

Sleep in Halacha

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- I. **Introduction.** Immediately after creating the world, the תורה records that God looked at all that He had created and remarked: "יהנה טוב מאד" ("behold it was very good"). The פוסקים (דברים פרק ו' פסוק יג) cites a מדרש which explains that the term "very good" refers to the special gift of sleep that God gave to humanity. The רמב"ן explains that sleep is "very good" because after sleeping for a short while a person is energized and ready to delve into torah study. The רמב"ם (הלכות דעות פרק ג' הלכה ג') exhorts us to take care of our bodies. He explains that one who is weak is at a significant disadvantage in any attempt to serve Hashem. One may engage in physical activity, but must imbue them with spiritual meaning, provided he intends those activities to strengthen his body to serve God. Specifically, the רמב"ם notes, that one who sleeps to relax his mind and body and to avoid illness so that he will be better equipped to serve God has turned his sleep into service of God. This is precisely what the משנה (אבות ב:יב) means when it says "וכל מעשיך יהיו לשם שמים" ("and all of your actions shall be for the sake of heaven").
- In this essay we will explore various halachic issues pertaining to sleep. First we will discuss the optimal amount of sleep recommended by the פוסקים. Second, we will list, and briefly discuss, various halachic requirements relating to the position of one's body and the sleeping environment. We will then discuss the concept of "stealing sleep" and explore whether there is any basis for this concept. Finally, we will analyze the status of a sleeping person as he relates to מצוות in the תורה.
- II. **How much and when to sleep.** Like most things in this world, sleep can be used for both good and bad, depending on how long a person chooses to indulge. It is therefore critical to determine the optimal amount of sleep that one must get in order to properly serve God, without being guilty of laziness or laxity in the service of God (by sleeping too much).
- A. **Sleeping enough.** The רמב"ם (הלכות דעות פרק ד' הלכה ד') writes that one should sleep for eight full hours (one third of a 24 hour period – שעות זמניות) each night, and schedule himself to wake up just before sunrise.¹ While the רמב"ם does not distinguish between different people, the סימן א' אות ו' points out that the precise amount of sleep necessary is subjective, and some people may need a little more or a little less sleep. The גמרא (סוכה דף נג) records that those who participated in the שמחת בית השואבה would remark that they did not "taste sleep" throughout all the days of the celebration. The גמרא points out that they must have slept during that time, but brief naps do not constitute genuine sleep and will do little to re-energize a person for future service of God.
1. While it is critical to sleep enough at night, it is equally critical not to sleep too much. The גמרא (עירובין דף סה.) records that when רב הסדא's wife

¹ See Mishnah Berurah (1:9) that one who is weak and cannot wake up for *tikun chatzos*, or one who thinks that if he were to wake up for *tikun chatzos* he will fall asleep during davening, should sleep as much as necessary, provided that he arrive at shul at least a half hour early to properly prepare for *tefilah*.

asked him whether he wanted to sleep, he responded that there will be plenty of time to sleep when he is dead, but while alive he wanted to maximize his time involved in תורה ומצוות. In a similar vein, Shlomo Hamelech relates sleeping excessively to laziness (משלי פרק ו' פסוק ט'),² and to potential poverty (משלי פרק כ' פסוק יג). The גמרא (גיטין דף ע) lists sleep amongst the eight things that are only good in small measure, but bad in large measure. This point is highlighted by the גמרא (סנהדרין דף צח) which says that when good people sleep excessively, it is bad for them and bad for the world, while when the wicked sleep excessively it is good for them and good for the world.

- B. Learning at night. While the (אבות פרק ג' משנה ד') lists one who stays up all night among those who are deserving of paying with their own lives,³ there is strong basis in rabbinic literature to encourage serious time for learning at night, and not spending the entire night sleeping. The אמוראים debated whether nighttime is primarily designated for sleep or for learning torah (עירובין דף סה). The ש"ך (יורה דעה סימן רמו ס"ק כה) explains that the two opinions can be reconciled as follows: during the long winter nights, the primary focus should be on learning, while during the short summer nights the primary focus should be on sleep. Alternatively, the רמב"ם (הו"ד ביו"ד סימן רמו) writes that somebody who learns torah each and every night (even during the short summer nights) can merit the crown of torah. In fact, it can be argued that even the mishnah in Avos (cited above) does not mean to encourage sleeping all night. The Rashbeitz (Magen Avos) cites the Rambam's interpretation of the mishnah, that only one who stays up at night AND does not use the waking time to learn torah is said to be deserving of paying with his life. One who learns at night and does not sleep, is in fact doing a great mitzvah.⁴ In any event, the גמרא (סנהדרין דף צב) clearly assumes that one should spend at least some time learning torah each and every night, as nighttime is most conducive to mastery of the torah (שולחן ערוך יורה דעה סימן רמו סעיף כג). The שולחן ערוך (יורה דעה סימן רמו סעיף כא) writes that when one "steals" time that would have otherwise been spent sleeping, in order to learn torah, the torah is likely to stay with him longer. In fact, the גמרא states that any house devoid of nocturnal torah will

² The Ralbag explains the passuk in (Mishlei 26:14) "the door turns on its hinge and the lazy man on his bed" to mean that the door is similar to the lazy man in the following way: Although a door can swing open and appear to separate from the doorpost, it always remains connected by its hinge. Similarly, a lazy person may temporarily be out of bed, but his thoughts are always thinking about the next opportunity he will have to sleep.

³ The others on the list are those who walk alone and turn their hearts to wasting time.

