

Fulfilling A Mitzvah When It Isn't a Mitzvah

Rabbi Chaim Yaakov Rottenberg (1909-1990) served as the Chief Rabbi of the Chareidi community in Paris, where he was instrumental in establishing Jewish education and creating kashruth standards. During the Holocaust, Rabbi Rottenberg reportedly defied the Nazi regime by building a sukkah while he was in concentration camp. He constructed a sukkah of some form prior to the onset of Sukkot, ate a *k'zayit* of bread — a minimum volume to fulfill the mitzvah but a relatively substantial amount in a concentration camp — and immediately dismantled the sukkah to avoid being caught by the Nazis and potentially be put to death. Rabbi Yitshak Zilberstein, an eminent rabbinic authority in Israel and son-in-law of the late Rabbi Shalom Yosef Elyashiv, discusses Rabbi Rottenberg's incredible sukkah, and records the perspective Rav Elyashiv shared with him.¹ The focus of those discussions is the questionable validity of a sukkah structure built under the conditions Rabbi Rottenberg faced. Due to its inherent lack of standing for any real period of time, and the environment of fear that existed resulting in the inability to properly “live” in the sukkah, are two factors that may invalidate the halakhic integrity of a sukkah. Rabbi Elyashiv is quoted by Rabbi Zilberstein as describing that Rabbi Rottenberg assembled the sukkah just before sunset at the beginning of Yom Tov



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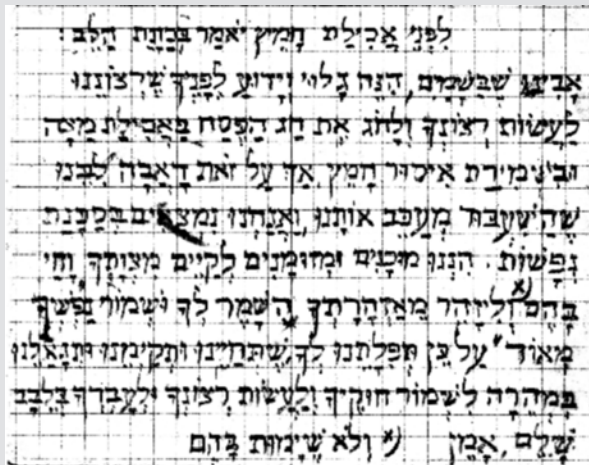
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and dismantled it immediately after nightfall, which, he felt, allowed the minimal environment necessary to fulfill the mitzvah without excessive fear. Their discussion also focuses on the appropriateness of constructing a sukkah with the clear intent to dismantle it during Yom Tov, which is normally a prohibited activity on Yom Tov.

What is not addressed specifically, though the issue is raised by Rabbi Zilberstein, is whether one can fulfill a mitzvah in a situation where one is categorically exempt. In particular, when the potential exists that attempting to fulfill a mitzvah may result in a threat to one's life, would proceeding with implementing the mitzvah be credited as a mitzvah? It is true that at times one is technically exempt from performing a certain mitzvah, yet one is definitely credited if one does so in spite of the exemption. The basic idea is that of “*aino metzuveh v'oseh*” — one who is not mandated to perform a mitzvah but does so voluntarily. The Talmud explicitly assigns reward for such a fulfillment.² Certain mitzvot which, for example, women are technically exempt from, are clearly credited

to a woman if she performs them.³ The situation of a potentially life-threatening consequence is, however, fundamentally different than simply being exempt. Rabbi Yosef Engel presents a difference of opinion regarding situations of “*annus*” where a person is unable to perform a mitzvah due to circumstances beyond his/her control.⁴ One example he refers to from the Talmud involves a man who was never circumcised due to his two elder brothers dying as a result of the circumcision procedure. That case, as Rabbi Dr. Lord Immanuel Jakobovits explains, refers to the genetic condition of hemophilia.⁵ Due to the potential complication of uncontrolled bleeding, this condition prevents a person from performing the mitzvah of *milah* due to the life-threatening consequences. The debate Rabbi Engel presents, based on a dispute between Rashi and Rabbeinu Tam, is whether for such an individual, the mitzvah of *milah* is non-existent or whether the mitzvah persists while the person is technically exempt from performing it. Rabbi Engel suggests that the first perspective is based in part on the notion that G-d only obligates

