



Sleep, Anesthesia, and Mitzvos

If one's offering is a burnt offering from the cattle, he shall offer an unblemished male; he shall bring it to the entrance of the Ohel Moed voluntarily before Hashem. (Vayikra 1:3)

The Gemara (*Arachin* 21a) deduces from the words “voluntarily before Hashem” (“*liRtzono Lifnei Hashem*”) that if a person is compelled to offer a *Korban* it does not atone for him¹. In other words, a *Korban* can only be offered with the consent of its owner. *Rashi* (*Sanhedrin* 47a) explains that this is why the *Korban* of a person who became a *Shoteh* after he consecrated it is invalid, for a *Shoteh* is not considered Halachically competent to consent.

This topic leads to the discussion of the Halachic status of a person who is sleeping (a “*Yashein*”), who similarly has no active will or desire. We will examine this *Sugya* (and several other relevant *Sugyos*) in greater depth, and also attempt to deduce the Halachic status of a person under anesthesia.

Sanhedrin 47a:

Ulla said in the name of R' Yochanan: If a person ate forbidden fats, set aside his Korban, and then became a heretic but subsequently returned to his faith; since the Korban was disqualified [as one may not offer a Korban of a heretic] it remains disqualified [even after he returns to his faith].

It was also said: Said R' Yirmiya in the name of R' Avahu in the name of R' Yochanan: If a person ate forbidden fats, set aside his Korban, became a Shoteh, but then returned to sanity; since the Korban has been disqualified, it remains disqualified.

*And [both statements in the name of R' Yochanan] are necessary: For had we only learned the first Halacha [regarding a heretic, one might have said that the reason that his Korban remains disqualified is] because he actively disqualified himself [by becoming a heretic]. **But a Shoteh, who became disqualified***

¹ If he refuses to fulfill his obligation to offer a *Korban* the Beis Din must compel him **until he says, “I want to”**.



involuntarily - one might have said that he should be considered like a sleeping person [whose Korban is not disqualified].

And had it only taught us the second Halacha [regarding a Shoteh, one might have said that the reason that his Korban remains disqualified is] because he has no ability to restore [cure] himself. But a heretic, who is able to return [to his faith], one might have said that this is not the case [and his Korban will become valid again once he returns]. For this reason, both statements of R' Yochanan are necessary [and both the Korban of a heretic and that of a Shoteh are disqualified permanently].

We see that if R' Yochanan had not specifically taught the Halacha that the *Korban* of a *Shoteh* is disqualified permanently, we would have compared his state to that of a sleeping person whose *Korban* is not disqualified. However, the Gemara only discusses whether the *Korban* of a *Shoteh* is disqualified *permanently* – in other words whether it remains disqualified even after he recovers, for certainly prior to that his *Korban* is invalid. Is the same true of a person who is sleeping? Does the Gemara consider a sleeping person's *Korban* to be valid only after he awakens but not prior to that?

This question is subject to a dispute among the *Rishonim*. *Tosfos* (*ad. loc. s.v. Eima*) hold that it is permissible to offer the *Korban* of a person who is sleeping. The Gemara only meant to compare a *Shoteh* (whose *Korban* may not be offered while he is a *Shoteh*) to a sleeping person in the sense that in both cases, the return to the awake or competent state does not entail a deliberate act or choice.

Rashi implies otherwise. When the Gemara contends that one might have compared a *Shoteh* to a sleeping person, *Rashi* comments that the *Korbanos* of people who are sleeping “*are not disqualified after they awaken*”. This clearly implies that before they awaken, their *Korbanos* are invalid. The same conclusion is drawn by the *Yad Ramah*.²

² *Tosfos* adduce proof for their position from the Gemara in *Gittin* (28a) which rules that if a person sends a sin offering from abroad, it may be offered and one needn't assume that he has died in the interim. *Tosfos* argue that if one may not offer the *Korban* of a person who is sleeping, we should not offer a *Korban* arriving from abroad for we have no way of knowing whether he is awake at the time. *Rabbenu Yona* (*ad. loc.*) counters that it would perhaps be possible to offer the *Korban* at a time of day that we estimate that he is likely to be awake.