⁴ See Anaf Eitz Avos to the Mishnah who explains that the third item listed (turning his heart to *batalah*) qualifies each of the first two (staying up at night and walking alone). When one stays up at night *and* doesn't use the time to learn, or when one walks alone *and* doesn't use the time to review his learning, he is deserving of paying with his own life. Both nighttime *and* the moments that one is traveling are considered to be dangerous times when the Satan can do us harm. The best way to avoid the Satan's impact is through torah study (see *Baba Basra* 16a where the relationship between the *yetzer hara* and torah is compared to an illness and its cure respectively; Also, the gemara states that the *yetzer hara*, angel of death, and Satan are one and the same). In fact, the *Gemara (Eruvin 54a)* explicitly recommends that one traveling alone engage in torah study, and elsewhere (*Eruvin 65a*) the Gemara explicitly suggests that nighttime should be used for learning.

ultimately burn down. The (סימן רלח ס"ק א') cites a variety of statements from תורה that serve to highlight the importance of learning תורה at night. For instance, one who learns at night is said to have done the equivalent of service in the בית המקדש (מנחות דף קי), and is in the presence of the שכינה (תמיד דף לב).

C. Napping during the day. The (אבות פרק ג' משנה י') lists morning naps amongst the activities that “remove a person from the world”. Avos d’Rabi Nasan (Chapter 21) explains that the mishnah criticizes morning naps in particular for purely practical reasons: one is more likely to miss the time for *kerias shema* or neglect other *mitzvos* during the morning than during other times of the day. While afternoon naps are also generally discouraged (and even seem to be prohibited by the gemara Sukkah 26b), there are a couple of exceptions to the rule.

1. First, the (אורח חיים סימן רלא) שולחן ערוך notes that if one is having difficulty learning he may take a very brief afternoon nap.⁵ However, the (סימן ד' ס"ק לו בשם המחצית השקל) משנה ברורה points out that the extent to which one naps during the day has to be dependent on his personal needs and profession.

2. The (סימן ד' ס"ק טו) מגן אברהם suggests that one may take an extended nap on Shabbos afternoon. Indeed, it would seem that a little extra rest on שבת would be a fulfillment of the מצוה of עונג שבת (enjoyment of Shabbos).

III. **Conditions during sleep.** The torah not only demands that we perform rituals for the service of God and deal honestly in monetary matters, but also provides practical guidance on every element of our lives. How one sleeps is no exception to this rule, as the torah dictates issues ranging from the position of one’s bed to the position of the body. We will divide the instructions that Chazal provided in this area into two distinct groups: those that are cited in Shulchan Aruch and those that are not cited in Shulchan Aruch. It is not entirely clear to this author why the Shulchan Aruch chose to cite some of these rules, while omitting others.⁶

A. Those that are cited in Shulchan Aruch.

1. The gemara (Berachos 5b) relates that one who has his bed positioned running north/south rather than east/west will merit to have male children. While the Shulchan Aruch (Orach Chaim 3:6) insists that one observe this practice when sleeping with his wife, he recommends observing the practice even when sleeping alone. However, the Shulchan Aruch Harav (3:10) writes that if it is practically impossible to arrange one’s bed this way, he may even cohabit with his wife with the beds running east/west. The Aruch Hashulchan (3:13) argues that

⁵ The exact amount of time that one may nap is subject to debate amongst the poskim. The gemara identifies “60 breaths” as the upper limit for an afternoon nap. The opinions relating to how long this is, range from close to three hours (based on the custom of the Arizal to sleep for three hours on shabbos afternoon) to under a minute (as suggested by the Chayei Adam).

⁶ It is certainly possible that the Shulchan Aruch chose not to cite those issues that he viewed as merely an עצה טובה (good advice), but not halachically binding.

this practice has rightfully fallen into disuse for two reasons. First, the Tur does not cite this gemara, and we may rule like the Tur that the gemara was merely offering good advice, rather than mandating the practice. Second, there are many kabbalistic sources who understood that the gemara's insistence was for the *width* of the bed to run north/south. Since we don't know whether the kabbalistic or classic reading of the gemara is correct, we may assume that whichever way our beds are facing is acceptable. It may also be suggested that only having the beds running due east/west is problematic, especially in light of the explanation of Rashi (Berachos 5b) that the reason one shouldn't sleep that way is that the שכינה resides in greatest concentration in those directions.⁷

2. The gemara (Berachos 13b) suggests that a person should not sleep in a "פרקדן" position. This is generally understood to include either lying on one's back (due to a concern that he will place himself in an embarrassing position), or lying on one's stomach (due to a concern that he will have a seminal emission), or both.⁸ The Rambam codifies this ruling (הלכות דעות פרק ד' הלכה ה') with respect to both positions and further suggests to begin the night sleeping on the left side and to wake up sleeping on the right side.⁹ The Shulchan Aruch records both the prohibition to recite קריאת שמע and to sleep in the face up position (אורח חיים סימן סג סעיף א' ואבן העזר סימן כג סעיף ג'), but makes no mention of a prohibition to sleep on one's stomach. Nevertheless, the משנה ברורה (סימן רלט ס"ק ו') states that it is a "great prohibition" to be in the habit of sleeping on one's back or stomach, and that a person should accustom himself to sleep on his side. A few additional details relating to this halacha are mentioned by various poskim:
 - a. Responsa Salmas Chaim (#226) writes that children should be taught to sleep on their sides starting from the age of nine, based on the notion that a nine year old is considered capable of meaningful sexual activity.
 - b. Rabbi Chaim Kanievsky (Sefer Shoneh Halachos 239:3) writes that his esteemed uncle, the Chazon Ish, was careful not to lie on his back even when not going to sleep. Rabbi Binyamin Zilber (Responsa Az Nidberu VI:50), however, strongly questions the accuracy of this report,¹⁰ and suggests that a simple reading of the

⁷ In Rashi's view one need only avoid lying between east/west, but there is no particular value in sleeping facing north/south. See, however, Kaf Hachaim 3:16) who suggests that the gemara specifically recommends running the bed north/south because it is reminiscent of the positioning of Adam as he was created.

⁸ It seems that all of these positions are only problematic for men, as the specific concerns only apply to men. Indeed, Rabbi Binyamin Zilber (Az Nidberu VI:50) writes that a very old man also need not worry about sleeping on his back or stomach.