The Mitzvah to Eat Chametz on Pesach in Bergen Belsen



This prayer was compiled by Rabbi Yissachar-Bernard Davids who, prior to World War II, served as Chief Rabbi in Rotterdam, Holland. During the war, he and his family were transferred to the Bergen-Belsen concentration camp. On Pesach in Bergen-Belsen, Rabbi Davids instructed his fellow prisoners to eat chametz due to the Jewish principle of *pikuach nefesh*—the paramount rule that preserving life takes precedence above all other commandments. During the clandestine Pesach seder held at Bergen-Belsen, the rabbi recited the regular blessings for matza, but then added the above prayer for the specific situation.

אבינו שבשמים, הנה גלוי וידוע לפניך שרצוננו לעשות רצונך ולהג את חג הפסח באכילת מצה ובשמירת איסור חמץ, אך על זאת דאבה לבנו שהשעבוד מעכב אותנו ואנחנו נמצאים בסכנת נפשות. הננו מוכנים ומזומנים לקיים מצותך וחי בהם ולא שימות בהם' וליזהר מאזהרתך: "השמר לך ושמור נפשך מאד" (דב' ד:ט), על כן תפלתנו לך שתחינו ותקיימו ותגאלנו במהרה, לשמור חוקיך ולעשות רצונך ולעבדך בלבב שלם, אמן.

Heavenly Father, it is apparent to You that our will is to do Your will and to celebrate Passover by eating matzah and by refraining from chametz. But on this our hearts are distressed, because the oppression prevents us [from fulfilling these commandments] and we find our lives in danger. We are ready and willing to fulfill Your mandate that we 'live by the commandments and not die by them.' And we are observing Your warning: 'Protect yourself and sustain your soul greatly.' We therefore beseech You to keep us alive, sustain us and redeem us speedily, so that we may observe your statutes, carry out Your will and serve You wholeheartedly. Amen."

From Rabbi Kenneth Brander's Introduction to Torah To-Go, Pesach 5774.

individuals in mitzvot which are realistically possible to perform. If that pre-condition is absent, then G-d never directed that mitzvah to that individual in that situation. Interestingly, he suggests a difference between *mitzvot bein adam Lamakom* and *mitzvot bein adam lachaveiro*, where in the former G-d never has an interest in obligating the person if it is not feasible. Thus, according to this view, the mitzvah of *milah* in cases of potential life-threatening consequences does not exist as a mitzvah at all. In the latter, however, where the benefit of the mitzvah for another person can still be accomplished, the mitzvah exists, albeit with an exemption. The implication of this fundamental disagreement regarding *onnes* and mitzvot, posits Rabbi Engel, is that according to the first view, performing a mitzvah in a case of *annus* when one's life may be threatened, accomplishes and fulfills nothing as no mitzvah actually exists in the Torah for this person. It is as if a person performed some act that has no religious origin or significance. According to the second view, the performance of the mitzvah would be credited and can be of religious significance, in spite of the absolute exemption to do so in a potentially life-threatening situation.

As Rabbi Yair Hoffman writes in reference to Rabbi Rottenberg's act of courage in attempting to fulfill the mitzvah, "ours is not to question the dedication ... of those ... who gave their all to fulfill Hashem's mitzvos during those times..."⁶ That remarkable act does, however, serve as a basis from which to analyze the fulfillment of mitzvot under the potential of life-threatening conditions, several aspects of which Rabbi Hoffman himself addresses. One very practical application I wish to present involves fasting on Yom Kippur. It is not uncommon for an individual who is instructed by a physician to not fast on Yom Kippur to persist in fasting despite medical advice. Assuming that the medical restriction on fasting is based on a real potential for the person to develop a life-threatening complication, would fasting result in a fulfillment of the mitzvah on Yom Kippur? Rabbi Mosheh Shternbukh was asked by a person with some form of cardiac, or heart, condition whether he may fast on Yom Kippur that year.⁷ He explained that the year before he fasted just fine, in spite of being instructed by physicians to refrain from fasting. Rabbi Shternbukh describes that he emphatically and sensitively conveyed to this individual that eating/drinking on Yom Kippur to protect his life was itself a mitzvah of *pikuah nefesh*. He continued to explain in his responsum that the possibility of a life-