Gittin 78a:

A similar dispute among the *Rishonim* can be found in the Gemara in *Gittin 78a*. The Mishna states that if a person gives a *Get* to his wife while she is sleeping, it is invalid. The *Rishonim* ask: since it is possible to divorce a woman who is a deaf-mute (as essentially one may divorce a woman without her willful consent), why can't a man divorce a woman who is sleeping?³ Two answers are suggested:

1. The *Rashba* and *Ran* explain that if a woman is asleep *she is perforce unable to guard her Get*. To fulfill the requirement of "*v'Nasan b'Yadah*" – "*and he shall place it [the Get] in her hand*" a woman must be able to look after the *Get* she receives. A deaf-mute is capable of taking care of her *Get* thus it is possible to divorce her but a sleeping woman is not. As an aside, the *Rashba* adds that as far as the requirement of *Da'as* for divorce is concerned, it is sufficient that the witnesses understand the process, even if the woman does not.
2. The *Rosh* (*Gittin 8:4*) explains that a person who is asleep "*has no Da'as at all*", unlike a deaf-mute who understands a little. The *Rosh* appears to hold (and this is the understanding of the *Beis Yosef E.H. 138*) that although one may divorce a woman against her will, she must still be lucid at the time of the divorce.

It is clear that the *Rosh* holds that a sleeping person is not considered to have *Da'as*. However, there is not a clear indication of what the *Rashba* holds. Simply understood, the *Rashba* seems to focus on the woman's inability to take care of her *Get*, and, therefore, would seem to reject the notion that she would not be considered to have *Da'as*. This is the understanding of the *Beis Yosef (ibid.)* and *Machaneh Efraim (Hilchos Kinyan Chatzer 12)*. On the other hand, the *Rashba* adds that to effect a divorce it is sufficient that the witnesses understand the process, even if the woman does not. This implies that he agrees that a sleeping person does not have *Da'as*, just that the lack of her *Da'as* does not invalidate the *Get* as the witnesses provide the required *Da'as*.

Gittin 70b:

The Gemara in *Gittin (70b)* discusses a case of a man who sent a *Get* with a *Shliach* (an emissary) but became a *Shoteh* before it was delivered. It cites the Mishna (*ibid.*) which states: *If a person says, "Write a Get for my wife" but is then seized by*

³ See *Gittin 55a*, the *Rambam Hilchos Geirushin 10:23* and *Shulchan Aruch E.H. 119:6*.



*Kurdikus*⁴ [a certain mental illness] and then retracts and says “Do not write it”, his latter instructions are meaningless [and the *Get* is valid]. At what point may the *Get* be delivered to his wife? According to *Reish Lakish*, one needn’t wait for the husband to recover from his illness and the *Get* may be given immediately. According to *R’ Yochanan*, since *Kurdikus* renders him a certain *Shoteh*, they must wait until he recovers before delivering the *Get*.

The Gemara explains the respective positions of *Reish Lakish* and *R’ Yochanan*:

Reish Lakish compared him [the man with *Kurdikus*] to a person who is sleeping [and whose *Get* may certainly be delivered]. *R’ Yochanan* compared him to a *Shoteh*.

Why did *R’ Yochanan* not agree that this man should have the same status as a person who is sleeping? The Gemara **explains that a person who is asleep will eventually wake up spontaneously, thus, even when he is sleeping, he is not considered to be a *Shoteh***. However, a man with *Kurdikus* needs specific treatment in order to recover thus, during his illness, he is considered a *Shoteh*.

Why did *Reish Lakish* disagree? The Gemara explains that since there is no cure for a *Shoteh* but there is a cure for a person with *Kurdikus*, namely, eating roasted, lean meat with diluted wine, a person with *Kurdikus* should not be compared to a *Shoteh*.⁵

This Gemara says explicitly that a person who is sleeping is not considered a *Shoteh* - precisely the position of the aforementioned *Tosfos* in *Sanhedrin*. This appears to contradict the view of *Rashi* and the *Yad Rama* who argued that while a person is sleeping he is considered a *Shoteh*.