⁹ The (סימן עא סעיף ה') suggests medical reasons for the Rambam's recommendation. However, (סימן רלה ס"ק יא) suggests that there are kabbalistic reasons to do this as well.

¹⁰ In fact, Rabbi Zilber cites this as a lesson to never believe second hand reports of what the Chazon Ish did, even when recorded by a great person (such as Rabbi Kanievsky).

primary passage in the gemara (Berachos 13b) with Rashi clearly indicates that one need only be careful about how to lie when actually going to sleep.

- B. Those that are not cited in Shulchan Aruch.
1. The gemara (Berachos 62b) states that one can sleep on anything, so long as he doesn't sleep on the ground. Rav Yakov Emden (Ya'avetz ad. Loc.) suggests that this prohibition is based on the very practical concern that the floor is frequently very cold and can therefore be unhealthy for a person to sleep on. In fact, the Mishnah (Avos 6:4) suggests that one of the ways of torah is to sleep on the ground, suggesting that there is no prohibition to do so, absent the danger that is inherent in sleeping on the cold earth.
 2. The gemara (Yoma 78b) states that one who is interested in experiencing a sense of death should sleep with his shoes on.¹¹ While the Shulchan Aruch does not codify this halacha, the Kaf Hachaim (Yoreh Deah 116:211) does quote it amongst the other items that are prohibited on account of danger.
 3. The gemara (Horayos 13b) lists sleeping with clothing under one's head amongst five activities that cause one to forget his learning.
- IV. **Stealing sleep.** Young children are frequently taught that the worst kind of stealing is "gezel sheinah" (stealing sleep). Considering how ingrained the concept of stealing sleep is in so many people, it is somewhat surprising to discover that the phrase "gezel sheinah" is never mentioned by Chazal, Rishonim, or early Acharonim. In this section we will analyze what, if any, prohibition is violated when one wakes somebody up prematurely from their sleep.
- A. The prohibition.
1. The gemara (Berachos 13b) records that both Rav Nachman and Rabbah would instruct their attendants to "bother/pain" (*tza'ar*) them and wake them up in order for them to read the first passuk of kerias shema. Once they had said the first passuk, they asked not to be "bothered/pained" in order to read the rest of kerias shema. Rabbi Menashe Klein (Responsa Mishnah Halachos 12:443) suggests that we may derive from this passage that being woken up is classified as a "bother/pain". Rabbi Klein asserts that the reason that stealing is prohibited is that it causes "tza'ar" to other people.¹² Rabbi Klein suggests that when one follows this line of

¹¹ Based on this the gemara explains why children cannot wear shoes on Yom Kippur even though they may bathe and anoint themselves with oils. When one sees a child who is bathed or anointed they will naturally assume that an adult had done those services for the child on the previous day, before Yom Kippur. When, however, one sees a child with shoes on he will immediately realize that an adult had put those shoes on the child on Yom Kippur. The child could not have been wearing those shoes since the previous day because it is inappropriate to sleep in shoes.

¹² This assertion is based on the gemara's statement (Sanhedrin 59) that a non-Jew is culpable for stealing something valued at less than a *perutah* from a Jew, even if the Jew has forgiven him because at the moment the Jew discovered that the item was stolen and before he had a chance to forgive the non-Jew, there was *tza'ar* caused to the Jew. Apparently, merely causing *tza'ar*, even without causing a monetary loss, is classified as stealing.

reasoning, waking somebody up is also a form of stealing because it causes *tza'ar*. This argument is questionable for a number of reasons:

- c. One may suggest that stealing is limited exclusively to physically taking something from another person. Rabbi Klein, however, dismisses such an argument based on a Tosefta in Baba Kama (7:8) which lists seven types of “stealing”, most of which are examples of “*geneivas da'as*”¹³ which does not involve the physical taking of an item. Rabbi Shmuel Vosner (Responsa Shevet Halevi VII:224) distinguishes between “*geneiva*” and “*gezeila*”. He argues that we only find the term “*geneiva*” used in reference to non-monetary issues, while the term “*gezeila*” is limited to physically taking or benefiting from that which belongs to another person.¹⁴
 - d. Rabbi Klein’s suggestion that the primary problem with stealing is that it causes another person “*tza'ar*” is far too general a statement, and almost certainly does not reflect the precise nature of the prohibition of stealing. While all stealing causes “*tza'ar*”, it would be difficult to suggest that all causing of *tza'ar* is stealing. For instance, striking another person also causes “*tza'ar*” but the prohibition is not one of stealing, but of striking a fellow Jew (Devarim 25). There are an infinite number of ways that one can cause “*tza'ar*” to another person, but only a tiny number of them are considered actual stealing. It would therefore seem that the idea of “stealing” sleep is a misnomer.
2. The gemara (Baba Basra 20b) rules that one resident of a courtyard may not open up a business in the residential courtyard because the neighbors may rightfully complain that they are unable to sleep due to the increased traffic in the courtyard. The Meiri refers to the potential loss of sleep as “*hezek sheina*” (damaging of sleep). Apparently, in Meiri’s view, one cannot “steal” sleep, but keeping people awake involves some form of damage from which a person must refrain.
- B. What is the real prohibition? While it seems clear that there is no prohibition of “stealing” when waking up a sleeping person, there may be other prohibitions that apply depending on the circumstances:
1. The gemara (Shabbos 29b) states that one may extinguish a flame on shabbos in order to allow a dangerously sick person to sleep. Chazal would never allow violation of a biblical prohibition of shabbos for anything short of a life threatening situation. Apparently, when somebody is sick, Chazal viewed their need to sleep as critical. It may logically be suggested that one who wakes up a sick person who needs their rest has violated the prohibition of putting them in mortal danger.

