalty" to mean that the hooligans wish to kill the fugitive because of a grievance they specifically have on him, and not necessarily that he was sentenced to death in a legitimate justice system. Raish Lakish's reasoning is as follows:

- A. Both Rav Yochanan and Raish Lakish agree that in order to apply the law of *Rodef* to a 'fugitive without escape capability', the fugitive must have been designated (singled out) by the hooligans. They merely disagree as to how absolute the hooligans must be when singling out their victim. Rav Yochanan believes that by merely specifying one individual, the hooligans show that they are prepared to kill the entire city unless he is surrendered to them. Raish Lakish, on the other hand, believes that only if the hooligans have a specific grievance directed towards that individual, he is deemed "*Halachically designated*" since now it is clear that the hooligan's murderous desires will only be assuaged by receiving this specific victim. Without a grievance, the hooligans may be just as content to take another life and thus, the designation does not have legal force to establish this fugitive as the definitive *Rodef*. Without the definitive *Rodef* assignment, even though the fugitive will be killed either way, the townspeople are forbidden to hand him over since they would deprive him of his *Chayei Sha'ah* (temporary life).

Source 18: Rav Moshe's explanation of Raish Lakish's view: The hooligans must have a grievance against the fugitive in order to permit handing him over. *Igros Moshe* (ibid).

[Raish Lakish] believes that we cannot assign the status of a *Rodef* to the person that the hooligans designated to kill since they have no basis to demand his death. The fact that an idea "fell upon" their minds to demonstrate their fearsomeness and kill a person who they singled out from the group, does not render the fugitive as the cause for the pursuit (against the townspeople), since if he were not present, it is possible that the hooligans would have designated someone else. Therefore, it is impossible to permit handing him over. Although the fugitive will be killed shortly thereafter along with them when the hooligans apprehend them, we must forbid (handing him over) because (this will deprive him) of his remaining *Chayei Sha'ah* (transient life).

אגרות משה, יורה דעה ח"ב, סימן ס', ענף ג':
 אבל בייחדו סובר שאין להחשיבו למי שייחדו העכו"ם להרגו לרודף כלל כיון דאין להם עליו שום חיוב מיתה רק שכך נפל בדעתם להראות אימתם ולהרוג אחד שייחדו מהסיעה, שאין זה אף סיבה לרדיפה שאפשר אם לא היה זה שם היו מייחדין אחר. ולכן לא שייך להתיר כלל דאף שיהרג גם הוא עמם אחר שעה שיתפסו אותם, מכל מקום הרי יש לאסור מחמת חיי שעה ...

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<p>Therefore, ... (according to Raish Lakish) <u>if hooligans want to kill the fugitive because of any (unlawful) grievance on him, this will assign the status (law) of a Rodef onto him</u>, even though he lacks intention to pursue. Thus, the townspeople will be permitted to hand him over even according to Raish Lakish, just as (we assign the status of the definitive Rodef to) the 'non-emerged fetus'.</p>	<p><u>שגם ליסטים בעלמא כיון שהם רוצים להרגו מחמת טענה שיש להם עליו. הוא בדין רודף אף שהוא בלא כוונת רדיפה ומותרין למסרו לריש לקיש כמו בעובר.</u></p>
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Table 5: Summary of the fugitive case: Two different explanations for the *Halachot* pertaining to handing over a fugitive (who was singled-out by the hooligans) in different situations:

		'fugitive with escape capability'	'fugitive without escape capability'	
			Hooligans have NO grievance against the fugitive	Hooligans have a grievance against the fugitive
Is handover permitted or forbidden?		Forbidden due to: <i>Ain Dochin Nefesh</i> <i>Mipnei Nefesh</i>	Permitted according to Rav Yochanan	Permitted according to Rav Yochanan and Raish Lakish
Explanation by:	Chasdei Dovid	<p>"Mai Chazit" forbids us to choose between:</p> <p>(1) the fugitive living and the townspeople dying; vs. (2) the townspeople living and the fugitive dying.</p>	<p>Since the fugitive will die either way, we are not choosing between his life vs. the townspeople's lives.</p> <p>The only available choices are: (1) the fugitive will die alone; vs. (2) everyone else will die with him. Thus, "Mai Chazit" does not apply.</p>	<p>Raish Lakish believes that the logic of "Mai Chazit" does not apply when the fugitive deserves the death penalty.</p>
	Rav Moshe	<p>Both the fugitive and the townspeople are mutual (and equal) pursuers. Since the fugitive can escape, therefore by handing him over, the townspeople deprive him of life as much as he does to them by refusing to surrender. Therefore, the law of Rodef does not apply.</p>	<p>The fugitive only has <i>Chayei Sha'ah</i> (temporary life) since he will be killed anyway when the hooligans attack. Therefore, he pursues after the townspeople's <i>Chayei Olam</i> (normal life expectancy) potential while they only pursue after his <i>Chayei Sha'ah</i>. Due to the 'life expectancy differential', the fugitive is deemed the definitive Rodef.</p>	<p>Raish Lakish believes that only if the hooligans have a grievance on the fugitive, he is deemed the definitive Rodef against the townspeople since the hooligans have fixed on him as their target.</p>

- B. Rav Moshe notes that Raish Lakish's requirement for a "death sentence", i.e., the hooligans had a grievance against the fugitive, only applies if the fugitive fled to the city before the hooligans singled him out for death. However, if the hooligans singled out the fugitive for death prior to his flight to the city, even if they have no grievance against him, the townspeople may hand him over if he has no escape capability. Rav Moshe explains his reasoning: *"Since they previously designated him to be killed, it is as if he was condemned to death by the hooligans and therefore, he is deemed as a Rodef*

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even though he lacks intent to harm.” Perhaps Rav Moshe’s reasoning is that the hooligans are unlikely to switch their blood-thirsty demands to another victim in the city after they already had their sights on this fugitive prior to his flight. Therefore, their designation would have legal force to establish this fugitive as the definitive *Rodef* (Table 6).

- C. Rav Moshe suggests that the requirement of escape incapability is not an absolute. The Tosefta presents this requirement only in a situation where the fugitive’s ‘pursuit’ against the townspeople’s lives was unintentional. However, if prior to his entry into the city, the fugitive was aware that the hooligans knew where he was headed and potentially would massacre the city residents on his account, it is probable even according to Raish Lakish, then he would be considered *“as a Rodef with intent since (the massacre of the city) is an inevitable consequence (and) it is certainly forbidden to save himself at the expense of his fellow. In this situation, they would be permitted to hand him over even if he had the ability to escape.”* Thus, according to Rav Moshe, the requirement for the “inability to escape” is simply needed to assign the fugitive as the definitive *Rodef*, for if he is able to escape, both parties are on equal footing as *unintentional pursuers* and neither may be assigned the definitive *Rodef* appellation. However, if the fugitive actively sought refuge in the city knowing that he was thereby endangering the others, then obviously, he is the definitive *Rodef* while the townspeople are not, since they have not done anything to endanger him. Once he is deemed the definitive *Rodef*, then his ability to escape is immaterial and it is permitted to turn him over just as we may kill any intentional *Rodef* due to his intention to kill (Table 6). However, Rav Moshe states that this requires further analysis to finalize the Halacha accordingly.

Table 6: Rav Moshe Feinstein's analysis of Raish Lakish's view of the fugitive case: When is a grievance or inability to escape a requirement to permit hand over?

