



The Zera Emes Project by Rabbi Moshe Hubner was created to honor and share the Torah of over 250 Gedolim who weren't zocheh to descendants of their own. Their legacy lives on through their words of Torah and emunah that continue to inspire and touch countless lives. By bringing their timeless divrei Torah and wisdom to life, we create a powerful connection to the past to help inspire today's generation.

For sponsorship opportunities or to sign up to the weekly newsletter, email weekly@zeraemes.com or visit www.zeraemes.com

Bechor and Yibum

The Torah teaches that when a man tragically passes away without any children, there is a mitzvah for the widow to marry one of his brothers, thereby ensuring continuity of the family line. If they do not marry there is an option of a *chalitza* ceremony too.

We know that regarding the 613 commandments, not everyone is obligated in all 613 commandments. Some apply only to kohanim, some to kings, others to farmers, and many only in Eretz Yisrael. Therefore, when the Torah (*Devarim* 25:6) states regarding the mitzvah of Yibum, "it shall be the first born..." we might assume that this mitzvah is limited to a firstborn brother. That would mean that if the deceased himself was a *bechor*, the mitzvah of Yibum would not apply!

However, this is not how to interpret these words. Rashi explains that "the first born" does not limit the obligation to the firstborn, rather, they establish an order of priority. It is the eldest of the surviving brothers who is first approached to fulfill the mitzvah. Should he decline, the Beis Din turns to the next brother in descending order of age. If all refuse, Beis Din returns to the eldest and places upon him the obligation: either marry her or perform the *chalitza*. See Yevamos 39a.

MARRIED BECHOR

What about when all of the factors are not equal? For example, when the oldest surviving brother is already married while a younger brother is single. The *cheirem* of Rabbeinu Gershom prohibits a man from simultaneously having two wives.

Did his decree apply even when the Torah commands the mitzvah of *yibum*? If so, would the married elder be disqualified from both *yibum* and *chalitza*, since *chalitza* is linked to the ability to marry the *yevamah*.

The Shulchan Aruch does not cite this ruling.

In 1866, the *Shoel Umeishiv* (1:1:69) was asked this question and in his answer, he quotes a Beis Shmuel who bases his ruling on a Ritva (cited in the Beis Yosef) that in this scenario the younger single brother is the ideal one to perform the ceremony. He adds that this is what he answered the "Tzadik *chasid*, Av Bes Din of Belz" when he was asked this same question, and "this is how in Belz they ruled [having the younger single brother perform the *chalitza* ceremony and not the older married one]."

There is another *teshuva* in the Shoel Umeishiv (3:1:284) where this question and answer is sent to a "Rav Yechiel Muntner, who was a Moreh Tzedek in Belz." There too the Shoel Umeishiv makes the same ruling, as well as elsewhere (3:1:348) – the younger single brother is preferable to the older married brother.

These aren't the only two *teshuvos* regarding a *chalitza* in Belz.

The Divrei Chaim (2:146; *Even Haezer* 176) received this same question from Rav Moshe Rokeach (the third son of the Sar Shalom of Belz). The Divrei Chaim takes a more stringent view; he warned that if the older married brother performs the *chalitza* ceremony – it may be a "disqualified

chalitza." Meaning it is not just ideal for the younger single brother to perform the ceremony but essential. See the footnotes to the newer versions of these *sefarim* that point out that this is not a universal opinion, and that many *poskim* rule that the married older brother should perform the *chalitza*.

SHMUEL SHMELKA ROKEACH

Historians debate whether these *teshuvos*, to the Shoel Umeishiv (one when he testifies what he answered the "Tzadik *chasid*, Av Bes Din of Belz" and the one to "Rav Yechiel Muntner, Moreh Tzedek in Belz.") and the Divrei Chaim (to Rav Moshe Rokeach), were regarding the same *yevamah*, and whether this can help us determine the details of another historical *chalitza* that occurred in Belz, within the family of the Belz rebbe.

Rav Shalom Rokeach (1783-1855), known as the Sar Shalom of Belz, was orphaned from his father, Rav Elazar at a young age. He named his *bechor*, Elazar, after his father. His second son was named Shmuel Shmelka, after the Sar Shalom's grandfather (father's father). His other sons were Moshe, Yehudah Zundel and his youngest, Yehoshua who eventually succeeded him as the second rebbe of Belz.

Sadly, the second son Shmuel Shmelka passed away young – after he was married – without any children. There is a legend that states that Malka the wife of the Sar Shalom asked her husband what she can dedicate to the shul in honor of her son's soul. And he responded that she had a very expensive

silk outfit that she should transform it into a *peroches* for the Aron Kodesh, and that he would give her the *kitel* of Rav Shmelka of Nikolsberg that he had in his possession for the inside lining of this *peroches*.

The question became whether the *bechor*, Elazar who was married, should perform the *chalitza* ceremony or whether Moshe who was single (possibly engaged) should perform the *chalitza* ceremony.