threatening complication does not have to have the potential to develop on Yom Kippur itself. If fasting may compromise the person's health to the extent that in the future — near or distant — the person's physiologic resilience may be weakened resulting in death sooner than otherwise might have been the case, then one should not fast this Yom Kippur. Rabbi Shternbukh presents the theology that just as it is G-d's will for people in general to fast on Yom Kippur, it is equally His will for certain individuals to not fast when a life-threatening complication may result. He goes so far as to suggest that for this individual, the mitzvah of eating/drinking on Yom Kippur in fulfilling the mitzvah of *pikuah nefesh* is greater and of higher value than the basic mitzvah of fasting on Yom Kippur.

Based on Rabbi Shternbukh's analysis, it seems that he sides with the first view presented by Rabbi Engel, and that for a person suffering from a significant heart condition, the mitzvah of fasting on Yom Kippur does not at all exist. Indeed, at the conclusion of his discussion, Rabbi Shternbukh refers to the opinion of rabbinic authorities that one who fasts on Yom Kippur against medical advice in a potential life-threatening situation, does not fulfill the mitzvah of fasting on Yom Kippur. However, it may be that Rabbi Shternbukh's rationale differs from that of Rabbi Engel. For Rabbi Engel, in such situations no mitzvah was ever intended by G-d through His Torah. Rabbi Shternbukh emphasizes a different point. The very presence of

the counter-mitzvah of *pikuah nefesh* is what supersedes, displaces and perhaps cancels the mitzvah of fasting. The mitzvah of fasting may exist a priori for this person at the onset of Yom Kippur, yet it is cancelled by the greater mitzvah of preserving life — *pikuah nefesh* — at the point on Yom Kippur that the person fulfills the mitzvah of *pikuah nefesh* by eating/drinking. It could be argued that until the point on Yom Kippur that the person eats/drinks he/she is in fulfillment of the mitzvah of fasting and is credited with that. According to the first view Rabbi Engel presents, there was never a mitzvah this particular year for this person to fast, and there isn't any fulfillment of fasting even prior to the point at which he/she eats/drinks.

The *Mishneh Brurah* records the definitive view of rabbinic authorities which seems to go even further than invalidating the mitzvah of fasting in potential life-threatening situations.⁸ The statement he quotes includes a strong criticism of those who should not fast on Yom Kippur but still do. The verse in Genesis, 9:5, "And I shall indeed demand your blood for your lives..." This suggests that fasting against medical advice is a violation of Torah law, and not simply neglect of the mitzvah of *pikuah nefesh*. It suggests that for such individuals, no mitzvah of fasting exists, and fasting would then be equivalent to endangering one's own life, which is a Torah prohibition. A fuller analysis of this perspective is required, but is not the focus of this article.

The mindset suggested by Rabbi Shternbukh regarding the greater value of eating on Yom Kippur to preserve life, should highlight for us how precious G-d and the Torah views our lives. Therefore, what we do with our lives, and how we treat others' lives is a cornerstone of our focus on Yom Kippur. In addition, Rabbi Rottenberg's amazing act of defiance, independent of its halakhic implications, expresses a profoundly meaningful perspective for this year's Sukkot celebration. It is incredibly remarkable that in a relatively short period of time since the end of the Holocaust, Judaism has flourished in so many ways, and that sitting in a sukkah this year should be experienced as a precious freedom that we have to be able to fulfill G-d's will.

Notes

1. Zilberstein, Yitshak. *Kav V'Naki*. Vol. 1. 2012. *Orah Haim*, Sections 199, 200.
2. *Kiddushin* 31a.
3. Cf. *Shulhan Arukh* and Rama, *Orah Haim*, 17:2, 589:6.
4. Engel, Yosef, *Atvan D'Oreyta*, Principle 13.
5. Jakobovits, Immanuel. *Jewish Medical Ethics*. Bloch Publishing Company, New York, 1975. pp.198-199.
6. Hoffman, Yair. *The 5 Towns Jewish Times*, September 28, 2012. Retrieved online at 5tjt.com.
7. Shternbukh, Mosheh. *Responsa Teshuvot V'Hanhagot, Volume 2, No. 291. Yerushalayim*, 1993.
8. *Mishneh Brurah* 618:5.

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