Prior to taking asylum in the city, was the fugitive aware that the hooligans knew where he was headed and able to capture the city?	When did the fugitive flee to the city? <i>Before or after he was designated by the hooligans?</i>	Is a grievance against the fugitive a requirement to permit handing over the fugitive?		Is inability to escape a requirement to permit handing over the fugitive?	
		Yes/No	Reason	Yes/No	Reason
No <i>The fugitive thought they would not find him in his city of asylum or that they lacked the ability to capture the city.</i>	Before	Yes	A grievance is required to call the fugitive "legally" designated; otherwise the hooligans' targeting him is merely capricious.	Yes	If the fugitive is able to escape, both he and the townspeople are equal pursuers against each other. Therefore, we say: " <i>Mai Chazit</i> to call him the definitive <i>Rodef</i> ?"
	After	No	Perhaps: Since the fugitive was designated prior to fleeing, the hooligans' designation is fixed on him.		
Yes	After	No	Since the fugitive is considered an intentional <i>Rodef</i> , no additional designation is required (see next column)	No	The fugitive is considered an intentional <i>Rodef</i> since he knew that he was endangering the townspeople by taking asylum there. As such, he is the definitive <i>Rodef</i> even if he could escape.

VII. Application of *Ain Dochin Nefesh Mipnei Nefesh* and law of *Rodef* to multifetal pregnancy reduction:

1. The following points provide the basis for the ensuing discussion:
 - A. This discussion refers to clinical cases where none of the fetuses have gross abnormalities or malformations and furthermore, no apparent health difference is observed between fetuses. Rabbi Dr. Zalman Levine suggests that selective termination of a fetus with a gross abnormality that would result in its death could be *Halachically* viewed with greater leniency than performing MPR where none of the fetuses demonstrate an abnormality.
 - B. This discussion refers to clinical cases where there is a high probability of total fetal death if MPR is not performed.
2. In light of the above discussions, several arguments can be made to either allow or prohibit MPR:

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- A. At first glance, it would appear that the principle of *Ain Dochin* should theoretically forbid MPR even though it would increase the survival probability of the remaining fetuses, since we would be forced to save some lives at the expense of others.
- B. However, the 'fugitive without escape capability' case may serve as a model to perhaps permit MPR since in both cases the survival likelihood is low for all parties if the passive option was taken.
- C. We have looked at two different approaches to understand the basis for the permissibility to hand over the 'fugitive without escape capability'. We will examine the logic inherent in these approaches for possible application to the MPR permissibility question:
- i. Approach 1: Chasdei Dovid: Since the fugitive has no capability to escape, the fugitive will die whether or not the townspeople hand him over. Accordingly, the logic of "*Mai Chazit*" does not apply since we are not selecting between two parties - who should live and who should die.
 - ii. Approach 2: Rav Moshe: Since the fugitive is unable to escape, the fugitive is deemed the definitive *Rodef* against the townspeople due to the '*life expectancy-differential*' between the two parties. The fugitive pursues after the townspeople's *Chayei Olam* potential while they only pursue after his *Chayei Sha'ah*.
- D. According to the Chasdei Dovid (Approach 1), just as the lack of "*Mai Chazit*" applicability serves to permit handing over the 'fugitive without escape capability', his approach could apply equally well to permit MPR if there is a high probability of total fetal death without the procedure. This approach was suggested by Rabbi Dr. Zalman Levine.
- i. One may question the analogy between the 'fugitive without escape capability' who was singled out to be killed and multifetal pregnancy where none of the fetuses were previously selected for death. Rabbi Dr. Levine explained that the physician uses the physical positioning of the fetuses in the uterus as the basis for choosing which fetus(es) to reduce to minimize the risk of harm to the remaining fetuses. Perhaps this selection criterion can be considered a form of "singling-out" and it is therefore analogous to the 'fugitive without escape capability' case.
- E. According to Rav Moshe (Approach 2), perhaps we can reason that each fetus has the status of a *Rodef* against the other fetuses just as the 'fugitive without escape capability' is a *Rodef* against the townspeople. However, Rav Moshe explains that the permissibility to hand over the 'fugitive without escape capability' is based on the '*life expectancy-differential*' between the two parties. This approach does not seem applicable to multifetal pregnancy since there is no differential between fetuses (assuming all are of equal health and have the same survival probability). Thus, even if we deem the fetuses as *Rodfim*, they are all engaged in "*equal and opposing*" pursuit

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against each other and therefore, we have no basis to assign the definitive *Rodef* status to any fetus. Accordingly, multifetal pregnancy seems more analogous to the ‘fugitive with escape capability’ case since all parties are on equal footing without any ‘pursuit differential’ (see Tables 7 and 8 for comparison between multifetal pregnancy and each of two fugitive cases). Thus, perhaps we should say “*Mai Chazit- why should we presume that the fetus X is more of a Rodef after the other fetuses than they are Rodfim after fetus X?*” and the law of *Rodef* should not apply to reduce any fetus(es) to save the remaining ones?

Table 7: Analyzing MPR from the perspective of the rule of *Rodef*, with comparison to the ‘fugitive without escape capability’ case

Note: “*fetuses x&y*” refers to the fetuses that we wish to reduce to save the remaining fetuses (see Figure 3).

Case	Which parties are engaged in pursuit?	Available Options			Can we apply the law of <i>Rodef</i> ?		
		Passive	Active		Is there a differential between parties?		Who is assigned the definitive <i>Rodef</i> status?
		Who will be saved?	What is the action?	Who will be saved?	Yes/No	Why “yes” or “no”	
Fugitive without Escape Capability	Fugitive vs. Townspeople	No one	Hand-over	Townspeople	Yes	¹ There is a life expectancy-differential	² Fugitive
Multifetal Pregnancy	<i>fetuses x&y</i> vs. remaining fetuses	No one	MPR	Remaining Fetuses	No	All fetuses have similar survival probability	³ ?? <i>fetuses x&y</i>

¹Townspeople’s *Chayei Olam* (normal life expectancy) vs. the fugitive’s *Chayei Sha’ah* (transient life).

²Applying the law of *Rodef* requires us to assign the definitive *Rodef* status to the fugitive.

³Can we assign the definitive *Rodef* status to any fetus without a differential?

Table 8: Analyzing MPR from the perspective of rule of *Rodef*, with comparison to the ‘*fugitive with escape capability*’ case

Note: “*fetuses x&y*” refers to the fetuses that we wish to reduce to save the remaining fetuses (see Figure 3).

Case	Which parties are engaged in pursuit?	Available Options			Can we apply the law of <i>Rodef</i> ?		
		Passive	Active		Is there a differential between parties?		Who is assigned the definitive <i>Rodef</i> status?
		Who will be saved?	What is the action?	Who will be saved?	Yes/No	Why “yes” or “no”	
<i>Fugitive with Escape Capability</i>	Fugitive vs. Townspeople	Fugitive	Hand-over	Townspeople	No	<i>Either one of the two parties can survive – it is mutually exclusive</i>	¹ No one
<i>Multifetal Pregnancy</i>	<i>fetuses x&y</i> vs. remaining fetuses	No one	MPR	Remaining Fetuses	No	<i>All fetuses have similar survival probability</i>	² ?? <i>fetuses x&y</i>

¹Assignment of the definitive *Rodef* status to any one party (i.e. *fugitive* or *townspeople*) is unjustified since we have no basis to presume that one party is more of a *Rodef* than the other.

²Can we assign the definitive *Rodef* status to any fetus without a differential?

F. However, this alternative analogy of multifetal pregnancy to the ‘*fugitive with escape capability*’ case also does not hold true. In the ‘*fugitive with escape capability*’ case, taking either the active or the passive option will result in one party living and the other party getting killed. Thus, the choice is between the active option (handing over the *fugitive*) that requires us to unjustifiably assign the definitive *Rodef* status to one party (i.e., the *fugitive*) versus the passive option where no such assignment is made (thus, allowing the *fugitive* to escape). Therefore, the logic of “*Mai Chazit*” teaches us that we must take the option that makes no such assignment. However, by multifetal pregnancy, the only option that is likely to lead to survival of any lives is the active option (MPR) since passivity will likely result in a total loss of life. Thus, the decision process (whether to perform MPR or not) revolves around either saving or losing the pregnancy, without deciding which of two competing forces should be assigned the definitive *Rodef* status. Thus, the multifetal pregnancy situation does not clearly align with either the ‘*fugitive without escape capability*’ or the ‘*fugitive with escape capability*’ cases?

