

Parsha Ponders

Vayeira | November 4, 2020 | 17 Marcheshvan 5781

*Serving while sleeping*¹

ותשקין את-אביהן יין בלילה הוא ותבא הבכירה ותשכב את-אביה ולא-ידע בשכבה ובקומה
[Lot's daughters] gave their father wine to drink that night. The elder went and slept with her father,
and he did not know of her sleeping or getting up²

The episode with Lot, the nephew of Avraham, and his daughters is well known. They got him drunk, and conceived children from him. He was so drunk that he was totally unaware of what was happening, as it was happening. This begs the question, what is a person's level of responsibility when they are in this state? Obviously a person is accountable for getting themselves this drunk. However, when they are completely not in control, oblivious to their surroundings and to their actions, are they responsible? If a *mitzvah* is accomplished in this state³, do they get credit? If they transgress a prohibition, are they punished? These questions are equally applicable to someone who is asleep. They too are totally unaware of what is happening. What is a person's level of responsibility when they are sleeping?

There are many authorities⁴ who unequivocally assume that someone who is asleep is totally exempt from *mitzvah* observance. As such, they wouldn't get credit for *mitzvos* accomplished while asleep, or be punished for transgressions. The same would then be true if someone reached the level of drunkenness of Lot. An example of this ruling is regarding the holiday of *Sukkos*. During that festival, there's a *mitzvah* to sleep in the *sukkah*. What if the *sukkah* is so small it only fits one person at a time? One authority suggested⁵ that after the first person falls asleep, they're now exempt from *mitzvos*. As such, gently pull them out of the *sukkah* (without waking them), and then the next person can go to sleep, and so on⁶. However, there seems to be three very strong proofs against this opinion⁷. We'll present them one by one.

¹ Based on a *shiur* from Rav Asher Weiss, given in 5773. The audio and accompanying text are accessible at <https://www.torahbase.org/halachic-status-person-slumber/>

² Genesis 19:31

³ Rav Asher Weiss is careful to point out that we can't say a drunk (or sleeping) person can **perform** a *mitzvah* (מקיים), as they're not aware of what they're doing, which is classified as מתעסק. However, some *mitzvos* can be **accomplished passively** (מתקיימת על ידו), such as *tzitzis* (which will be discussed shortly)

⁴ This opinion was made famous from an often quoted ruling of Rav Shlomo Zalman Auerbach *zt"l* (see next note). He was preceded by the Aruch HaShulchan *Orach Chaim* 25:6, who says that even though there is a prohibition of *hesech hada'as* (forgetting you're wearing) with *tefillin*, someone who is asleep isn't transgressing. Even though they are surely not thinking about the fact that they're wearing *tefillin*, since someone asleep is like they're not alive anymore, they are exempt from *mitzvos*. This opinion is also shared by the Netziv in his Meishiv Davar 1:47 (see note 11). Rav Asher Weiss didn't bring this, but the earliest source I found for this opinion was the Keren Orach to Menachos 36b s.v. גמרא אמר רבה

⁵ This oral ruling of Rav Shlomo Zalman was eventually printed in Halichos Shlomo *Sukkos* 9:17. He understood the *mitzvah* to sleep in the *sukkah* wasn't fulfilled while actually asleep. The *mitzvah* is to **go to sleep** in the *sukkah*

⁶ I heard a *shiur* on Sukkah from Rav Aharon Feldman *shlita*, where he approvingly quoted this ruling of Rav Shlomo Zalman

⁷ Indeed, Rav Asher Weiss concludes from these proofs that a person who is sleeping is obligated in *mitzvos*. I subsequently found in the *sefer* Shevivei Eish *Moadim Sukkah* § 34 that the author asked Rav Chaim Kanievsky *shlita* if we find someone sleeping outside the *sukkah*, which is a prohibition, should we wake them, and he responded in the affirmative. The Maharil Diskin *parshas Emor* also says this. If someone sleeping is exempt from *mitzvos*, why wake them? Presumably he agrees that they are in fact obligated. However, someone could perhaps get out of this and say that he said to wake them so that they'll get the *mitzvah* of sleeping in the *sukkah*. Or

The first is from the Arizal⁸. The Arizal is of the opinion that a person must sleep while wearing *tzitzis*. He proves this from a story⁹ about Dovid HaMelech, who was once in the bathhouse. He all of a sudden realized that since he was unclothed, he was completely bare of *mitzvos*. He was very distraught. He had no *tzitzis*, he had no *tefillin*. He was only appeased when he remembered he had the *mitzvah* of *bris milah* engraved on his body. The Arizal asked on this story that why wasn't Dovid upset when he would go to bed? He would be without *mitzvos* then as well. The conclusion must be that he would wear *tzitzis* while he slept. While there are those that dismiss this proof to wear *tzitzis* while sleeping¹⁰, you see the Arizal assumed that a person accomplishes *mitzvos* when asleep^{11 12}.

The second proof is from a dispute in the *Rishonim* regarding the laws of *Sukkos*¹³. If a person is sleeping in the *sukkah* and it begins to rain, they can go inside and continue to sleep. What happens if it then stops raining? Some say¹⁴ that you have to wake up the person, so they can go back into the *sukkah*. Others disagree. Since they were allowed to leave, and it's a big inconvenience to interrupt one's sleep and move their bed back into the *sukkah*, they're allowed to continue to sleep outside the *sukkah*. However, if this dispensation weren't true, you see you'd have to wake them up to go back into the *sukkah*. Both sides of the dispute seem to agree that a person that is sleeping is obligated to be sleeping in the *sukkah*, to the point that you have to wake them up¹⁵.