There are different accounts among historians of what occurred. Many sources (*Dover Shalom*, *Pier Vikavod* and *Eizar Eliyahu*) relate that the married *bechor*, Elazar, performed the *chalitza* ceremony. In the last source it states that the Beis Din consisted of the Divrei Chaim, Rav Shalom Kaminka and Rav Eliyahu Hershovsky.

However, other sources use the *teshuvos* to the Shoel Umeishiv, and the Divrei Chaim, as proof that Moshe (who wrote to the Divrei Chaim), the younger single brother performed the *chalitza* ceremony. These sources argue: how many such cases could there have been in Belz, with a married *bechor* and a younger unmarried brother?

FORENSIC HISTORIANS

How will the first accounts answer these *teshuvos*?

They wonder: If Rav Moshe Rokeach was asking the Divrei Chaim about whether *he* should perform the *chalitza* on his brother Shmuel Shmelka's widow, then he was

very young and the honorific titles given to him by the Divrei Chaim seem a bit much for an unmarried boy ("המאור הגדול חסידא" "ופריישא"). It seems more likely he was older and this was at a later date.

More so, if Rav Moshe was asking about whether he as a single brother should perform the *chalitza* before his married older brother, it had to be before 1833 when he married. They wonder whether the Sar Shalom, who was born in 1783, would send a question to the Shoel Umeishiv (born in 1808) who was 25 years younger than him? And they note that it is a question whether the Shoel Umeishiv was answering questions when he was just 25 years old.

As well, they note that Rav Moshe Rokeach had a son, Shmuel Shmelka, born in 1834. There is a *minhag* in Belz not to have two people alive named after the same person. If so, we might suggest that the *chalitza* of the Sar Shalom's son, Shmuel Shmelka, was before 1834. (If Rav Moshe performed the *chalitza* it might add to why he named a child after his deceased brother – which is part of the *yibum* process.) The Shoel Umeishiv responded to "Rav Yechiel Muntner, who was a Moreh Tzedek in Belz," but Rav Yechiel only first became a Moreh Tzedek in Belz in 1850!

Even if one can explain that Rav Moshe was not asking whether he should perform the *chalitza* but whether one of his single younger brother's should, it should be noted that the youngest son of the Sar Shalom

was married by 1842, which would mean he had no single children in 1850.

Thus, some conclude there must have been multiple *chalitza* cases in Belz involving a married elder and a single younger brother. Therefore, the married *bechor*, Elazar, performed the *chalitza* ceremony, and the later *teshuvos* ruled that such a *chalitza* should be performed by a single younger brother.

However, this approach too has flaws. If the same situation arose later, why would anyone from Belz send this question to the Shoel Umeishiv, and certainly why would Rav Moshe Rokeach (the third son of the Sar Shalom of Belz) send this question to the Divrei Chaim if they had a precedent from the *chalitza* performed on the *yevama* of Shmuel Shmelka, the son of the Sar Shalom of Belz?! They should have followed what was done then! After all, the *chalitza* ceremony was performed in the presence of the Divrei Chaim, Rav Shalom Kaminka and Rav Eliyahu Hershovsky, while the Sar Shalom was alive! Why would they need to ask this very question?!

EPILOGUE

There are great proofs to whether the *halachah* is that a married older brother should perform the *chalitza* or a younger single brother, as well as great Torah discussions created regarding who performed the *chalitza* ceremony on the *yevama* of Shmuel Shmelka, the son of the Sar Shalom of Belz, and that is *nachas* for the souls of these *niftarim*.

שואל ומטיב

Rav Yosef Shaul Halevi Nathanson (1808–27 Adar I, 1875) was from a wealthy family in Brezhan, Galicia. His father was a talmid chacham. His great-uncle was the wealthy and learned R' Yudel Nathanson. His grandfather was a leader in Brody. He also learned with his maternal grandfather, R' Dov Berish Heilperin, in Berzhan.

At 17 he married into the wealthy Ettinga family from Lemberg. His father-in-law, Rav Yitzchak Ahron (1827-1891), was the son-in-law of R' Mordechai Orenstein, the Rav of Lemberg (Lvov), who was succeeded by his son R' Yaakov, the Yeshuos Yaakov.

The Shoel Umeishiv learned with his brother-in-law R' Mordechai Ettinga (1804-1863). Together they published five sefarim and corresponded with the giants of the generation, such as R' Akiva Eiger, the Nesivos, R' Mordechai Banet, and the Chasam Sofer.

In 1857, he was appointed Rav in Lvov, a position that had been left empty since the passing of the Yeshuos Yaakov, his wife's uncle. On 26th Sivan of the same year, his Rebbetzin passed away. A year later, on 12 Adar, he married Rebbetzin Shifra Buna, and with her money he refused a wage from the community. The Shoel Umeishiv is one of the greatest poskim of his time, and the author of over 3000 teshuvahs on all subjects, besides works of Torah and Aggadah.