- In *Sefer Nishmat Avraham* (Source 19), Rabbi Dr. Abraham records the ruling of Rav Shlomo Zalman Auerbach (henceforth referred to as “Rav Shlomo Zalman”) who permitted MPR in cases where there is high risk of pregnancy loss, on the basis that each fetus has the status of a *Rodef*.

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- A. It is not clear when *Rav Shlomo Zalman* referred to “cases where the pregnancy is at high risk”, whether he would consider a greater than 50% risk as sufficiently a “high risk” to consider that “each of the fetuses has the status of *Rodef*”. See Appendix B for additional discussion on this issue.

Source 19: Rav Shlomo Zalman Auerbach permits MPR in certain cases of high risk due to the law of *Rodef* (*Nishmat Avraham, Siman 425*):

<p>In a sextuplet pregnancy case, the Gaon, Rav Shlomo Zalman Auerbach, ZT”L told me that it was permitted to reduce a portion of fetuses to save the others. In another case where doctors believed that a quadruplet pregnancy would become inviable due to the mother’s narrow pelvis, the Gaon, ZT”L permitted reduction of one or two fetuses, as the situation required. <u>The Gaon, ZT”L explained me that in cases where the pregnancy is at high risk due to multiple fetuses, each of the fetuses has the status of a <i>Rodef</i> and therefore the physicians are permitted to select those fetuses for reduction whose termination will cause the least risk of aborting the entire pregnancy.</u> He also agreed that this is permissible even beyond 40 days, based on the opinion of contemporary physicians that the optimal time for reduction is between 9-12 weeks of gestational age. In a case of a quadruplet pregnancy, the Gaon, Rav Yosef Sholom Elyashiv, ZT”L, told me since the doctors assess that there is danger that all fetuses will be miscarried, it is permitted to reduce. On the other hand, it is known to me that the Gaon (Rav Elyashiv), ZT”L, forbade reducing a triplet pregnancy.</p>	<p style="text-align: center;">נשמת אברהם חושן משפט סימן תכה:</p> <p>בשאלה של ששיה אמר לי הגרש"ז אויערבאך זצ"ל שמותר לגרום להפלה חלק מהעוברים כדי להציל האחרים. במקרה אחר באשה עם רביעיה דעת הרופאים שלא תוכל להמשיך עם הריונה עקב האגן הקטן והתיר הגאון זצ"ל שיפילו אחד או שנים מהעוברים לפי הצורך. הסביר לי הגאון זצ"ל שבמקרה של הריון בסיכון גבוה עקב ריבוי עוברים כל אחד מהעוברים יש לו דין של רודף ולכן מותר לרופא להרוג חלק מהם בזריקה בבחירת אותם לפי שיקול רופאי שהריגתם יגרום לסיכוי הקטן ביותר של הפלת כולם. והוא זצ"ל גם הסכים שמותר לעשות זאת אחרי ארבעים יום (מבחינת רפואי הזמן האופטימי לבצע דילול הוא בין תשע לשתיים-עשרה שבועות של הריון). ואמר לי הגרי"ש אלישיב שליט"א שכיון שהרופאים אומרים שיש סכנה ברביעיה שתפיל את כולם, מותר לדלל. מאידך ידוע לי שהגאון שליט"א אסר דילול בשלישיה.</p>
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4. In personal correspondence with Rabbi Dr. Zalman Levine (Reference 5), *Rav Yosef Sholom Elyashiv* ruled that the single deciding factor for permitting MPR is the probability of mortality for each of the fetuses. *Rav Elyashiv* permitted MPR (in a specific case presented to him by Rabbi Dr. Levine) if the probability of all fetuses perishing was greater than 50% (in the absence of intervention). In addition, *Rav Elyashiv* ruled that major disability or morbidity (which is common in surviving multifetal-pregnancy babies) may not be considered a factor in allowing MPR.

VIII. Possible approaches for viewing MPR in *Halacha*, according to Rav Moshe’s teachings:

NOTE: Rav Moshe has not published any ruling on the permissibility of MPR probably because this procedure only became available in the 1980s. Thus, any thoughts below are intended as merely an attempt to logically extend Rav Moshe’s *Halachic* analysis from the fugitive and obstructed labor situations discussed above, to multifetal pregnancy.

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1. Rav Hershel Schachter (Reference 8) explains that the position of Rav Moshe, i.e., the prohibition of feticide is included under *Lo Tirtzach* ("thou shall not murder") is based upon the eventuality that a fetus would become a viable born person (על שם סופו). Therefore, if the physicians state with near certainty that all fetuses will die unless MPR is performed, since the eventuality of a viable born person does not exist, there would be no prohibition of *Lo Tirtzach* and therefore MPR would be permitted to save the remaining fetuses. According to this explanation, Rav Moshe would not agree with Rav Elyashiv that a mortality risk of greater than 50% would suffice to permit MPR, as Rav Moshe would require a much higher mortality risk to permit MPR.
2. Despite the various questions raised above, there is reason to suggest that Rav Moshe would agree with Rav Shlomo Zalman that MPR could be permitted by defining the fetus(es) that the physicians wish to reduce as a *Rodef* (or *Rodfim*) since Rav Moshe believes that the law of *Rodef* applies even to unintentional pursuit. However, we previously challenged this approach, asserting that all the fetuses are "equal and opposing pursuers" just as in the 'fugitive with escape capability' case. As such, we should say: "*Mai Chazit - why should we presume that the fetus X is more of a Rodef after the other fetuses than they are Rodfim after him?*"
3. An approach is presented in Figures 2a&b and 3 to resolve this difficulty based on Rav Moshe's writings regarding the obstructed labor and the fugitive cases. This approach posits that there is a fundamental difference between the 'partially emerged fetus' and the 'fugitive with escape capability' situations, on one hand, versus the multifetal pregnancy situation on the other hand. We suggest that the problem of "equal and opposing pursuers" would only apply to prohibit feticide and hand-over in the 'partially-emerged fetus' and 'fugitive with escape capability' situations, respectively, but would not apply in the multifetal pregnancy situation.
 - A. In the fetus and fugitive situations, there are clearly mutually "opposing" pursuit-forces, i.e., the pursuit is bidirectional (see Figure 2a&b). Thus, unless the following two conditions are met, we may not select between the competing pursuit-forces to assign a definitive *Rodef*: 1) a designated (singled-out) *Rodef*, and 2) a 'pursuit-differential' between the two parties. Accordingly, we may only assign a definitive *Rodef* status in the 'non-emerged fetus' and 'fugitive without escape capability' situations, because there is either a '*Nefesh-differential*' (between the full *Nefesh* of the mother and the partial *Nefesh* of the fetus) or a '*life span-differential*' (between the *Chayei Olam* of the townspeople and the *Chayei Sha'ah* of the fugitive), respectively. However, if both conditions are not met, *Ain Dochin* dictates that that we must remain passive, even if everyone will thereby die.
 - B. The same is true if there are seven people on a life boat that is sinking because it only can support six people (e.g., we don't know who boarded last) and we wish to throw one passenger overboard to keep the boat afloat and save the others. Since each passenger could be viewed as

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a *Rodef* against another, we cannot assign the definitive *Rodef* status to any one passenger more than the others. Consequently, *Ain Dochin* dictates that that we must remain passive even though everyone will die when the boat sinks.