¹³ For a complete treatment of the prohibition of *geneivas da'as* see my article at www.bknw.org

¹⁴ Rabbi Vosner concedes that a passage in Maseches Berachos (6b) seems to contradict this rule. The gemara relates a passuk that speaks of stealing from the poor, to the crime of not offering a proper greeting. Apparently the gemara had no problem associating “*gezel*” with the withholding of benefit from somebody else, and does not limit “*gezel*” to physically taking something that doesn’t belong to you.

2. In a more general sense, the Torah commands that one “love a fellow Jew like they love themselves” (Vayikra 19:18), or in the words of Hillel “that which you dislike do not do to your friend” (Shabbos 31a).¹⁵ Since nobody likes for their own sleep to be disturbed prematurely, these simple laws *bein adam l'chaveiro* demand that we refrain from doing the same to others.¹⁶

C. Circumstances when it may be permissible.

1. Tzadikim. Rabbi Klein suggests that since Chazal (Sanhedrin 71b) state that when the righteous sleep, it is bad for them (and bad for the world) but when the wicked sleep it is good for them (and good for the world), one may not wake up a wicked person but may wake up a righteous person. After all, by waking up the righteous he is doing them a great favor because sleep is bad for them and for the entire world. This assessment seems lacking. While *excessive* sleep is not good for the righteous, and *excessive* sleep is good for the wicked, all human beings need to sleep. In fact, the righteous man who vows not to sleep for a period of three days is said to have vowed the impossible (Nedarim 13a, Shach Yoreh Deah 213:5). The righteous person is trusted to determine what amount of sleep is necessary for him, and what is excessive. Therefore, one may not wake up a tzadik who feels that he needs to rest at a given moment. That is why Rav Nachman and Rabbah gave specific instructions that they not be woken up for anything short of the biblical commandment of reciting the first verse of *shema*. Rabbi Klein expresses confusion over how God can give the wisdom to the rooster to wake people up each morning, if doing so is considered stealing. It seems that the resolution to this difficulty is obvious in light of our analysis. When it is time to wake up there is no violation in waking a person up. It is only problematic when the person is justifiably sleeping.
2. Sounds of Torah. Very often, one who learns torah finds it easier to focus when learning out loud, rather than learning silently. Indeed, the gemara (Eruvin 54a) records an episode when Beruriah (R' Meir's wife) chastised a student who was learning torah quietly, and informed him that torah should be learned in a way that involves one's entire body. The gemara (ibid.) also tells of a student who learned torah quietly and forgot all of his learning after only three years. The gemara (Megilla 32a) further relates one who learns without using a tune to one who views the torah as

¹⁵ Rav Chaim Kanievsky (Derech Sichah page 368) explicitly states that the term גזל שינה was invented by the בעלי המוסר, and the real prohibition is one of לרעהו כבוד. It follows, he argues, that if the person who is sleeping is obligated to do a chessed (the particular case in question was one where a student was locked in a classroom and the only person with a key was in middle of a nap), one may wake the person up to perform the חסד.

¹⁶ The idea that it is not nice to wake a person up from his sleep is both intuitive and documented in the gemara. The Gemara (Kiddushin 31a) records the well known story of דמא בן נתינה who was a gentile who refused to wake up his sleeping father, even though doing so would have been a financial boon for him. While the context of the story is to demonstrate this gentile's fantastic dedication to אב ואם, the story implies that it is generally not very nice to wake people up.

something that is “not good”.¹⁷ The question arises whether one may learn torah at night in such a way that it will keep people who are trying to sleep awake:

- a. Rabbi Vosner (Shevet Halevi VII:224) writes that it is absolutely forbidden for a person to keep others awake, even with the sounds of his own learning. While learning may be enhanced by saying the words out loud, it is certainly possible to say them loud enough to enhance concentration while not saying them so loud as to disturb those who are sleeping.
 - b. Rabbi Menashe Klein (Mishnah Halachos XIV:200), on the other hand, argues that one who is learning torah is entitled to learn as loudly as he pleases, even if it means keeping neighbors awake. He points to a gemara (Eruvin 18b) that says that any home where the sounds of torah can be heard at night will never be destroyed. Rashi (ad.loc.) explains that at night the sounds can be heard from a great distance because the streets are generally quiet, and the sounds of torah heard at that time reflect that this home has not forsaken God. Conversely, the gemara (Sanhedrin 92a) states that any home where sounds of torah cannot be heard at night will ultimately be consumed by a fire, again implying that sounds of torah may emanate from the home through the streets, even in the dead of night. Even Rabbi Klein, though, does agree that people should not purposely learn louder at night just to make sure that their voices are being heard. It is only permissible, and indeed encouraged, to learn at night in the way that one would normally learn, without having to worry about keeping their voices down to allow others to sleep.
 - i. It should be noted that one can take issue with Rabbi Klein’s position. All of his proofs revolve around the fact that learning torah at night is considered to be a positive thing, and that the sounds of torah should emanate from one’s home at night. However, as we have already explained, learning torah all night long is discouraged, as it is necessary for one to rest his body by getting a healthy amount of sleep. It is very likely that the Talmudic passages regarding the sounds of torah being learned at night, refer specifically to those hours of the night that most people are awake, though not out in the streets. At the hour that most are asleep, it may indeed be forbidden to keep them awake, even with something as beautiful as the sounds of torah.
3. Sounds of children learning torah. The gemara (Baba Basra 20b) and the Shulchan Aruch (Choshen Mishpat 156:3) rule that, since the times that R’ Yehoshua ben Gamla instituted the communal requirement of hosting

¹⁷ Interestingly, Tosafot assume that the requirement to put the mishnayos to a tune relates to the fact that they had to memorize all of the mishnayos, and it is certainly easier to memorize a song. In our times, when memorization is not as critical, there may no longer exist a requirement to learn with a tune.

schools, one may teach children torah in his home, even in a residential area. The neighbors are not entitled to stop him from teaching on the grounds that the noise made by the children disturbs their sleep.

