

Conjoined Twins: 2000 Version British Supreme Court's Decision

Case No: B1/2000/2696, 22nd September 2000

<http://news.findlaw.com/cnn/docs/siamesetwins/siamesetwins1.html>

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“Though some of the arguments mentioned in the British court decision are not in accordance with the principles of Jewish Law, the halachic conclusion is quite simple, that the separating operation is obligatory, based on the arguments which are discussed in the previous articles.”

-Rabbi M. Halperin, M.D.

The Facts (I)

Jodie and Mary are conjoined twins. They each have their own brain, heart and lungs and other vital organs and they each have arms and legs. They are joined at the lower abdomen. Whilst not underplaying the surgical complexities, they can be successfully separated. But the operation will kill the weaker twin, Mary. That is because her lungs and heart are too deficient to oxygenate and pump blood through her body. Had she been born a singleton, she would not have been viable and resuscitation would have been abandoned. She would have died shortly after her birth. She is alive only because a common artery enables her sister, who is stronger, to circulate life sustaining oxygenated blood for both of them. Separation would require the clamping and then the severing of that common artery. Within minutes of doing so Mary will die. Yet if the operation does not take place, both will die within three to six months, or perhaps a little longer, because Jodie's heart will eventually fail. The parents cannot bring themselves to consent to the operation. The twins are equal in their eyes and they cannot agree to kill one even to save the other. As devout Roman Catholics, they sincerely believe that it is God's will that their children are afflicted as they are and they must be left in God's hands. The doctors are convinced they can carry out the

operation so as to give Jodie a life which will be worthwhile. So the hospital sought a declaration that the operation may be lawfully carried out. Judge Johnson J. granted it on 25th August 2000. The parents applied to the Royal Courts of Justice, London, for permission to appeal against his order.

The Twins present position: (II, 6-7)

Jodie has an anatomically normal brain, heart, lungs and liver, two kidneys and a full spinal cord.

On the other hand, Mary is not in such good shape. She is severely abnormal in three key respects; first, she has a very poorly developed “primitive” brain. The second problem is with her heart. Hers is very enlarged, almost filling the chest with a complex cardiac abnormality and abnormalities of the great vessels. Third, there is a virtual absence of functional lung tissue (severe pulmonary hypoplasia).

The dilemma

The Options (II, 8)

There are three ways of treating this appalling situation.

(a) Permanent union: at the moment the twins survive virtually unaided, though Mary has to be fed by tube. Jodie is liable to progressive high output heart failure, which may lead to her early death within weeks or months.

(b) Elective separation: this will lead to Mary’s death, but will give Jodie the opportunity of a separate good quality life. Separation should allow Jodie to participate in normal life activities as appropriate to her age and development.

(c) Semi-urgent/urgent separation: This may need to be considered in the event of an acute catastrophe such as Mary’s death, the development of progressive heart failure for Jodie, or the development of a life threatening condition. [...] The prognosis for Jodie would be markedly reduced and mortality highly likely, particularly following the death of Mary. For Jodie the prospects of urgent separation are not as good (60% mortality) when compared with those of a planned elective separation (6% mortality).

Clearly, for Mary, separation will always mean death. If it is possible it would be preferable to plan for an elective separation than to avoid “urgent” procedures.

The Parents point of view (II, 13)

“We cannot begin to accept or contemplate that one of our children should die to enable the other to survive. [...] Everyone has the right to life so why should we kill one of our daughters to enable the other to survive. [...] In addition we are also told that if Jodie survives and that is not known at all, then she is going to be left with a serious disability. The life we have ... is remote ... with very few, if any facilities ... This would make it extremely difficult not only for us to cope with a disabled child but for that disabled child to have any sort of life at all.

“[...] We have very strong feelings that neither of our children should receive any medical treatment. We certainly do not want separation surgery to go ahead as we know and have been told very clearly that it will result in the death of our daughter, Mary. [...] We have faith in God and are quite happy for God’s will to decide what happens to our two young daughters.

“In addition we cannot see how we can possibly cope either financially or personally with a child where we live, who will have the serious disabilities that Jodie will have if she should survive any operation. [...] If Jodie were to survive she would definitely need specialist medical treatment and we know that cannot be provided. [...] This has meant that we have also had to give very careful consideration to leaving Jodie in England, should she survive, to be looked after by other people. [...]

“We do not understand why we as parents are not able to make decisions about our children although we respect what the doctors say to us and understand that we have to be governed by the law of England. We do know that everyone has the best interests of our daughters at heart and this is a very difficult situation not only for us as their parents but also for all of the medical and nursing staff involved in Mary’s and Jodie’s treatment.”

The Judgment of Judge Johnson J. (II, 15)

“All in all, the evidence, which has not been, and in my judgment could not be, the subject of serious dispute is that in medical terms Jodie’s life would be virtually as long as and would have the quality of that of any ordinary child. ... For Jodie separation means the expectation of a normal life; for Mary it means death.

“[...] Mary’s state is pitiable. ... However pitiable her state now, it will never improve during the few months she would have to live if not

separated. Mary cannot cry. She has not the lungs to cry with ... So I ask, what would happen as the weeks went by and Jodie moved, tried to crawl, to turn over in her sleep, to sit up. Would she not, I ask, be pulling Mary with her. Linked together as they are, not simply by bone but by tissue, flesh and muscle, would not Mary hurt and be in pain? In pain but not able to cry. [...] Accordingly, weighing up those considerations I conclude that the few months of Mary's life if not separated from her twin would not simply be worth nothing to her, they would be hurtful. ... To prolong Mary's life for these few months would in my judgment be very seriously to her disadvantage."

The Grounds of Appeal (II, 16)

The parents have appealed on the grounds that the learned judge erred in holding that the operation was (i) in Mary's best interest, (ii) that it was in Jodie's best interest, and (iii) that in any event it would be legal. The appeal has accordingly ranged quite widely over many aspects of the interaction between the relevant principles of medical law, family law, criminal law and fundamental human rights.

Conclusions

Lord Justice Robert Walker (VI)

"In this case highly skilled and conscientious doctors believe that the best course, in the interests of both twins, is to undertake elective surgery in order to separate them and save Jodie. The surgery would not be intended to harm Mary but it would have the effect of ending her life, since her body cannot survive on its own (and there is no question of her life being prolonged by artificial means or by a heart-lung transplant). The doctors opinion cannot be determinative of the legality of what is proposed – that responsibility has fallen on the court – but it is entitled to serious respect.

"In this case the doctors would perform a positive act of invasive surgery, but they would do so for the well-intentioned purposes which I have mentioned. The surgery would plainly be in Jodie's best interests, and in my judgment it would be in the best interests of Mary also, since for the twins to remain alive and conjoined in the way they are would be to deprive them of the bodily integrity and human dignity which is the right of each of them.

"[...]Mary has a right to life, under the common law of England (based as it is on Judeo-Christian foundations) and under the European Convention on Human Rights. It would be unlawful to kill

Mary intentionally, that is to undertake an operation with the primary purpose of killing her.

“[...] The proposed operation would not be unlawful. It would involve the positive act of invasive surgery and Mary’s death would be foreseen as an inevitable consequence of an operation which is intended, and is necessary, to save Jodie’s life. But Mary’s death would not be the purpose or intention of the surgery, and she would die because tragically her body, on its own, is not and never has been viable.”

“I would therefore dismiss this appeal.”

*Source: ASSIA – Jewish Medical Ethics,
Vol. IV, No. 1, February 2001, pp. 28-29*