- C. By contrast, we suggest that in the multifetal pregnancy situation, the pursuit is unidirectional. Perhaps the fetuses that are designated to be reduced by the physician (*fetuses x&y*, see Figure 3) are not considered as direct *Rodfim* (pursuers) against any other fetus. Rather, *fetuses x&y* would only be considered *Rodfim* directly against the pregnancy entity as a whole (through the cumulative effect of multiple fetuses on the pregnancy), but the pregnancy entity cannot be considered as a pursuing force against any fetus since the fetuses themselves are a part of the same pregnancy entity. Since *fetuses x&y* threaten the pregnancy but not vice versa, the pursuit is unidirectional and therefore, we are not proscribed by the “*equal and opposing pursuers*” problem which only applies to bidirectional pursuit. Only in bidirectional pursuit situations, no one individual can be assigned as the definitive *Rodef* unless there is a ‘*pursuit-differential*’. However, by multifetal pregnancy, even though there is no ‘*pursuit-differential*’, perhaps we can still assign the definitive *Rodef* status to any fetus(es) the physician wishes to reduce since the pursuit is unidirectional.
- i. We must admit that this argument is very susceptible to the counterargument that even the multifetal pregnancy situation may be viewed as a multi-directional pursuit situation since theoretically any number of fetuses can be viewed as the *Rodfim* against the pregnancy entity and therefore, we should require a ‘*pursuit-differential*’ (which there is none) to assign the definitive *Rodef* status to any fetus.
 - ii. Moreover, this explanation of unidirectional pursuit vs. bidirectional pursuit seems flawed, since by extension, the same logic would dictate that the life boat situation is also a case of unidirectional pursuit because none of the passengers are *Rodfim* against each other and it is merely the cumulative weight of all passengers that threatens to capsize the boat. This application of the same logic is absurd. Clearly it is forbidden to throw any passenger off on the basis that he is a *Rodef* against the others. Thus, it is unclear if the above approach is viable to permit MPR using *Rav Moshe’s* understanding of the law of *Rodef*.
4. Furthermore, we can suggest that even though we require singling-out of a specific victim by the hooligans to permit handing over a fugitive, the same may not hold true in multifetal pregnancy. In the fugitive case, if the hooligans just demand “give us any person”, it is impossible to assign the status of a *Rodef* to anyone since the hooligans’ demand has no power to render any one individual as the “cause” of everyone else’s endangerment. Only if the hooligans specify the person to be handed over (according to *Rav Yochanan* or, according to *Raish Lakish* - if they also have a grievance against a specific person), then the specified individual is deemed the cause of the townspeople’s endangerment and therefore he would be assigned the status of a *Rodef*. However, in the case of a multifetal

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pregnancy, it is self-evident that each fetus contributes to the physiological cause of other fetuses' endangerment and thus we may not require the type of designation required in the fugitive case. Thus, our earlier approach that the physician's selection process in performing MPR is equivalent to the designation in the fugitive case, may not be necessary. Nonetheless, we still need an approach to deal with the absence of a quantitative '*pursuit-differential*' in multifetal pregnancy in order to apply the law of *Rodef* to any fetus. Perhaps the "unilateral pursuit" approach has some merit to resolve this remaining issue.

Figure 2a: Fugitive Situation: Townspeople vs. Fugitive – Bidirectional Pursuit

Situation Description: A band of hooligans threatens the townspeople to hand over a designated fugitive to them to be murdered or else they will kill all the city's inhabitants.



$Pursuit_{fugitive}$ – refers to the pursuit from the fugitive that is the cause of the threat facing the townspeople;

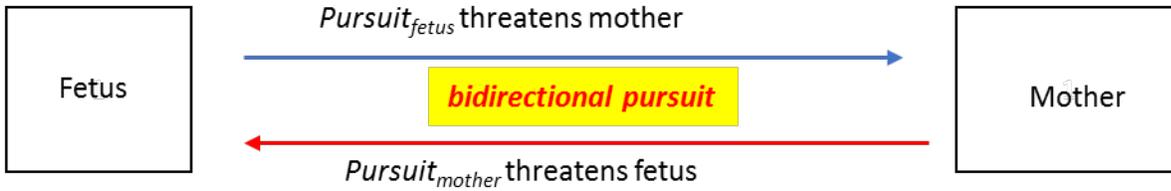
$Pursuit_{townspeople}$ – refers to the pursuit from the townspeople that is the cause of the threat facing the fugitive;

Halacha: Remain passive unless the fugitive can be assigned as the definitive *Rodef* by establishing a quantitative '*pursuit-differential*' between the two "opposing" pursuing forces (e.g., a '*life expectancy-differential*', in the 'fugitive without escape capability' case), in which case the fugitive may be handed over to save the townspeople.

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Figure 2b: Obstructed Labor Situation: Mother vs. Fetus – Bidirectional Pursuit

Situation Description: In an obstructed labor situation, the mother will die unless the fetus is killed.



Pursuit_{fetus} – refers to the pursuit from the fetus that is the cause of the threat facing the mother;

Pursuit_{mother} – refers to the pursuit from the mother that is the cause of the threat facing the fetus;

Halacha: Remain passive unless the fetus can be assigned as the definitive *Rodef* by establishing a quantitative 'pursuit-differential' between the two "opposing" pursuing forces (e.g., a 'Nefesh-differential', by the 'non-emerged fetus' case), in which case the fetus may be killed to save the mother.

Figure 3: Multifetal Pregnancy Situation – Unidirectional Pursuit

Situation Description: In the case of a quintuplet pregnancy, the physician determines there is a high risk of total loss of fetal life if MPR is not performed. The physician recommends reducing from quintuplets to triplets.



Pursuit_{fetuses x&y} – refers to the pursuit from fetuses x&y that is the cause of the threat facing the entire pregnancy.

Halacha: *Rav Yosef Shalom Elyashiv* permitted MPR in a case where there was a greater than 50% risk of total loss of life without the procedure. *Rav Shlomo Zalman Auerbach* permitted MPR in cases of high risk to the pregnancy because each fetus is a *Rodef* against the others.

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4. There is an additional difficulty of employing the law of *Rodef* to permit MPR:
 - A. According to the Rambam (Source 20) who follows the position of Raish Lakish requiring a death sentence (i.e., a grievance, per Rav Moshe) to hand over the fugitive, it is problematic to employ the law of *Rodef* to permit MPR. Certainly, no fetus has a death sentence (or a grievance) against him. Thus, perhaps we should be unable to apply the law of *Rodef* to permit MPR?

Source 20: Rambam's position on handing over the fugitive follows Raish Lakish.
Hilchot Yesodei HaTorah 5:5.

<p>Similarly, if gentiles told [a group of Jews]: "Give us one of you to kill and 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]: <u>If the person is deserving of death like <i>Sheva ben Bichri</i>, they may give him over to them.</u> 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].</p>	<p style="text-align: right;">רמב"ם פרק ה' הלכות יסודי התורה, הלכה ה': ואם אָמְרוּ לָהֶם גּוֹיִים "תִּתְּנוּ לָנוּ אֶחָד מֵכֶּם וְנַהַרְגֶנּוּ וְאִם לֹא נַהַרְגְּ אֶת כָּלְכֶם", יִהְיֶה כָּלְכֶם וְאֵל יִמָּסְרוּ לָהֶם נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל. וְאִם יִחַדְוֶהוּ לָהֶם וְאָמְרוּ "תִּתְּנוּ לָנוּ פְּלוֹנִי אוֹ נַהַרְגְּ אֶת כָּלְכֶם", אִם הָיָה מַחֲזִיב מִיָּתֵהּ כְּשֶׁבַע בֶּן בְּכָרִי, יִתְּנוּ אוֹתוֹ לָהֶם, וְאִין מוֹרִין לָהֶם בֶּן לְכַתְּחֻלָּהּ. וְאִם אֵינּוּ חֲזִיב, יִהְיֶה כָּלְכֶם וְאֵל יִמָּסְרוּ לָהֶם נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל.</p>
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- B. Perhaps we can answer this question with the explanation of Rav Moshe (Source 18) that the only reason Raish Lakish requires a grievance is to enable assigning a "definitive *Rodef* status" to the fugitive. Otherwise, without any basis to demand his death, their selection is arbitrary and "does not render the fugitive as the cause for the pursuit". However, if we can independently identify the definitive *Rodef*, such in the case where the fugitive fled to the city after the hooligans already designated him (see Table 6), Raish Lakish does not require a grievance. Therefore, by multifetal pregnancy, the lack of a "death sentence" should not, in of itself prohibit MPR, if we can otherwise satisfy the requirements for assigning definitive *Rodef* status, perhaps based on the "unilateral pursuit" approach suggested above.