- c. Based on this passage, Rabbi Klein rules that one may teach children through all hours of the night, with no regard for those who are trying to sleep.¹⁸
- d. Rabbi Wosner (Shevet Halevi VII:224) rules that one may only teach children in his home for part of the night, but may certainly not allow children in his home to keep neighbors awake through all hours of the night. This ruling is based on the fact that the suggested time to teach children torah is “all day, and a portion of the night” (Shulchan Aruch Yoreh Deah 245:11). One is only entitled to keep neighbors awake in order to teach the children on a normal learning schedule, but not through teaching during abnormal hours of the night.¹⁹

V. **The obligation of one who is sleeping to perform mitzvos.** Perhaps the most fascinating academic element of one who is sleeping, is trying to determine his halachic status. On the one hand a person who is sleeping has reduced awareness of his environment and would seem to be comparable to a dead person (the navi Yirmiyahu 51:39 refers to death as “eternal sleep”) who is exempt from all mitzvos (Nidda 61b). On the other hand, the sleeping person is simply recharging his energy and can dictate the conditions around which he goes to sleep, and may therefore retain some level of obligation in mitzvos. There are many halachic ramifications to determining the exact halachic status of a person who is sleeping, ranging from his culpability for sins committed while sleeping to his obligation to awaken himself in order to perform mitzvos (e.g. waking up on time for minyan). In this section we will discuss various cases, briefly outline how the poskim have approached each one, and elaborate on Rav Shlomo Zalman Auerbach’s comprehensive approach to this issue. In some cases the poskim unanimously assume that the sleeping person does not have the full status of a person who is awake, in some cases they unanimously assume that he is comparable to a person who is awake, and in other cases there is some controversy as to his exact status.

- A. Cases where the sleeping person is unanimously considered excluded from obligations of a person who is awake.
 1. The Shulchan Aruch (Even Ha’ezer 138:3) rules that if a man places a *get* into his wife’s hand while she is sleeping, the *get* is ineffective, unless after she woke up he tells her “this is your *get*”. Apparently the

¹⁸ It would seem, though, that when there are sick people in the neighborhood whose sleep is going to be disturbed, all would agree that the children have to keep their voices down, because Chazal view disturbing the sleep of a sick person to be on par with pikuach nefesh. Rabbi Wosner points out that when one lives in close quarters (apartment building) he can never know if there is a sick person whose sleep is being disturbed, and he must therefore act with great caution.

¹⁹ Even during those hours that one is permitted to teach during the night, the teacher should be careful to keep it as quiet as possible. When Chazal say that the neighbors have no right to complain about the noise, they are merely recognizing that it is impossible for children to learn without making noise.

- divorce cannot be effective on a woman when she is sleeping because she must be in a state of complete consciousness to become divorced.²⁰
2. The gemara (Kerisos 11a) rules that one who committed a sin of arayos (sexual immorality) while sleeping is not held accountable for his/her actions. This ruling is codified by the Rambam (Issurei Biah 1:18).
- B. Cases where the sleeping person is unanimously considered to be the same as a person who is awake.
1. The Mishnah (Baba Kama 26a) rules that a person who damages while he is asleep is obligated to pay for the damages caused.²¹ This halacha is codified in Shulchan Aruch (Choshen Mishpat 421:3).
 2. The Mishnah (Baba Kama 86b) rules that somebody who embarrasses a sleeping person is obligated to pay for the humiliation caused, though a sleeping person who embarrasses somebody else is exempt from paying for the humiliation caused.
 - a. It would seem that the common link between both of these cases is that there is a victim to the actions of the sleeping person. While one can argue that a sleeping person is not obligated in mitzvos at all, the loss to the victim cannot go ignored.
- C. Cases where the poskim debate the status of a sleeping person
1. The Shulchan Aruch (Orach Chaim 55:6) rules that a sleeping person, much like a person who is in the middle of davening and is therefore unable to answer, can count toward a minyan for davening.²² The commentaries are divided in their attitude toward this ruling of the Shulchan Aruch.²³
 - a. Magen Avraham (55:8) accepts the ruling of the Shulchan Aruch to allow a sleeping person to count toward a minyan. He cites those who believed that three or four sleeping people can also count toward a minyan, so long as the majority of the minyan is

²⁰ It would seem that this halacha does not prove that a sleeping person is considered to be excluded from mitzvos in general because for a woman to receive a “get” there is a specific requirement that she consciously look after the “get” to protect it (mishtameres m’da’ata), which a sleeping person is obviously incapable of doing.

²¹ Rashba cites a passage in Talmud Yerushalmi that states that if a person was sleeping and then another person went to sleep next to him, and was damaged by the first sleeper, the first person is exempt from paying for damages because the second person is said to be at fault. The exact reason that the first person is exempt seems to be the subject of dispute between the Talmud Yerushalmi which maintains that the blame falls squarely on the second person, and the Tosafos (Baba Kama 27b) who say that he is exempt because the situation is completely out of his control.

²² See Mishnah Berurah (55:33) that the same would apply to a minyan for birchas hamazon, and perhaps for kerias hatorah and nesias kapayim. However, with regard to kerias hamegillah, a sleeping person would certainly not count toward a minyan because the very basis for requiring a minyan for kerias hamegillah is to fulfill the idea of pirsumei nissa (publicizing the miracle), which can only be done with a minyan of people who are awake.

²³ One of the difficulties with the Shulchan Aruch is that the Shulchan Aruch himself (Orach Chaim 124:4) rules that if any fewer than nine people are paying careful attention, the berachos are “close to being wasted”, strongly implying that a sleeping person should not count toward a minyan. The Derisha (Orach Chaim 124) writes that the Shulchan Aruch does not mean that the berachos are completely wasted when fewer than nine people are paying attention, but that the situation is less than ideal.

awake. He rejects this approach on the grounds that the primary reason to count a sleeping person to a minyan is the allowance to count a baby toward a minyan,²⁴ and nobody would suggest that multiple babies may be counted toward a minyan.

