TERMINATION OF PREGNANCY IN JEWISH LAW: An exercise in Jewish ethics

No additional texts are required, though paper and pencil for all participants will be useful.

Note: This exercise comes in 3 parts. This is Part A. Parts B and C should be sealed and not studied in advance so the effect of the exercise will not be impaired.

In this program we will study termination of pregnancy in Jewish law. More than that, we will learn something of the rabbinic approach to doing ethics We begin by taking a quiz.

By the power invested in us, we hereby bestow upon all present conditional smichah. You are now all ordained rabbis, and the ordination will remain in effect for the remainder of this exercise. You constitute a bayt din - a rabbinic court, and thirteen briefs will be brought before you. Since each case concerns a matter of ethics, there may be no abstentions. You may never abstain in a matter of ethics. Each of you must make a decision! Of course, you can change your decision later, should more evidence and testimony come before the court, but to begin with, you must decide either in favor of the termination of pregnancy or against it. "Yes," if you decide that a termination is warranted, "No," if a termination is not warranted.

It is expected that you will feel a frustration because of the minimal data provided, but in spite of that frustration, you must make a decision.

On a piece of paper, write the numbers 1 through 13. Beside each number there must be either a "yes" or "no" and nothing else when the quiz is done. "Yes" if you rule that the termination is warranted, according to your present, personal understanding of the ethics of termination of pregnancy, "no" if you rule that the termination is not warranted. Again, this is according to your own personal understanding. Your own understanding is the only basis upon which to make a judgment.

Each case is presented to you early in the pregnancy.
Case #1. A woman has been advised by her physician that her pregnancy jeopardizes her life. If she carries full term, there is a strong likelihood that she will not survive, though the baby might. You have before you an affidavit from the physician to that effect. According to your own personal ethic, is the termination warranted or not? (No discussion! Write "Yes" or "No").

Case #2. A woman is pregnant as the result of a rape. The notion of bearing the baby of the molester is consuming her and making her unstable. She is entering a deep depression and attending physicians fear for her well-being. ("Yes or "No").

Case #3. A woman is pregnant by her husband, but is mentally unstable and is entering a deep depression, and attending physicians fear for her well-being. They attribute the depression to this unwanted and unexpected pregnancy.

Case #4. A fifteen year old woman finds herself pregnant after some sexual experimentation with a young man she has no intention of marrying. She does not want to be saddled with the responsibility of a baby at this time in her life.

Case #5. A twenty-five year old sexually active single woman becomes pregnant after a liaison with a man she has no intention of marrying. She does not want to be saddled with the responsibility of a baby at this time in her life.

Case #6. A married woman with four children is unexpectedly pregnant. The family is economically hard pressed and is having difficulty getting by with a gross income of $16,500. She and her husband had wanted only three children. The fourth has caused considerable strain. They doubt if they can maintain their lifestyle with a fifth child.

Case #7. A married woman with four children is unexpectedly pregnant. The family gross income is $122,000 per year. She and her husband had wanted only three children. The fourth has caused considerable strain. They doubt if they can maintain their lifestyle with a fifth child.

Case #8. A married woman is a graduate student seeking a professional degree. She finds herself unexpectedly pregnant for the first time. She and her husband want children, but if she has this child now, because of certified circumstances, it is unlikely she will ever be able to complete her degree.

Case #9. A married woman is a graduate student seeking a professional degree. She finds herself unexpectedly pregnant for the first time. She and her husband want children, but if she has this child now, it will cause at least a two year delay in completing her degree.

Case #10. A married woman is pregnant with her first child. Tests are done which determine the child will be severely deformed and will never be able to function normally.

Case #11. A married woman is pregnant with her first child. Tests are done which determine the child will be born with an apparent physical defect which will not hinder the child from
developing normally otherwise, but will put additional child-rearing burdens upon the parents.

Case #12. A married woman is pregnant and already has two children of the same sex. She and her husband desire a child of the opposite sex, and only one more child. Tests are done which determine the third child will be of the same sex as the two they have already.

Case #13. A married woman is unexpectedly pregnant. She and her husband have made vacation plans. The delivery date interferes with those plans.

This concludes the case load, and thus far the exercise should have gone quite quickly, since there hasn't been any discussion, right? OK. Now go on to Part B.
PART B

Please have the Clerk of the Court tabulate all of the responses.

If the response was unanimous in any of the cases, there is obviously no need to discuss that particular case. If the response was other than unanimous, then there is some room for discussion. But to facilitate matters, let's examine certain cases together.