IX. Conclusion

1. Table 9 summarizes the two potential approaches we discussed to permit MPR when there is a high risk of total fetal death. These two approaches are similar to the explanations offered by the Chasdei Dovid and Rav Moshe, respectively, for permitting the hand-over of the 'fugitive without escape capability':
 - A. The logic of "*Mai Chazit*" is inapplicable since the fetuses who the physicians wish to reduce are likely destined to die whether or not MPR is performed.

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- B. We apply the law of *Rodef* since the fetuses that the physicians wish to reduce are deemed *Rodfim* (pursuers) against the other fetuses.

Table 9: Summary of two potential approaches for permitting MPR in cases of high risk of total fetal death

Approach Proponent	Permissibility to hand over the ‘fugitive without escape capability’		Would the reason for permitting handover of the fugitive also apply to permit MPR?
	Reason	Explanation	
Chasdei Dovid	Inapplicability of “ <i>Mai Chazit</i> ”	We are not selecting between two parties - who should live and who should die.	The same logic in the fugitive situation would apply to the multiple pregnancy situation.
Rav Moshe	Law of <i>Rodef</i>	Based on the ‘ <i>life expectancy-differential</i> ’ between the <i>Chayei Olam</i> of the townspeople and the <i>Chayei Sha’ah</i> of the fugitive.	Difficulty: There is no apparent similar ‘ <i>pursuit-differential</i> ’ among the fetuses. Resolution (?) : Perhaps it is a unidirectional pursuit situation and we can assign the definitive <i>Rodef</i> status to selected fetus(es) despite the absence of a ‘ <i>pursuit-differential</i> ’.

2. Table 10 summarizes Rav Moshe’s analysis of the fugitive and obstructed labor cases – when the law of *Rodef* is applied and the reasons for its application or lack thereof. The table also looks at the multifetal pregnancy situation – how it compares to Rav Moshe’s view of the fugitive and obstructed labor cases regarding possible application of the law of *Rodef*.
3. We have presented several different logical arguments in support of permitting MPR in cases of high risk of total fetal death:
 - A. Rabbi Dr. Zalman Levine reasoned that if there is a high probability of fetal death, “*Mai Chazit*” should not apply (as in the ‘fugitive without escape capability’ case) and therefore MPR would be permitted.
 - B. Rav Shlomo Zalman ruled that in cases of high risk to the pregnancy “*each of the fetuses has the law of Rodef*” and on this basis, he permitted MPR.
 - C. Rav Hershel Schachter explained that even according to *Rav Moshe* who believes that feticide usually is a violation of *Lo Tirtzach*, if there is a near certainty that all fetuses will die without MPR, there would be no prohibition of *Lo Tirtzach* and therefore MPR would be permitted to save the remaining fetuses.

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- D. Perhaps Rav Moshe would agree with Rav Shlomo Zalman that we may apply the law of *Rodef* to permit MPR, since Rav Moshe believes that the law of *Rodef* applies even to unintentional pursuit. Perhaps the multifetal pregnancy situation differs from the fugitive situation in that we can assign the title of definitive *Rodef* to any fetus(es) whose reduction is deemed to offer the best chances of survival for the remaining fetuses, even though there is no '*pursuit-differential*' between fetuses.
4. The question as to how *Rav Moshe* would have ruled regarding the permissibility of MPR cannot be definitively answered based on his rulings and insights that we have presented here. There does not appear to be an exact fit between multifetal-pregnancy and any of the fugitive cases. If we had the fortune to still have *Rav Moshe* leading us today, we could be certain that he would have marshaled his immense and profound understanding of all areas of *Shas* and *Poskim*, as well as his great *Yirat Shomayim* and *Mesirat Nefesh* for *K'lal Yisroel* to properly determine the *Halacha* in each type of multifetal pregnancy situation to guide us through these very critical situations.

חבל על דאבדין ולא משתכחין, מי יתן לנו תמורתו

Woe is to us that Rav Moshe is lost and not found. Who will give us another as him?

Table 10: Summary of Suggested Analyses of the Fugitive, Obstructed Labor and Multifetal Pregnancy Cases, Using *Rav Moshe's* Insights

Type of Situation	Sub-category	What will be lost, as a consequence of the _____ option?		Is there a differential between the two parties' pursuit (<i>Redifah</i>)?		Who is assigned definitive <i>Rodef</i> status?	How does <i>Halacha</i> decide?	
		Active	Passive	Yes/No	Why?		Which option?	Reason?
Fugitive Dilemma	'with escape capability'	Fugitive (F)'s <i>Chayei Olam</i>	Townspeople (T)'s <i>Chayei Olam</i>	No	Both (F) and (T) threatens each other's <i>Chayei Olam</i> equally	No one	Passive	Since the law of <i>Rodef</i> cannot be applied to any one party, the townspeople cannot claim their life at the expense of the fugitive's life due to <i>Ain Dochin</i> .
	'without escape capability'	Fugitive (F)'s <i>Chayei Sha'ah</i>	(F)'s and (T)'s <i>Chayei Olam</i>	Yes	(F) threatens (T)'s <i>Chayei Olam</i> while (T) only threatens (F)'s <i>Chayei Sha'ah</i>	Fugitive	Active (Hand-over)	Since the law of <i>Rodef</i> is applied to the fugitive, <i>Ain Dochin</i> is not applicable.
Obstructed labor	'non-emerged fetus'	Baby (B)'s <u>incomplete</u> <i>Nefesh</i>	Mother (M)'s	Yes	(B) threatens (M)'s complete <i>Nefesh</i> while (M) only threatens (B)'s incomplete <i>Nefesh</i>	Fetus	Active (Feticide)	Since the law of <i>Rodef</i> is applied to the fetus, <i>Ain Dochin</i> is not applicable.
	'partially-emerged fetus'	Baby (B)'s <u>complete</u> <i>Nefesh</i>	<u>complete</u> <i>Nefesh</i>	No	Both (B) and (M) threatens each other's complete <i>Nefesh</i> equally	No one	Passive	Since the law of <i>Rodef</i> cannot be applied to any one party, the mother cannot claim her life at the expense of the baby's life due to <i>Ain Dochin</i> .
Multifetal Pregnancy	¹ high risk of total fetal death	Partial Loss of pregnancy	Probable total loss of pregnancy	No	All fetuses are equally <i>Rodfim</i> against the viability of the pregnancy.	Perhaps fetuses x&y (see Figure 3)	??	Perhaps <i>Rav Moshe</i> would rule that the law of <i>Rodef</i> may be applied to permit MPR despite the lack of a differential between fetuses if the pursuit is considered unidirectional (see Figure 3).

¹I am unclear if the risk of fetal death alone was not high, but the anticipated combined risk of fetal death and post-natal death was high, would this qualify to permit MPR?

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References

1	<i>Talmeidei Rabbeinu Yonah, Mesechet Avodah Zarah, 28b</i>
2	Rav Nochum Partzovitz: <i>Sefer Zichron Tov Moshe (Yeherag V'al Yaavor)</i>
3	<i>Sefer Meirat Einayim on Shulchan Aruch - Choshen Mishpat 425:8.</i>
4	Rav Avrohom Yeshaya Karelitz: <i>Chazon Ish, Mesechet Sanhedrin, Siman 25.</i>
5	Rabbi Dr. Zalman Levine: <i>"Multi Fetal Reduction"; audio file on YUTorah.org, October 2007.</i>
6	Rav Chaim Soloveitchik: <i>Rabbeinu Chaim HaLevi al HaRambam, Hilchot Rotzeach U'Shmirat Nefesh, 1:9.</i>
7	Rav Elazar Menachem Man Shach: <i>Avi Ezri al HaRambam, Hilchot Rotzeach U'Shmirat Nefesh, 1:9.</i>
8	Rav Hershel Schachter: <i>"Fetal Reduction"; audio file on YUTorah.org, March 2002.</i>