The third is a surprising dispute in the laws of prayer. A *minyan* needed for public prayers consists of ten men. What happens if one of the ten is asleep? Do they count for the *minyan*? Some say no, since they can't possibly respond to the prayers being recited¹⁶. Others disagree¹⁷, and say nevertheless they count

maybe it was so the onlooker won't see that the person neglected to sleep in the *sukkah*. Another authority who possibly agrees to Rav Asher Weiss is Rav Shlomo Kluger in his *Sefer HaChaim* 2:639 (*chiddushim* to *Sukkah* 3a). There, he discusses if the main *mitzvah* of *sukkah* is eating there or sleeping there. According to Rabbah (*ibid* 2a), part of the *mitzvah* of *sukkah* is a person needs to be able to see the *sechach*. Rav Shlomo Kluger sees from this that Rabbah holds the main *mitzvah* is eating, as when you're sleeping how will you fulfill the *mitzvah* of seeing the *sechach*? It sounds like he's assuming that a person fulfills *mitzvos* while they're sleeping. Otherwise, why is he only asking that you can't see the *sechach*?

⁸ *Pri Eitz Chaim Sha'ar HaTzitzis* Chapter 1 (at the end), brought by the *Magen Avraham* to *Shulchan Aruch Orach Chaim* 21:1 § 2

⁹ *Menachos* 43b

¹⁰ *Magen Avraham loc. cit.* says that he had a *mezuzah* for his house, so he didn't need to wear *tzitzis* to accomplish *mitzvos* while asleep. The *Arizal* presumably held that a *mezuzah* is not a *mitzvah* with one's body, so Dovid would have still felt he was "bare" of *mitzvos*. However, a few lines in the *gemarra* before this story mentions that Jews are surrounded with *mitzvos*, such as *tefillin* on their arm and head, *tzitzis* on their clothes, and *mezuzah* on their doorposts. This story seems to be a response to that concept

¹¹ Cf. *Meishiv Davar loc. cit.*, who questions this proof because he held a person is exempt from *mitzvos* while asleep. You see the *Arizal* disagrees. Rav Asher Weiss adds that the *Magen Avraham* must also disagree, being that he dismissed the proof in a different way than the *Netziv*

¹² Rav Asher Weiss admits that he really feels that this discussion in *Menachos* isn't relevant to our discussion. See *Beis HaLevi* § 47 and *Teshuvos Pri Yitzchak* 2:33, who debate the intent of this *gemarra*. The *Pri Yitzchak's* approach, to which Rav Asher Weiss concurs, is that the *gemarra* isn't discussing **fulfilling** *mitzvos*, but rather the inherent **segulah** of these *mitzvos*

¹³ Brought by *Beis Yosef* to *Tur Orach Chaim* § 639

¹⁴ *Ran* to *Sukkah* 13b (in the pagination of the *Rif*) s.v. ה"ה

¹⁵ However, see note 7

¹⁶ *Taz* to *Shulchan Aruch Orach Chaim* 55:6 § 4

¹⁷ *Shulchan Aruch loc. cit.*

for the *minyan*. Neither opinion however seems bothered that the person sleeping is exempt from *mitzvos*. Someone exempt from prayer surely can't count for a *minyan*. We see then that they both agree a person sleeping is obligated¹⁸.

Regardless of who is right, all would agree that it's possible to fulfill a *mitzvah* by going to sleep¹⁹. All it takes is the proper intent. Why am I going to sleep? Because it feels good? Because I'm tired? Those are definitely benefits of sleep. However, they're self-focused. If we have in mind that sleep is part of our Divine service, it counts as a *mitzvah*. If we have in mind we're going to sleep to gain energy to serve Hashem properly the next day, we take a mundane act and make it holy. This is true for everything we do, all day long. We can take any human function and make it special. It just takes a moment of forethought.

Good Shabbos

¹⁸ Rav Asher Weiss actually brought other sources. The above sources are those that I felt were the most fascinating. The other sources were: In Shulchan Aruch Yoreh Deah § 372 the Rema rules that if there's a corpse next to a sleeping Kohen, we must wake him up. Rav Asher Weiss sees no reason to differentiate between the prohibition of a Kohen becoming ritually impure from the deceased and other prohibitions or *mitzvos*. Another is Sefer Chassidim § 337, which says to wake up one's sleeping father so he can go pray in *shul*. While it could be the Sefer Chassidim just means you're allowed to since this is showing honor to one's father, Chayei Adam 67:11 understood differently; see there. Another is from Bava Kamma 2:6 and Tosafos to Bava Kamma 4a s.v. כיון דכייף, who bring from the Yerushalmi 2:8 that a person sleeping is obligated to pay for damages they cause. Another is the Teshuvos Maharsham 6:85 and the Teshuvos Imrei Yosher 2:108 debate if it's permissible to be put under anesthesia when receiving a *bris milah*, but neither have an issue with the fact that a person is exempt from *mitzvos* while they're unconscious. His final proof is the fact that someone who slept through the entire time for prayers can make it up later and pray twice, known as *tashlumin* (Shulchan Aruch 99:1 with Mishnah Berurah § 4). *Tashlumin* is only relevant for someone obligated to pray. Someone who was exempt from prayers doesn't require *tashlumin*. We see then that while they were sleeping they were obligated in prayers. Obviously the great *Rabbanim* who hold someone who is asleep is exempt from *mitzvos* were aware of these sources, and somehow had ways to answer these proofs

¹⁹ See Shulchan Aruch Orach Chaim 231:1