Some answer that, according to *Rashi* and the *Yad Rama*, a sleeping person is only considered a *Shoteh* with regard to *Korbanos* where the Torah demanded that a person’s *Korban* be brought “*liRtzono*”, which requires an active awareness and intent that is not necessary in other areas of Halacha. However, this answer is difficult to understand since a person who sends his *Korban* with a *Shliach* is unlikely to be thinking about his *Korban* precisely at the moment that it is being offered. Rather, it

⁴ See *Rashi* and other *Rishonim* *ibid.* 67b who explain the source of this illness

⁵ We should point out that according to the *Rambam* (*Hilchos Geirushin* 2:15, as understood by the *Kesef Mishna* and consequently codified in the *Shulchan Aruch E.H.* 121:2) *R’ Yochanan* agrees that the *Get* of a man with *Kurdikus* is only invalid *mid’Rabbanan* due to the argument of *Reish Lakish* that a person for whom there is a cure cannot be compared to a complete and utter *Shoteh*.



must be that we assume that his desire to offer a *Korban* has not changed since the time that he dispatched it, and that we do not require his affirmative *Da'as* at the time the *Korban* is offered. Since this same reasoning can also be applied to a person who is sleeping, we must say that the reason that these *Rishonim* hold that one may not offer a *Korban* of a sleeping person is because he is not considered to be a “*Bar Da'as*” while asleep, and his *Korban* is therefore not being offered with the “will” of its owner⁶. However, this notion appears to be contradicted by the Gemara in *Gittin* (70b) that states that *Reish Lakish* allows the *Get* of a man with *Kurdikus* to be written and delivered via *Shliach* since he compares him to someone who is asleep.

Additionally, this Gemara asserts that a sleeping person is not considered to be a *Shoteh* and appears to contradict the view of the *Rosh* in *Gittin* who explained that the reason that one cannot divorce a woman who is sleeping is because *she does not have Da'as*. This obviously cannot be answered by distinguishing between the laws of *Korbanos* and other areas of Halacha. In fact, the Gemara which clearly validates a divorce performed by a *man who is sleeping and does not consider him a Shoteh*, seems to imply precisely the opposite message to the *Rosh's* interpretation of the Gemara cited above which disqualifies a *Get* given to a *woman who is sleeping because she is considered a Shoteh*⁷.

[It is obvious that without the use of a *Shliach*, the acts of a sleeping person certainly have no validity. He therefore cannot acquire things while he is asleep for he isn't lucid at the time. See *Rashi Yevamos* 54a, s.v. *Yashan*]

Regardless, the Gemara clearly implies that while a sleeping person does bear some similarity to a *Shoteh*, since he will awaken spontaneously, he is not considered a *Shoteh*. See below.

Shulchan Aruch O.C. 55:6:

The *Shulchan Aruch* rules that a sleeping person can be counted towards a Minyan for the recital of *Devarim sheb'Kedusha*. The source of this ruling is R' Yaakov Birav, the teacher of the *Beis Yosef*, who compares it to the ruling of the *Maharam miRottenberg* that a person who cannot answer *Amen*, *Kaddish* or *Kedusha* together with the *Tzibur* because he is still saying his personal *Shemona Esrei* may nevertheless

⁶ In other words, a person's *Da'as* is required at the time his *Korban* is brought, and when he sends it with a *Shliach* we assume that he hasn't changed his mind and can “apply” that *Da'as* when bringing the *Korban* as long as he is in a state (i.e. awake and sane) that he would be considered a *Bar Da'as*.

⁷ Moreover, one would have expected the woman's threshold for *Da'as* to receive the *Get* to be lower than that of the man who is effecting the divorce!



be counted towards the Minyan. The *Maharam miRottenberg* derived this from *R' Yehoshua ben Levi's* ruling that even a baby in a crib completes a Minyan for reciting *Zimun* (*Brachos* 47b). A sleeping person, though not as cognizant as a person who is awake and still reciting *Shemona Esrei*, may similarly be included when it comes to counting towards a *Minyan*.

The *Acharonim* discuss this novel ruling at length⁸. Firstly, they note that the comparison between a sleeping person and a child in a crib (which is essentially the basis of the *Shulchan Aruch's* ruling) is problematic. The *Zohar* describes how a sleeping person is bereft of *Kedusha* for his *Neshama* has departed him and there are other sources that compare his state to a corpse (which is the reason why we recite the Bracha of "*Hamachazir Neshamos liFgarim Meisim*" each morning). How then could he be included in a Minyan?⁹

Moreover, as the *Taz* (*ibid.* 4) notes, the ruling that even a child in a crib may complete a Minyan, is only that of *R' Yehoshua ben Levi* and according to the vast majority of the *Rishonim* (aside from *Rabbenu Tam*), the Halacha is not in accordance with his view (*Beis Yosef ibid.*) Furthermore, it is possible that even *R' Yehoshua ben Levi* would agree that a sleeping person cannot be included in a Minyan given that it is possible to wake him. Why should we include him while he is asleep when it is possible to remedy the situation? A child, by contrast, cannot be transformed into an adult.