Appendix A: Medical Facts Relevant to Multifetal Pregnancy Reduction

From: *Seminars in Perinatology; Joanne Stone and Richard L Berkowitz; 1995 Volume 19; pp. 363–374: Multifetal pregnancy reduction and selective termination:*

- Morbidity and mortality of multifetal gestation increase with increasing numbers of fetuses. Adverse outcomes are primarily the consequence of preterm birth.
 - ✓ 11 percent of twins, more than one-third of all triplets, and more than two-thirds of all quadruplets and higher order multiples were delivered very preterm (<32 weeks of gestation), compared with less than 2 percent of singletons.
 - ✓ Early mortality (death from 20 weeks of gestation through the first year of life) was 4.8 percent for twins, 8.6 percent for triplets, 10.8 percent for quadruplets, and 28.9 percent for quintuplets.
- Prevalence of cerebral palsy ranges from 1.6 to 2.3 per 1000 surviving infants in singletons, 7 to 12 per 1000 surviving infants in twins, and 28 to 45 per 1000 surviving infants in triplets.
- The two most serious risks of multifetal gestation are (1) complete pregnancy loss and (2) preterm birth, with its potential sequelae including perinatal mortality, respiratory and gastrointestinal complications, infection, and long-term neurologic impairment.
- The goal of MPR is to reduce the risk of adverse outcomes in survivors of higher order pregnancies by decreasing the number of fetuses in the gestation, since the risk of complications is proportional to the number of fetuses in utero.
- Multifetal pregnancy reduction of pregnancies with three or more fetuses to twins results in fewer pregnancy losses and fewer preterm births than unreduced pregnancies.
- Results for reduced triple-to-twin pregnancies versus non-reduced triplet pregnancies:
 - ✓ Miscarriage before 24 weeks of gestation: 5.1 versus 11.5 percent;
 - ✓ Delivery before 28 weeks of gestation: 2.9 versus 8.4 percent;
 - ✓ Delivery before 32 weeks of gestation: 10.1 versus 20.3 percent;
 - ✓ Perinatal mortality rate per pregnancy: 26.6/1000 versus 92/1000.

Appendix B: Applying the דיין רודף (Law of Rodef) in Cases of Uncertainty

- 1) The גמרא יומא (Source B-1a) sites sources from which to derive the rule that saving lives (פיקוח נפש) pushes aside the שבת (i.e., is דוחה שבת) even in cases of uncertain danger to life (ספק סכנת נפשות). The גמרא sites רבי ישמאל who derives this rule from the במחותרת בא case (the dispensation to kill a thief tunneling into one's home) where the imperative to save the homeowner's life pushes aside the prohibition to murder the thief, even though there is an uncertainty (ספק) whether the thief intends to murder the homeowner or only to steal. However, the גמרא subsequently states that this source is inconclusive since it only teaches us that we may push aside מצוות in cases of נפשות (certain danger to life) since the במחותרת בא case is considered a case of נפשות ודאי (Source B-1b, per רש"י's explanation in Source B-2) due to the presumption that the tunneling thief intends to kill the homeowner if confronted.

Source B-1: Talmud Bavli, Yoma 85a-b: Biblical origin for the dispensation to push aside שבת to save human life (פיקוח נפש, Pikuach Nefesh):

<p><i>Rebbi Yishmael, Rebbi Akiva and Rebbi Elazar ben Azaryah were walking on the road, with Levi Hasadar (the arranger or embroiderer) and Rebbi Yishmael the son of Rebbi Elazar ben Azaryah walking behind them. The following question was asked before them: From where do we know that saving lives pushes aside (the observance of) שבת? Rebbi Yismael responded and said (the תורה says in 'א': "כב': 'א'": "If a thief is discovered while tunneling in, and he is struck and dies, he has no blood". If this thief, about whom it is uncertain if he (only) comes to take money or if he come to take lives, and furthermore, bloodshed defiles the land and causes the Divine presence to become removed from Israel, and yet it is permitted to save the homeowner by taking the thief's life, then certainly saving lives pushes aside the שבת.</i></p>	<p style="text-align: right;"><u>גמרא, דף פה' ע"א:</u> (B-1a)</p> <p>וכבר היה רבי ישמעאל ורבי עקיבא ורבי אלעזר בן עזריה מהלכין בדרך ולוי הסדר ורבי ישמעאל בנו של רבי אלעזר בן עזריה מהלכין אחריהן. נשאלה שאלה זו בפניהם מניין לפקוח נפש שדוחה את השבת? נענה רבי ישמעאל ואמר אם במחותרת ימצא הגנב, ומה זה שספק על ממון בא ספק על נפשות בא ושפיקות דמים מטמא את הארץ וגורם לשכינה שתסתלק מישראל ניתן להצילו בנפשו, ק"ו לפקוח נפש שדוחה את השבת.</p>
<p><i>Shmuel said if I had been there (during the above discussion), I would have said my source is superior to their sources: The תורה states: "You shall guard My decrees and My laws that man shall carry out and by which he shall live" (ויקרא יח': ה'). (This implies that) man shall live by Hashem's laws and not die by them. Rava stated: For all the Tanaic sources (that Pikuach Nefesh pushes aside שבת), there is a refutation, save for Shmuel's source for which there is no refutation. The source of Rebbi Yishmael (i.e., the tunneling thief case, may be refuted) as Rava said: What is the מ'שנה's reasoning (in Sanhedrin 72a) that someone tunneling into a house (may be killed)? There is a presumption that a person does not hold himself back from defending his property, and this thief, knowing that homeowner will confront him, says "If he will confront me, I will kill him" and the תורה says if someone comes to kill you, anticipate him and kill him first. Therefore, we only find (from the tunneling thief case, a source that we may push aside מצוות to save a person whose life is in) certain danger, but from where do we know (that we may push aside מצוות to save a person whose life is in) possible danger?</i></p>	<p style="text-align: right;"><u>גמרא, דף פה' ע"ב:</u> (B-1b)</p> <p>אמר שמואל אי הואי התם הוה אמינא דידי עדיפא מדידהו וחי בהם ולא שימות בהם. אמר רבא לכולהו אית להו פירכא בר מדשמואל דלית ליה פירכא. דר' ישמעאל - דילמא כדרבא, דאמר רבא מאי טעמא דמחותרת? חזקה אין אדם מעמיד עצמו על ממונו, והאי מידע ידע דקאי לאפיה ואמר אי קאי לאפאי קטילנא ליה, והתורה אמרה בא להרגך השכם להרגו. ואשכחן ודאי, ספק מנלן? ...</p>

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Source B-2: Rashi's explanation why the tunneling thief situation is considered a סכנת נפשות (certain danger to life). Talmud Bavli, Yoma 85b:

<p>(A person does not hold himself back) from defending his property from the thief. And this thief who enters via tunneling in knows that the homeowner will confront him, and with this foreknowledge, the thief comes, saying "if he confronts me, I will kill him." (Therefore) <u>this is not a situation of uncertain danger to life but rather, a situation of certain danger to life</u> and the תורה here says to him (the homeowner): "since he comes to kill you, anticipate him and kill him first."</p>	<p><u>רש"י דף פה ע"ב, ד"ה אין אדם מעמיד את עצמו:</u> מלהציל את ממונו מיד גנב והאי גנב דאתי במחתרת מידע ידע דקאי בעל הבית באפיה ואדעתא דהכי אתא דמימר אמר כי קאי לאפאי קטילנא ליה ואין זה ספק נפשות אלא ודאי נפשות והתורה אמרה לו כאן אחרי שבא להורגך השכם להורגו.</p>
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- 2) רש"י in סנהדרין (Source B-3b) comments that the tunneling thief is considered a רודף because of his intent to kill if confronted. It would therefore appear from the גמרא יומא that we may only apply the דיין רודף (law of Rodef) to kill the thief because it is certain that he intends to kill if confronted. However, if there would be an uncertainty regarding his intentions to kill, presumably we could not apply the דיין רודף to kill the thief.

Source B-3: Talmud Bavli, Sanhedrin 72b and Rashi: The tunneling thief is considered a Rodef:

<p>It was taught in another <u>ברייתא</u>: Scripture states "<u>If the thief is found while tunneling in</u>" (שמות כ"ב: א'). This only teaches us (that we may kill the thief who gained entry through) tunneling. From where do we know (that we may kill the thief who gained entry to) the homeowner's roof, yard or field (via a ladder or open door)? Scripture states "<u>If the thief is found</u>" - which indicates in any manner (i.e., even if the thief gained entry to the roof, yard or field, he may be killed). If so, why does Scripture state "tunneling"? The תורה comes to teach us that his act of tunneling is in place of his warning.</p>	<p>(B-3a) <u>גמרא, דף עב, ע"ב:</u> תניא אידך מחתרת אין לי אלא מחתרת גגו חצירו וקרפיו מנין תלמוד לומר ימצא הגנב מכל מקום. אם כן מה תלמוד לומר מחתרת מחתרתו זו היא התראתו.</p>
<p>(The explanation is) that the thief does not require any additional warning (to warrant his death), but rather the homeowner may kill him immediately (upon sighting him). Since the thief expends the effort and sacrifices himself to tunnel in, he does so with the intent to kill the homeowner if confronted. <u>And the תורה states since the thief is a רודף, he does not require any warning (to warrant his death). Rather, we save the homeowner by taking the life of the thief.</u> However, if the thief enters the homeowner's yard or roof via the doorway, the homeowner may not kill him unless he warns him in the presence of witnesses (as follows): "Beware! I am confronting you and I will kill you". The thief must accept upon himself the warning and say: "I acknowledge (your warning) and in spite of it, I will carry out (my crime with the admonition that) if you confront me, I will kill you". However, in the absence (of an explicit warning, the thief who gained entry to the yard or roof) may not be killed since perhaps he does not come with the intent to take a life. Rather, (perhaps) he found an open door (and entered) with the intent to exit (i.e., to flee immediately) if the homeowner confronts him.</p>	<p>(B-3b) <u>רש"י, ד"ה זו היא התראתו:</u> שאינ צריך התראה אחרת אלא הורגו מיד. דכיון דטרח ומסר נפשיה לחתור אדעתא דהכי אתא דאי קאי לאפאי קטילנא ליה ואמרה תורה כיון דרודף הוא אין צריך התראה אלא מצילין אותו בנפשו. אבל נכנס לחצרו וגגו דרך הפתח אינו הורגו עד שיתרו בו בעדים חזי דקאימנא באפך וקטילנא לך וזה יקבל עליו התראה ויאמר יודע אני ועל מנת כן אני עושה שאם תעמוד לנגדי אהרוג אותך. אבל בלא התראה לא, דדילמא לאו אדעתא דנפשות קא אתי אלא דאשכח פתחא להדיא ועל אדעתא דאי קאי באפאי ליפוק.</p>

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- 3) *Rav Moshe (Source B-4)* applies the same principle concerning application of the דיין רודף to abort a fetus to save his mother from life threatening complications of the pregnancy, apparently referring to a case where the mother suffers from an illness that is expected to intensify with the advancement of the pregnancy and/or childbirth, potentially with lethal results. Rav Moshe rules that we may only permit aborting the fetus if the eventuality of the mother's death is nearly certain (קרוב לודאי): "Since the dispensation for feticide is based on the fetus being a רודף, there must be a near certainty that he is a רודף". (See also Source B-5 in which Rav Moshe reiterates the same thought regarding a responsum of Rav Chaim Ozer Grodzenski). Perhaps one may extend Rav Moshe's logic to the case of multifetal pregnancy as follows: If Rav Moshe would permit MPR due to the fetuses being considered as רודפים (pursuers) after each other as Rav Shlomo Zalman does, perhaps Rav Moshe would require a near-certain prediction that all fetuses would die without intervention. Perhaps any prediction below a near-certainty level would not allow us to consider the fetuses as רודפים against each other just as Rav Moshe does not consider the fetus as a רודף against his ill mother without a near-certain prediction that she will die without intervention.

Source B-4: Rav Moshe: A near-certain danger to the mother is required to permit feticide based on the law of Rodef. *Igros Moshe – Choshen Mishpat, Chelek 2, Siman 69.*

<p>For this reason, I have ruled that even if the physicians say there is a risk that a pregnant woman may die if the fetus is not aborted, even though usually a very minor risk level (i.e., a minimal chance of a lethal outcome) is sufficient to permit violating שבת and other prohibitions ... nevertheless, it is forbidden to kill the fetus unless the physician's assessment regarding the eventuality of the mother's death is nearly certain (קרוב לודאי). Since the dispensation for feticide is based on the fetus being considered a רודף, there must be a near certainty that he is a רודף.</p>	<p>אגרות משה, חושן משפט ח"ב, סימן סט' אות ב': ומטעם זה הוריתי שאף שהרופאים אומרים שיש חשש שמא תמות האם כשלא יהרגו את העובר, אף שלענין חלול שבת וכל האיסורין היו מחללין ... מכל מקום להרוג את העובר יהיה אסור עד שתהיה האומדנא להרופאים גדולה קרוב לודאי שתמות האם, דמאחר דהוא מצד שנחשב רודף, צריך שיהיה כעין ודאי שהוא רודף.</p>
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- 4) However, perhaps we can explain both the יומא גמרא and Rav Moshe's פסק (decision) in the case of the ill pregnant mother in a slightly modified manner which would, in turn, allow us to argue that in the multifetal pregnancy situation, a prediction of fetal loss below a near-certainty level would suffice to consider the fetuses as רודפים against each other. When the יומא גמרא says we can only derive that נפשות בא במחותרת (is דוחה מצות) from the case because of the presumption that a person does not hold himself back from defending his property ("חזקה אין אדם מעמיד עצמו על ממונו"), the following explanation is suggested: Originally, רבי ישמאל proposed that the נפשות בא במחותרת case serves as a source that ספק על ממון בא ספק על – "חזקה אין אדם מעמיד עצמו על ממונו" because he understood that the tunneling thief is – ספק על ממון בא ספק על – "it is uncertain whether he only comes to take money or if he come to take lives" – and thus, the נפשות בא במחותרת case, from which we can derive that in all similar cases, we may

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push aside מצות. However, the גמרא subsequently recalibrated its position due to the “חזקה אין אדם מעמיד עצמו על ממונו”, and thus, the בא במחזרת case is no longer considered a ספק סכנת נפשות case, but rather a ודאי סכנת נפשות case. This חזקה (presumption) is needed since normally a burglary is not presumed to be a life-threatening situation and, thus, unless we are certain about the thief’s intent, we have no basis to call the thief a רודף without further empirical evidence that he threatens lives. The “חזקה אין אדם מעמיד עצמו על ממונו” is the “evidence” that enables us to conclude that he certainly is engaged in a life-threatening activity – which transforms the “ordinary” thief into the status of a רודף. Once a person is deemed a רודף, it is immaterial if we are able to predict with certainty that the outcome of his actions will be a fatality or if our predictions of a fatal outcome are less than certain. The very fact that he is, with certainty, engaged in life-threatening activity renders him a רודף and therefore, subject to the דיין רודף - i.e., we save the life of his victim by taking the רודף’s life.