- b. The Taz (55:4) rejects this ruling. He points out that all of the potential sources that permit a sleeping person to count toward a minyan are questionable.
 - i. First the Beis Yosef quotes his rebbi, the Mahri BeiRav, who derives this halacha from the fact that a person who is in the middle of reciting shemona esrei can count toward a minyan. The Taz points out that the comparison is faulty. After all, a person who is in the middle of davening can stand silently and listen to kedusha, thereby being included through the vehicle of “shomei’a k’oneh” (hearing is like speaking). A sleeping person, on the other hand, cannot listen and therefore cannot participate on any level.
 - ii. Alternatively, the Beis Yosef cites the Agudah who views the opinion in the gemara that a young baby can count toward a minyan as a precedent to allow a sleeping person to count toward a minyan. This comparison, the Taz points out, is even more troubling for multiple reasons. First, we don’t pasken like the opinion that counts a child toward a minyan. Second, even those rishonim who did pasken this way in theory, refrained from paskening this way in practice. Third, a child may be in a better position to count toward a minyan than a sleeping person because a child has kedusha while a sleeping person is consumed by tumah.²⁵ Finally, while there is no remedy for youth we can awaken the sleeper. Thus, there is no reason to allow him to sleep and count him toward a minyan while sleeping.
 - iii. The Beis Yosef also suggests that counting sleeping people for a minyan can be derived from the common custom of allowing people who are talking about other things to count toward a minyan. The Taz finds this source wanting. First, the Taz rejects the notion that people who are talking can count toward a minyan. Second, even if they count toward a minyan, we should never extrapolate halachic rules from “stupid people whose sin is very great”.
- c. After citing both opinions, the Mishnah Berurah (55:34) rules that one should wake up a person who is sleeping to help make a minyan, at least to the point that he is no longer in a deep slumber, but is only dozing. In the Biur Halacha, he remains uncertain if one

²⁴ Although we do not allow a baby to count toward a minyan, that is only because the shechinah only resides on a quorum of people past bar mitzvah.

²⁵ Encyclopedia Talmudit (volume XXVI page 175 note 36) cites Responsa Zachor L’Avraham who argues that *tumah* and *hashra’as ha’shechinah* are not mutually exclusive.

can rely on the sleeping person in an instance where it would be impossible to wake him up.

D. Rav Shlomo Zalman Auerbach's understanding the halachic status of a person who is sleeping. Rav Shlomo Zalman Auerbach (Halichos Shlomo, Tefilla, Miluim #12) writes that it is obvious that while a person is sleeping he has no obligation to do any mitzvos, including shema and davening, because he is considered like a mentally disabled person ("shoteh").²⁶ This exemption from mitzvos, in Rav Auerbach's view, includes both מצוות עשה (positive commandments) and מצוות לא תעשה (negative commandments). Rabbi Auerbach cites many sources, some which seem to contradict his thesis, and others that seem to support his thesis:²⁷

1. Sources to contradict Rav Auerbach's thesis:

- a. The gemara (Berachos 13b) explicitly states that one should be awakened in order to recite the first passuk of shema. The clear implication is that although one is currently sleeping, he remains obligated in the mitzvah of קריאת שמע and must therefore be woken up to perform this mitzvah. Rabbi Auerbach deflects this proof by pointing out that Rashi explains that the person in question was not in a complete sleep, but was merely dozing, and is therefore still obligated in mitzvos.²⁸
- b. The gemara (Gittin 70b) discusses a case of one who commanded to write and give a get to his wife and then becomes mentally ill. Reish Lakish rules that the get can be given while the husband is ill because it is similar to a sleeping person on whose behalf a "get" can certainly be given. R' Yochanan, on the other hand, compares the person who is ill to a shoteh and therefore rules that the "get" cannot be given on his behalf. What emerges from this dispute is that a sleeping person does not have the status of a shoteh. Furthermore, the Beis Shmuel (Even Haezer 121:3) cites the Tur that we pasken like R' Yochanan that if the get is given while he is ill it is ineffective on a biblical level.

²⁶ See Derech Sichah page 368 where it is reported that Rav Chaim Kanievsky ruled that a person who is sleeping is obligated to perform acts of סדר that only he is capable of performing, and he may be woken up to do this סדר. Clearly, Rav Kanievsky does not accept Rav Auerbach's opinion that a sleeping person is exempt from all mitzvos. In fact, Encyclopedia Talmudit (volume XXVI page 174 footnote 33) argues that even Rabbi Auerbach does not mean to consider the sleeping person as a full fledged *shoteh*, as even Rabbi Auerbach agrees that one who knows that he will be removed from a Sukkah should not go to sleep in the Sukkah. If somebody knew that they would become a *shoteh* and would be removed from the Sukkah while a *shoteh*, it is obvious that he may sleep in the Sukkah.

²⁷ The reader should note that some of the sources we will cite are either Talmudic sources or rishonim, and therefore must be given more credence than those that are rulings of acharonim.

²⁸ It is interesting to note that the Shulchan Aruch (Orach Chaim 63:5), when he codifies this halacha, uses the term ישן, which usually connoted a complete sleep. However, at the end of the sentence he writes that the person need not be woken up for the rest of shema because he can read that part while he is מתנתנם (dozing). Obviously if the alternative to waking him up is to have him say shema while dozing, the level of sleep that we are speaking of is not a true sleep.

