

157. Artificial Insemination

(Vol. LXII, 1952, pp. 123-125)QUESTION: Is artificial insemination permitted by Jewish Law?**ANSWER:** The question involves many legal problems. Does the donor fulfill the duty of begetting children (*Periya Ureviya*) if a child is born (but the donor has no other children)? Does he commit the sin of wasting seed (*zera levatala*)? Is the woman henceforth forbidden to live with her husband on the ground that she has been fertilized by a man who is not her husband? Is the child a *Mamzer*, since he is born of a married woman (*Eshet Ish*) and a man not her husband? Is there not a danger that the child, when he grows up, may marry his own blood sister or the wife of his own blood brother (contrary to the Levirate laws)? 1. Even though the technique of artificial insemination is new, nevertheless, most of the questions mentioned above are not new in the Law, since the legal literature has already discussed them with regard to certain special circumstances which are analogous to artificial insemination, namely, if, for example a woman is impregnated in a bath from seed that had been emitted there ("*Ibera be-ambatei*") (cf. B., Chagiga 15a, top). 2. Joel Sirkes (1561-1640), in *Bach to Tur*, Yoreh De-a 195 (quoting Semak) says that the child is absolutely *kasher* (i.e., not a *Mamzer*), since there had been no actual forbidden intercourse ("*Ein kan bi-at isur*"). 3. On the basis of the fact that there has been no illicit intercourse, Judah Rosanes (died in Constantinople in 1727), in his *Mishneh Lamelech* to Maimonides, Hilchot Ishut XV.4, declares that the woman is not immoral and is therefore not forbidden to live with her husband. 4. But whose son is it? Samuel b. Uri Phoebus (17th century), in his commentary *Beit Shemu-el* to *Shulchan Aruch*, Even Ha-ezer 1, note 10, says that it is the son of the donor; otherwise we would not be concerned lest the child later marry his own blood sister. If he were not, the donor's daughter would not be his sister. 5. In modern times, since the development of the technique of artificial insemination, the subject has been discussed by Chayim Fischel Epstein in his *Teshuva Shelema* (Even Ha-ezer, #4), and by Ben Zion Uziel of Tel Aviv, the chief Sephardic rabbi of Palestine, in his *Mishpetei Uziel*, part II, Even Ha-ezer, section 19. Epstein—because of the danger that the child may some day, out of ignorance, marry one of the forbidden degrees of relationship—opposes the use of seed from a stranger, but permits the use of the husband's own seed if that is the only way the wife can be impregnated by her husband. Ben Zion Uziel says—as do earlier authorities—that the woman is not immoral because of this act and that the child is *kasher*, but—disagreeing with *Beit Shemu-el*—he says that the child is not the child of the donor as to inheritance and *Chalitsa*. He adds that the woman thus impregnated (if not married) may not marry until the time of suckling the child is over. Since he concludes that the child is not the donor's child, he therefore considers that the donor has sinned in wasting seed. However, inasmuch as he concludes that the woman is not immoral and not forbidden to her husband, he seems to incline toward permitting the procedure at the recommendation of the physician although he hesitates to say so. 6. My own opinion would be that the possibility of the child marrying one of his own close blood kin is far-fetched, but that since, according to Jewish law, the wife has committed no sin and the child is *kasher*, then the process of artificial insemination should be permitted. Solomon B. Freehof

197. Child Born Through Artificial

Insemination

QUESTION: Should a parent whose child has been born through artificial insemination tell the child that the child has been conceived in this fashion? If the semen used in the process of artificial insemination is a mixture of that of the father and of a volunteer, is the husband to be considered the actual father of the child? Is it permissible to use a donor in the case of artificial insemination? (Rabbi S. Ezring, Elkins Park, PA)

ANSWER: Let me begin with your second question which deals with the status of the father. In many instances artificial insemination merely uses the semen of the husband.

Then there is absolutely no question. If, as you indicated, a mixture has been used, there would also be no question about the father. In accordance with Jewish law, the husband is presumed to be the father unless there is proof that this is not so (Hul. 11b; Sotah 27a; *Shulhan Arukh*

Even Haezer 4.13 ff and commentaries). The husband would be presumed to be the father even if there was some suspicion that the woman had intercourse with someone else, or that the child was the result of rape. In this case, as there was no other intercourse, and a mixture of semen was used, the husband is definitely considered as the father. The only reason for not using a Jewish donor for artificial insemination lies in the possibility that the child may marry incestuously without realizing it (C. F. Epstein, *Teshuvah Sheleimah*, Even Haezer #4). In our very large, widely dispersed American Jewish community, this likelihood is minimal and for

that reason both Jewish and non-Jewish donors may be used. There is no reason to tell the child that he is the result of artificial insemination. After all, such a child is in every way part of the family from gestation and is genetically part of the family. Such knowledge can not benefit the child or its relationship with the parents. Such a discussion would be as absurd as telling a child conceived naturally that he may have been the result of intercourse in anger, or under other unusual circumstances. Conception is a private matter between the parents and the child has no right to that information. The child, therefore, should not be told about his conception through artificial insemination.

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