- a) We see this notion as self-evident as follows: Even in the classic רודף situation, we would never require a near-certain prediction that the assailant’s murder attempt would be successful in order to consider him a legal רודף. It is obvious that the mere attempt on another life even with an uncertain outcome, renders a person a רודף and therefore his life may be preemptively taken if no other avenue is available to stop him. Therefore, we see that the operative issue to consider is only whether the individual is considered a certain רודף in the first place and not whether the outcome of the רדיפה will be a certain death.
- b) This approach can perhaps help us understand *Rav Moshe’s* ruling regarding the ill pregnant mother – i.e., whether potential complications expected to arise from the pregnancy can enable us to consider the fetus a רודף to permit abortion to save the mother. In the case of the responsum of *Rav Chaim Ozer* which *Rav Moshe* refers to (*Source B-5*), the pregnant mother’s current condition was presumably not yet life-threatening; the threat would potentially arise later as a result of the childbirth complicating her existing lung disease. Since pregnancy itself inherently is not considered a life-threatening condition and her life would only become threatened due to future complications not yet extant, there is no basis to call the fetus a רודף based only on a potential for future developments, unless these potentially dangerous developments are predicted at a near-certainty level. Perhaps only under these dire, near-certain circumstances, we can deem the pregnancy itself as a life-threatening condition and therefore, a רדיפה situation, in which case we may sacrifice the fetus to save his mother. (Even though the near-certain danger will only occur in the future, *Rav Chaim Ozer* writes that to classify a danger as a רדיפה situation, it is immaterial if the danger looms immediately or if it only looms some time later; as long as the danger is considered certain, we apply the דיין רודף).

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Source B-5: Rav Moshe: Discussion of Rav Chaim Ozer Grodzenski's responsum concerning a woman with a serious illness that is predicted to become life-threatening as a complication of childbirth. *Igros Moshe – Choshen Mishpat, Chelek 2, Siman 69.*

<p>Regarding the question that came before the <i>Gaon, Rav Chaim Ozer</i> (אחיעזר, חלק ג', סימן עב'), where the (pregnant) woman was very ill and the physician stated that she would certainly become endangered through childbirth: (In such a situation), one should permit (aborting the fetus) on the basis of the law of דיין רודף as <i>Rav Chaim Ozer</i> himself wrote. ... And if the physicians do not state that it is a certainty (that the mother's life will become endangered as a result of childbirth complications), but rather they merely have concerns (that the mother may become endangered), then it is forbidden (to kill the fetus) until the physicians see (the mother's condition) at the time of childbirth.</p>	<p>אגרות משה, חושן משפט ח"ב, סימן סט' אות ד': ובענין השאלה שבא לפני הגאון הרב חיים עוזר שהאשה היתה חולה גדולה שהרופא אמר שודאי תסתכן בלידתה, יש להתיר גם מטעם רודף כדכתב בעצמו ... ואם הרופאים אין אומרים שהוא ודאי אלא רק חששות בעלמא, יהיה אסור עד שיראו הרופאים בשעת הלידה.</p>
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- c) However, in the case of multifetal pregnancy, the very pregnancy itself is a life-threatening condition since the nature of this complex pregnancy is likely incompatible with fetal life. Therefore, even if a lethal outcome is less than nearly-certain, we may perhaps still consider the pregnancy itself as a רדיפה situation since the multitude of fetuses threatens each other's lives. We do not require any additional evidence or new development to characterize the pregnancy as a life-threatening condition and therefore, a רדיפה situation. Therefore, perhaps a near-certainty of a lethal outcome (in the absence of MPR) is not needed to permit reducing the fetuses. This contrasts with the pregnant mother with lung disease where a near-certainty of a lethal outcome is needed to permit aborting the fetus since a new development must occur to create the life-threatening condition. Thus, it is possible that when *Rav Shlomo Zalman* stated "that in cases where the pregnancy is at high risk due to multiple fetuses, each of the fetuses has the דיין רודף" (*Source 19, page 21*), his definition of "high risk" ("בסיכון גבוה") may possibly be lower than a near-certainty that all fetuses would perish without intervention. Accordingly, if *Rav Moshe* would agree with *Rav Shlomo Zalman* that the דיין רודף can be applied to permit MPR, perhaps *Rav Moshe* would not require a near-certain prediction of a fatal outcome, as he may distinguish between the multiple pregnancy situation and the case of a singleton pregnancy complicated by a serious life-threatening illness of the mother.
- 5) However, after further thought, I believe that the above logic is incorrect since there is a fundamental difference between the conventional דיין רודף (who attempts to kill, in which category we will include the בא במזחלתר) and the fetuses in a multifetal pregnancy. In his ספר אבי עזרי (*Source B-6*), *Rav Shach* writes there are two aspects included in the דיין רודף: (1) a חיוב (liability) that devolves on the דיין רודף (i.e., the legal consequence of his act of attempted murder), which authorizes us to kill the דיין רודף if needed to save the victim (נרדף); and (2) even if the pursuer is not engaged in attempted murder (as in the case of an unintentional דיין רודף), the general imperative of פיקוח נפש (saving a life at risk) dictates that if the נרדף's life

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became endangered because of the ‘pursuer’, the pursuer has a דיין רודף – to the extent that the פיקוח נפש imperative of the דיין רודף overrides the פיקוח נפש imperative of the דיין רודף. Based on *Rav Shach’s* explanation, it is understood that with respect to the “legal consequence” (חיוב)-aspect of the דיין רודף, if the דיין רודף has criminal intent, then we do not require a certainty of a lethal outcome since the very attempt to commit murder creates the חיוב which authorizes killing the דיין רודף. Thus, the assignment of the status of דיין רודף to an *intentional* דיין רודף can be described as process-related and not necessarily outcome-dependent (i.e., the process is the attempt to kill another). However, if there is no criminal intent, then the only aspect of the דיין רודף that can be invoked is the פיקוח נפש imperative of the victim. Thus, the assignment of the status of דיין רודף to an *unintentional* דיין רודף is necessarily outcome-dependent. Consequently, our ability to assign the status of דיין רודף is only as good as our confidence about the outcome. Accordingly, in the case of an *unintentional* דיין רודף, if we lack certainty of a lethal outcome, perhaps we cannot assign of the status of דיין רודף. Therefore, it may be quite possible that *Rav Moshe* would rule that a fetus in a multifetal pregnancy cannot be assigned the status of a דיין רודף unless there is a near-certainty of a lethal outcome to all the fetuses just as he required a near-certain lethal outcome for the mother in order to permit aborting her fetus.

Source B-6: Rav Elazar Menachem Man Shach: Two aspects are included in the דיין רודף: 1) The legal consequence (חיוב) upon the דיין רודף; 2) the פיקוח נפש imperative of the דיין רודף (victim):

<p>It appears that two aspects are included in the דיין רודף:</p> <p>1) The specific rule that applies to a דיין רודף, i.e., that it is permitted to save the דיין רודף (victim) at the expense of the דיין רודף’s life. This is independent of the דיין רודף פיקוח נפש (general rule of saving the life) of the דיין רודף. This aspect of דיין רודף applies when the pursuit (רדיפה) entails an act of attempted murder (מעשה רציחה); it is a legal consequence (חיוב) that devolves on the דיין רודף (as a result of his criminal activity).</p> <p>2) The general rule of פיקוח נפש (saving a life at risk): Even if the pursuer is not engaged in attempted murder (רציחה); nonetheless, if the פיקוח נפש situation facing the דיין רודף came about because of the pursuer (even without criminal intent), he has a דיין רודף – which means that the פיקוח נפש imperative of the דיין רודף sets aside (overrides) the פיקוח נפש imperative of the דיין רודף. This works through the principle of דחייה - pushing aside - just as the prohibitions of the entire תורה are pushed aside by פיקוח נפש, similarly the פיקוח נפש of the דיין רודף is pushed aside by the פיקוח נפש needs of the דיין רודף.</p>	<p><u>אבי עזרי על הרמב"ם, הל' רוצח, פ"א ה"ט:</u></p> <p>אולם נראה שתרתי איכללא בדין רודף. האחד כמו שנתבאר הדין המסויים שיש ברודף שניתן להצילו בנפשו, ולא משום דין פיקוח נפש של הנרדף. וזהו כשהוא רודף על מעשה רציחה והוא דין וחייב שחל על הרודף. ושנית שנלמד מזה אם אינו רודף על מעשה רציחה, אלא אם יש פיקוח נפש על ידו, יש לו דין רודף לענין שפיקוח נפש דוחה את פיקוח נפש של הרודף. והוא מדין דחיה כמו שפיקוח נפש דוחה איסורי כל התורה, כן נדחה פיקוח נפש של זה הרודף.</p>
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