

1. The Mishnah seems to say straightforwardly that a pre-emergence fetus is not the legal equivalent of a human being, and therefore can be aborted if the mother's life is endangered, whereas a post-emergence fetus is legally human and thus, there being no issue of blame here, may not be endangered for the sake of the mother (and likely vice versa).
2. Rav Chisda claims that the legal humanity of the post-emergence fetus is an insufficient explanation of the prohibition against therapeutic abortion. He claims that there is a legal issue of blame, if not a moral one, and that the fetus in either case is legally considered a pursuer. Thus the only reason one may not kill the post-emergence fetus is that, in contradiction to R. Huna's dictum, minors may never be killed as pursuers. The Talmud responds by claiming that R. Huna's dictum is irrelevant to the Mishnah, which deals with a case in which "Heaven is pursuing her", i.e. there is no human pursuer.
3. The names are different or reversed, but the structure of the argument is the same as in the Bavli. The final answer, however, is formally not that there is no pursuer here, but that there is mutual pursuit. This may amount to the same thing, but it may imply a different vision of pursuit. In the Bavli there seems to be an objective standard of pursuit, whereas the Yerushalmi may believe that one merely looks for a basis for choosing the pursued over the pursuer.

In both Bavli and Yerushalmi, however, the conclusion seems to be that pursuit is not legally relevant to the case of therapeutic abortion. Presumably both would explain the permission in the pre-emergence case as we did previously, by saying that the pre-emergence fetus is not legally human. While the attack on R. Huna in both Talmuds would allow for pursuit to be an (additional) explanation of the pre-emergence case, defending R. Huna requires declaring it completely irrelevant.

4. Rambam, however, while ruling like R. Huna, cites pursuit as the rationale for the pre-emergence case. As noted, this is against the straightforward reading of the mishnah. It also contradicts his own explanation for the prohibition in the post-emergence case, where he explains that pursuit is irrelevant since "this is the "nature of the world"". If this is the "nature of the world" post-emergence, it is no less so pre-emergence; and if being the "nature of the world" makes pursuit legally irrelevant post-emergence, it should have the same impact pre-emergence.

Why does Rambam feel compelled to use pursuit as the explanation of the pre-emergence case when doing so contradicts his Talmudic sources and generates an internal contradiction?

5. Ravin cites R. Yochanan as saying that one may not save life by committing an act that falls into the category of bloodshedding. If Rambam believed that abortion falls into that category, we would understand his rejection of the straightforward reading of the mishnah and introduction of the law of pursuit. If abortion is bloodshedding, one may not abort to save life regardless of the legal status of the fetus.
6. The Talmud says that a prohibition called bloodshedding that applies to Gentiles.
7. Rambam limits the parameter of that prohibition, including abortion within it. This would seem to support our suggestion above – abortion is considered bloodshedding. However, he then adds that non-Jews are executed for violations, but "none of this applies to Jews". If that means that the category as a whole does not apply to Jews, that at least some of these cases aren't forbidden to Jews, our evidence vanishes.
- 8-10. However, we discover that in three of the four cases Rambam lists re Gentiles, his treatment of the same case with regard to Jews states that the act is forbidden and considered bloodshedding, although not a capital crime. It seems reasonable to conclude that the same is true of abortion, and that we have adequately explained Rambam's rereading of the mishnah.
11. But there is a problem with this explanation. We're arguing now that Rambam felt that the less-than-human status of a fetus did not suffice to legitimate therapeutic abortion because abortion nonetheless violates the prohibition against bloodshedding, and for whatever reason R. Yochanan declared that under no circumstances is one permitted to save a life by committing bloodshedding. But Rava says that the R. Yochanan's rule is not exegetically derived, but rather a function of the moral principle that "who says your blood is redder than his"(pace the Mishnah at the end of Horayot). If this is so, R. Yochanan's principle should not extend to therapeutic abortion, where there is an objective basis for deciding that the mother's blood is more valuable, namely that the fetus is not yet a human being. As a result, we must wonder yet again why Rambam is compelled to introduce the law of pursuit into the Mishnah.
12. Tosafot make a reasonable deduction from R. Yochanan's principle, namely that it is reversible – it also prevents one from choosing someone else's life over your own. Accordingly, Tosafot rule that one should passively murder rather than actively get oneself killed.
13. R. Chayyim claims that Rambam disagrees (his argument is based on Rambam's failure to mention the passivity exception in the case of adultery. Whether he is correct or not – and this is certainly debatable – is not dispositive with regard to our issue.)

R, Chayyim argues that for Rambam to disagree with Tosafot and choose active getting killed over passive murder requires him to believe that R. Yochanan's dictum is technical rather than rational in the sphere of law. Rava is not explaining the ground of R. Yochanan's dictum, but rather its origin. We know that there is a broad exception to most halakhot called "vochai bohem" – the question is whether that exception applies to the prohibition against bloodshedding. Constructing one case in which the exception should not apply allows us to determine that the exception was not meant to apply to this prohibition. (Tosafot, by contrast, think that we evaluate at the case level rather than the law level.)

14. R. Chayyim argues that the story in Bava Metzia is evidence for Rambam, as why should Ben Ptor have had them split the water prior to R. Akiva's drashah? Let whoever has the water keep it! Rather, it must be that each was obligated to give the other the water, and splitting it is a practical accommodation to the recognition that having them pass the full canteen back and forth while dying of thirst is too macabre to be law. R. Akiva's derashah rejects Ben Ptor in the context of lifesaving, but his logic would still apply to conflicts between lifesaving and bloodshedding. There are of course other explanations of the story, most obviously the Chazon Ish's suggestion that the issue is the legal value of "short-term life".