Nevertheless if given while sleeping it is clear from the gemara that R' Yochanan would agree it is effective, further indicating that a sleeping person is not considered to be a “shoteh” who is exempt from all mitzvos.²⁹

- c. The Rosh (Berachos 1:13) writes that the reason we do not recite a beracha of לישב בסוכה when we sleep in the sukkah is that prior to falling asleep a person has no guarantee that he will be able to sleep (and the beracha may become a ברכה לבטלה), and once he is sleeping the person is unable to recite the beracha. The implication of the Rosh is that if it were possible to recite the beracha while sleeping, one would do so – a clear indication that while sleeping one is in fulfillment of a mitzvah. Rabbi Auerbach deflects this question by suggesting that the Rosh was not referring to one is already fast asleep, but one who is beginning to doze. At that early stage he is still obligated in mitzvos, but due to some level of consciousness he is unable to recite a beracha.
- d. Tosafos (Sanhedrin 47a d.h. “eima”) asks why we don’t disqualify a korban whose owner had fallen asleep between the designation and sacrificing of the korban. After all, Tosafos ask, if a person became mentally disabled (“shoteh”) after designating the korban, even if he regains his faculties prior to bringing the korban, the korban is disqualified (כיון דאידיחי אידיחי)? Why should the sleeping person be any different than the shoteh? Tosafos explain that since the person will ultimately wake up we do not view the time spent sleeping as a “dechiyah” (temporary disqualification) of the korban. Apparently, in the view of Tosafos, the sleeping person is not considered to be a shoteh who is completely exempt from mitzvos. Rav Auerbach, however, explains that even Tosafos consider a sleeping person to be a complete “shoteh”, but since his condition is both temporary and quite natural, the korban is not said to have been “pushed away”.
- e. The Rama (Yoreh Deah 372:1) rules that if a kohein is sleeping in a house when a person dies in the house, one must wake up the kohein so that he can leave the house. The clear implication is that a person can be in violation of the prohibition of becoming tamei to a dead body even when he is sleeping. Rabbi Auerbach is reported to have deflected this question by asserting that there is in fact no prohibition for the kohein to remain in the house with the dead person while sleeping. When he stays, however, he is clearly contracting continued tumah (as even an inanimate object contracts tumah by being in the same room as the dead person). The

²⁹ I thank my brother, Rav Avi Lebowitz for bringing this source to my attention. It is unclear how Rav Auerbach would respond to this proof.

reason we are required to wake him up does not relate to any prohibition that he is violating, as much as it relates to God's desire that kohanim not become tamei. While sleeping, he is not violating any formal prohibition but is clearly becoming tamei, in violation of the will of God.³⁰

- f. The Sha'arei Teshuvah (Orach Chaim 639) cites the Birkei Yosef that when brothers or partners share a Sukkah that does not have enough room for both of them at the same time, they should alternate nights sleeping in the Sukkah, or (if they want to be extra strict) each sleep half of the night in the sukkah. If, as Rabbi Auerbach suggests, a sleeping person is completely exempt from mitzvos, the Birkei Yosef should have suggested that after one person falls asleep the other person can simply remove him from the Sukkah. Rabbi Auerbach argues that the Birkei Yosef never makes such a suggestion because one cannot go to sleep in a Sukkah knowing in advance that he will be removed. Although a sleeping person is not obligated in mitzvos, one cannot go to sleep in order to put himself in a position to avoid the prohibition.
- g. Rabbi Yehoshua Leib Diskin (commentary to Torah, Parshas Emor) writes that somebody who was sleeping before Sukkos started must be woken up upon the arrival of the Yom Tov so that he not violate the prohibition of sleeping outside of a Sukkah. The implication is that even though the person is sleeping, he is obligated in the mitzvah of Sukkah and will be considered in violation of the prohibition of sleeping outside of the Sukkah even though he went to sleep at a permissible time. Rabbi Auerbach may argue that Rabbi Diskin is not in disagreement with him on the fundamental point that a sleeping person is exempt from mitzvos. Rabbi Diskin merely penalizes a person who knows that the Yom Tov will begin soon and puts himself in a position to avoid becoming obligated in the mitzvah. Perhaps the knowledge that Sukkos will soon start should have prevented the person from going to sleep in the first place, and his failure to consider the coming Yom Tov warrants waking him up when Yom Tov arrives.

2. Sources to support Rabbi Auerbach's thesis:

³⁰ Rabbi Auerbach is said to have proven this idea based on the halacha that one may not bring a kohein who is under bar mitzvah into a cemetery. While the child is certainly not in violation of any prohibition, the fact that he is becoming tamei is viewed as problematic because the will of God is for kohanim to remain tahor. This analysis is most curious in light of the explicit prohibition to cause a child of any age to violate a prohibition (Yevamos 117a). It would seem that the reason that one cannot bring the child into the cemetery is not due to the child, but due to the prohibition for an adult to cause a child to do a prohibited act, a consideration that clearly does not apply to the case of waking a sleeping kohein.

- a. As we previously noted, the Talmud Yerushalmi (cited in Tosafot to Baba Kama 4a d.h. “kivan”) rules that when a person puts items near a sleeping person who proceeds to break those items in his sleep, the sleeping person is exempt from paying damages. The reason for the exemption seems to be that one is simply not responsible for his actions while sleeping.³¹
- b. Both Rashi and Avos d’Rabi Nasan explain that the reason the mishnah (Avos 3:3) is so critical of morning time naps because such naps are likely to cause a person to miss קריאת שמע. Rabbi Auerbach points out that the mishnah stops short of forbidding morning naps because one is in fact exempt from שמע while sleeping, but the mishnah criticizes one who does something to avoid the obligation to recite קריאת שמע.
- c. Rav Yehoshua Leib Diskin (Responsa Maharil Diskin, Kuntros Acharon #97) notes that the Mishnah (Sukkah 1:6) specifies that while one may have a board that is four tefachim wide on top of his sukkah, he may not sleep under the board. The Tosafos Yom Tov (ad. Loc.) notes that the mishnah could have just as easily said that one may not *eat* while sitting under the board. Why then does the mishnah choose to specify that one should not *sleep* under the board? Rav Diskin explains that one may have thought that one cannot even sleep *near* the board, lest he turn over in middle of his sleep, and wind up under the board. Therefore the Mishnah specifies that one is only prohibited from going to sleep directly under the board. If one went to sleep in a kosher Sukkah, though, and moved in his sleep to a place where the Sukkah is not kosher, has not violated any halacha. Those actions that a person does while sleeping are inconsequential as he is completely exempt from mitzvos while sleeping.
- d. Rav Yakov Emden goes so far as to say that one who cohabits with a woman while he is sleeping, and has a child, has not fulfilled his mitzvah of פרו ורבו³² because while he is