Thus far, we have not seen the *Acharonim* challenge the ruling of the *Shulchan Aruch* by claiming that a sleeping person should be considered a *Shoteh* who cannot complete a Minyan (though it is likely that this is the position of the *Taz*). However the *Pri Chadash* (*ibid.* 6 and cited by the *Mishna Berura* *ibid.* 33) does make this claim, supporting his claim with the aforementioned *Rosh* in *Gittin* who holds that the reason that a woman who is sleeping cannot be divorced is because she is considered a *Shoteh*.

⁸ See the *Taz*, *Pri Chadash*, *Aruch haShulchan* and *Mishna Berura ad. loc.*

⁹ *Aruch haShulchan*, *ibid.* 12



Sleeping and Mitzva Performance

Modern Poskim discuss the well-known question of whether one is required to awaken a person who is sleeping close to *Sof Zman Krias Shema*. They similarly discuss whether one may remove a sleeping person from a Sukkah in order to make space for others. The question depends upon whether a sleeping person should be considered a *Shoteh* who is exempt from Mitzva performance.

Famously, Rav Shlomo Zalman Auerbach *zt"l* (*Halichos Shlomo* 2:9) ruled that a person who is sleeping has no Mitzva obligations, just like a *Shoteh*. Therefore, if he misses Krias Shema he will not be punished for not performing a Mitzva, as he is considered to have been an *Anus* at that time. Likewise one may remove a sleeping person from the Sukkah, for while sleeping in the Sukkah is a Mitzva, a person's obligation is only to ensure that he *goes to sleep* in the Sukkah. Once he is asleep, he is like a *Shoteh* who is exempt from all Mitzvos, including Sukkah.

However, the *Maharil Diskin* (cited by Rav Shlomo Zalman) ruled that if a person is sleeping on Erev Sukkos outside of the Sukkah, he must be awakened at the onset of the Chag as at that point he is obligated to sleep in a Sukkah. The *Maharil Diskin* appeared to have held that a sleeping person does have Mitzva obligations. Likewise, several modern Poskim also contend that regarding the obligation to perform Mitzvos, a sleeping person is certainly not to be considered a *Shoteh*. The *Rishonim* who dubbed a sleeping person a *Shoteh*, did not mean to exempt him from Mitzva performance, but merely to disqualify him from performing certain Halachic acts due to his lack of *Da'as*.¹⁰

Anesthesia

Though anesthesia has been used in medical practice for well over a century, the mechanism of action is still poorly understood. It was popularly believed that the anesthetic medications depressed global brain functions and activity, thus eliminating memory, voluntary or involuntary movements, and any messages to and from the brain. However, recent studies have clarified that while the suppression of consciousness may be by the disruption of higher-level cortical function, there are

¹⁰ A sleeping person does not have an actual status of *Shoteh*, and if he sins while he is sleeping, although he is an *Anus*, it is still considered a "Ma'aseh Aveira". (For this reason, one shouldn't cause him to sin in his sleep). Conversely, if he performs a Mitzva at that time it is considered a "Ma'aseh Mitzva", though it was wrought with no intention whatsoever (see *Minchas Asher*, Bereishis, Mahadura Chadasha, 57).



neurobiological correlates of anesthesia and sleep. Researchers are studying dreaming and memory formation under anesthesia as compared to during sleep.

This question does not particularly impact on the Halachic status of a person under anesthesia. As we have seen, while a person sleeping, his acts certainly have no validity as he has no *Da'as* in the asleep state and the same would be true if he is anesthetized. Nevertheless, one of the characteristics of a sleeping person and which, as we have seen, distinguishes him from a *Shoteh*, is that he will spontaneously awaken from his slumber (unlike a *Shoteh* who will not find himself to be suddenly cured), and while this is also true of a person under anesthesia, there is a difference. A sleeping person can be awakened at any moment, whereas a person under anesthesia cannot – one need wait until the effects of the medications wear off.

HaGaon Rav Asher Weiss *Shlit"a* ruled that a person under anesthesia should be considered a "*Bar Chiyuva*" (a person obligated in Mitzvos). Though while anesthetized or sedated, he is considered an "*Anus*", he is nevertheless obligated still carries an obligation of Mitzvos, therefore, if it is possible to lay Tefillin on him, for example, it is worthwhile to do so.