

Marrying Off

Excerpted and adapted from a *shiur* by Dayan Yitzhak Grossman

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https://baishavaad.org/wp-content/uploads/2022/09/DEV82_006_Ki_Seitzei_A_Name_for_his_Brother-Yibum_in_Modern_Times.mp3

If brothers reside together, and one of them dies having no son, the dead man's wife shall not marry an outsider...But if the man does not wish to take his brother's wife...Then his brother's wife shall approach him before the eyes of the elders and remove his shoe from his foot...

Devarim 25:5-9

The Torah makes it plain that *yibum* is preferred over *chalitzah*, but Chazal debate whether this remains the case in later times. According to Abba Shaul, people no longer perform *yibum* with the proper intent, rendering their *yibum* tantamount to an *ervah*. The Chachamim disagree, maintaining that *yibum* should still be performed, regardless of intent.

Rishonim disagree about the final halacha. According to many *Rishonim* (including the Rambam, Radbaz, Rashba, and Ran), *yibum* should still be done, in accordance with the Chachamim. But some prominent Ashkenazi *Rishonim* (including the Ba'alei Tosafos and the Mordechai) rule like Abba Shaul that *chalitzah* should be performed instead. The Shulchan Aruch cites the Chachamim as the primary opinion and Abba Shaul as a "*yeish omrim*." The Rama appears to hold that *chalitzah* is preferred, though he does not definitively forbid *yibum*.

Despite the Ashkenazi preference for *chalitzah*, *yibum* was sanctioned by Ashkenazi *poskim* in a number of cases. For example, the Shvus Yaakov writes that a man who is ineligible for *chalitzah* due to a deformity in his leg may do *yibum*, to prevent the woman from remaining an *agunah*. He explains that even if the man's intent is not purely for the mitzvah, *yibum* may be done if his intent is for the mitzvah together with other motives. In Eretz Yisrael, the Chief Rabbinate ruled that *yibum* should not be performed even by Sephardim. But R' Ovadia Yosef wrote that Sephardim there should continue to follow their minhag and practice *yibum*.