³¹ Although the Mishnah rules that if the items were there before he went to sleep, the person would in fact be obligated to pay, it would seem that the obligation is incurred due to the negligence of going to sleep near items that he knew full well he may break while sleeping. Thus, the obligation is for going to sleep in that location rather than for what he did once asleep. Similarly, Chasam Sofer (Responsa Choshen Mishpat #184) discusses a case of a woman who fell asleep while nursing her baby, and woke up to discover that the baby had died (likely because the mother crushed the baby). The Chasam Sofer writes that if the mother went to sleep realizing that the baby was next to her, she is negligent and requires a severe level of teshuva. If, however, the mother fell asleep while nursing, and never intended to leave the baby in bed with her, the mother is not held accountable. The Chasam Sofer relates this case to a doctor who in treating a patient accidentally kills the patient while trying to help.

³² This ruling is very troubling in light of the opinion of R’ Yochanan (Yevamos 62a) that one can fulfill *pru u’rvu* even if he had children as a non-Jew (prior to converting). Apparently one only needs to have children in this world who are halachically related to him, but the method through which those children

sleeping he is not considered to be obligated in mitzvos at all (Sheilas Ya'avetz II:97).³³

- e. Similarly the שו"ת ה"א סימן יא) פרי יצהק rules that one who is sleeping while wearing tefillin is not in violation of having a תפילין היסח הדעת in his תפילין because he is simply not obligated in the mitzvah at all, and is not considered to even be wearing tefillin.
3. Practical applications of Rabbi Auerbach's thesis:
- a. If one were sleeping and he was wearing a four cornered garment without any tzitzis, there would be no reason to wake him up and tell him to remove the garment, because at the time that he is sleeping he is not in violation of the prohibition of wearing a four cornered garment without tzitzis.
 - b. If one were sleeping in the sukkah, in Rabbi Auerbach's analysis, there would be no prohibition to remove him while sleeping from the sukkah, so long as he did not plan on being removed initially before going to sleep. There is similarly no reason to wake up a person who is sleeping outside of a sukkah.³⁴
 - c. Similarly, if one were sleeping, and the time for davening or shema arrived, one would not be obligated to wake them up. The sleeping person is simply not obligated in those mitzvos. However, Rabbi Auerbach points out, one should wake the person up in order to provide him with the opportunity to fulfill the mitzvah. In short, while he will not be faulted for neglecting the mitzvah, the sleeping person certainly does not get credit for doing the mitzvah. For that alone, it is worthwhile to wake him up.
 - d. While Rabbi Auerbach does not explicitly discuss this case, it would seem that one should not go to sleep in an empty house, knowing that while he is asleep he will be alone with a woman (in violation of yichud). While a sleeping person is not in violation of any prohibition, going to sleep with the plan of being in a prohibited situation is certainly not

were conceived is irrelevant. See Beis Shmuel (Even Ha'Ezer 1:10) that even if a woman were artificially inseminated the father would fulfill the requirement of *pru u'rvu*. See also *Minchas Chinuch* (1) who writes that the mitzvah is not to conceive children, but to be in a state where one has children.

³³ This would seem to have major ramifications to the question of a person receiving a *bris milah* while under anesthesia. See Responsa Siridei Eish (II:62), Yabia Omer (V:Yoreh Deah:22), and Shevet Halevi (V:147:2).

³⁴ Though one may have argued that it is worthwhile to wake him up so that he can get the mitzvah of sleeping in the sukkah, Rabbi Auerbach suggests that there is not mitzvah to sleep in the sukkah, just a prohibition to sleep outside of the sukkah. As such, while he is sleeping he is not violating any prohibition, and there would be no reason to wake him up. Though the Ben Ish Chai (I:Ha'azinu:8) suggests that one must wake up a person who is sleeping outside of the sukkah, his language implies that he is referring to somebody who is dozing rather than sleeping, and is therefore still obligated in mitzvos.

permitted. Furthermore, if the man wakes up while still in the yichud situation he will be required to remedy the yichud problem immediately.

- e. Responsa Salmas Chaim (#226) rules that one should wake up a friend who is either sleeping on his stomach or back, as these positions are in violation of the gemara (Berachos 13b). According to Rabbi Auerbach, however, it would seem clear that there is no reason to wake the person because the prohibition can only apply to how he goes to sleep. Once asleep he is exempt from all requirements and limitations.
- E. An alternate approach. It may be argued that a sleeping person is not considered like a *shoteh* who has no obligation in *mitzvos*, but like an *ones* who is exempt due to circumstances beyond his control. The difference between the two can be explained as follows: A *shoteh* is simply not an intelligent person and therefore never has any relationship with a mitzvah. An *ones* on the other hand, may be included in the general obligation of mitzvos, but is exempt because practically he can't be held accountable. A simple practical example of where these two analyses diverge is one who went to sleep knowing that he would miss out on a mitzvah as a result of his sleep. If the sleeping person were considered a *shoteh* he cannot be held accountable. If, however, he were considered an *ones*, this would be an example of "starting off negligent, but finishing with an accident beyond his control", and he may be held accountable for his failure to set up a system by which he can be woken up in time for the mitzvah.³⁵

³⁵ Email correspondence with Rav Ahron Silver. See Asvun D'oraysa (#13) who discusses whether an *ones* is not obligated at all or is obligated but cannot be held accountable due to his situation. See also Rashi and Rabeinu Tam in Zevachim 22b.