Look at cases #4 and #5. Were there some among the rabbis present who voted "yes" in case #4 and "no" in case #5? If so, then permission to terminate is a function of age. Let's examine age: Begin, say, with age 10, progress to age 55. At which ages is there general agreement among those rabbis that termination is warranted?

Look now at cases #6 and #7. Are there any rabbis among you who have voted "yes" in case #6 and "no" in case #7? If so, then permission to terminate is a function of dollars and cents. Let's examine that. What should the gross family income be before there is a cutoff and termination is no longer warranted?

How about cases #8 and #9? This is a function of years of inconvenience.

How about cases #10 and #11? This is a matter of relative dysfunction in the child.

And so forth. After you have had ample time for discussion, which may be anything from a few minutes to a few years (remember, the rabbis of the Talmud had centuries!), change your votes if you like and retabulate.

Don't feel that you have to complete this whole thing in one session. The process of the argument is more important than the content of Part C. So really, take your time.

And then go on to Part C.
This is a summary of what some of the rabbis have concluded before us.

Just as we have done, they have argued from the extremes back toward the center. The extremes are generally easier to deal with than the middle ground.

Of course, it is possible to assume a dogmatic position. Dogmatic positions are the easiest of all, because you no longer have to consider individual cases. The Catholics have a dogmatic position about termination. It is never permitted. End of discussion. End of exercise. And some liberals have a dogmatic position. It is always permitted. End of discussion.

You might take a moment to consider the nature of dogmatic positions in general. Are they a cop-out so one need not be bothered with the agonizing dilemmas and confrontations of the various middle grounds?

The rabbis begin with both positions, some on one side and some on the other. Termination is always permitted, except... Termination is never permitted, except... Those exceptions lead them to the middle ground, where the discussion (argument) takes place in earnest.

In Case #1, the rabbis are unanimous. The termination is warranted. Consideration of the health of the mother is of paramount importance in their arguments. Two technical reasons are given.

If the fetus is considered a limb of the mother, part of the mother's body, then if a part of the body offends and endangers the body as a whole, that part is excised. Just as a gangrenous leg might be removed to save the mother, so the fetus is removed to save the mother.

But what if the fetus is considered a living entity, independent of the mother? In this instance the fetus is considered a pursuer who intends to kill the person pursued. Torah commands the pursuer be stopped, killed if necessary to protect the person pursued. And so the fetus, in this instance the pursuer, is terminated.

(The Catholic position is based on a very different argument. The mother has been baptized and is thus cleansed of original sin. The fetus is indeed a living entity, but has not been baptized. Therefore the Catholic position would demand the baby be born and baptized even at the expense of the mother's life. Without baptism, the baby is denied access to heaven.)

In Cases #2 and #3, the majority opinion would be in favor of termination, again considering the health of the mother.

The position of the rabbis in the past has always been based on the health of the mother, not the welfare of the child. Life is an essential good. Real life is valued over potential life. Whenever a real life can be brought into this world without mortal danger to the mother, the
rabbis would argue the pregnancy should continue.

When does the fetus become a real life as over against a potential life? When the head and shoulders are born. If you have witnessed a birth, you know that after the head and the shoulders are born the rest of the baby emerges in a moment. But in a breech delivery, the head and shoulders may be trapped inside the uterus, endangering the mother, and in this instance, if necessary, the fetus may be destroyed to save the mother. In our time and place, this situation no longer occurs, Baruch Hashem.

So in the rest of the cases, the rabbis of the past would oppose termination. Better to bring the life into the universe. If the parents are unable to provide care for the child, the community will.

There is a tendency in our time to take too much into our own hands. We would like to have assurance we will be able to provide our children with the quality of life to which we have become accustomed, and sometimes assume a life lived at any lower level of quality isn't worth living. That is a rather prideful assumption. Some couples will not consider bringing a child into the world unless the $250,000 necessary to get the kid through medical school is already in the bank! An exaggeration, perhaps, but the rabbis of the past were much more willing to leave more of the future in the hands of heaven. Consider our grandparents and great grandparents who had eight, nine, ten children, only three of whom became doctors, and only one of whom (the accountant probably) won a Nobel Prize!

But we are the rabbis of the present. And we must decide for our own time. But our tradition has been that, in making decisions for the present, we consider all the case histories, judgments, and traditions of the past. This is the process we are currently engaged in.

For a thorough treatment of this issue, certainly worthy of study within a havurah, see: