

מתני: בית שמאי אומרים: אין ממאנין אלא ארוסות, ובית הלל אומרים: ארוסות ונשואות.

בית שמאי אומרים: בבעל ולא ביבם, ובית הלל אומרים: בבעל וביבם.

בית שמאי אומרים: בפניו, ובית הלל אומרים: בפניו ושללא בפניו. בית שמאי אומרים: בבית דין, ובית הלל אומרים: בבית דין ושללא בבית דין.

אמרו להם בית הלל לבית שמאי: ממאנת והיא קטנה, אפילו ארבע וחמש פעמים. אמרו להם בית שמאי: אין בנות ישראל הפקר, אלא ממאנת וממתנת עד שתגדיל, ותמאן, ותנשא.

גמ': אמר רב יהודה אמר שמואל: מאי טעמא דבית שמאי – לפי שאין תנאי בנשואין, ואי נשואה תמאן אתי למימר: יש תנאי בנשואין.

נכנסה לחופה ולא נבעלה מאי איכא למימר? לפי שאין תנאי בחופה.

**MISHNA** The Sages decreed that in the case of a minor girl whose father died, her mother or brothers may marry her off. However, such a marriage does not have the same legal status as the marriage of an adult. Therefore, if the minor regrets having married, she is allowed to make a declaration of refusal to her husband, thereby annulling the marital bond. The Sages disagreed with regard to the details of this *halakha*: **Beit Shammai say: Only betrothed girls may refuse.**<sup>N</sup> A girl may refuse, upon reaching adulthood, to remain married to the man to whom her mother or brothers married her as a minor after the death of her father. **But Beit Hillel say that both betrothed and fully married girls may refuse.**<sup>H</sup>

**Beit Shammai say:** Refusal may be directed only at her husband and not at her *yavam*. In such a situation, she must perform *ḥalitzah* in order to dissolve the levirate bond. **But Beit Hillel say:** It may be directed at her husband or her *yavam*.<sup>H</sup>

**Beit Shammai say:** The refusal must take place specifically in the presence of the husband. **But Beit Hillel say:** It may take place either in his presence or in his absence. **Beit Shammai say:** The refusal must take place specifically in court. **But Beit Hillel say:** It may take place either in court, or not in court.

**Beit Hillel said to Beit Shammai:**<sup>N</sup> She may refuse as long as she is a minor, even four or five times if her relatives married her off again to another man after each refusal.<sup>H</sup> **Beit Shammai said to them:** The daughters of Israel are not to be treated with disregard and should not be passed from one man to another. **Rather, she refuses once. And then she must wait until she reaches majority, and refuse, and marry.**

**GEMARA** Rav Yehuda said that Shmuel said: **What is the reason of Beit Shammai for ruling that a married minor girl may not perform refusal? It is because there are no conditions with regard to marriage.**<sup>HN</sup> Although a betrothal can be conditional, the condition is nullified upon consummation of the marriage. Likewise, marriage cannot be conditional, as the sexual relationship is not subject to conditions. **And if a married minor girl would refuse, others may mistakenly think this to be a condition with regard to the marriage of an adult woman, and they will come to say that there can be a condition with regard to marriage.**

The Gemara asks: **But what is there to say if she entered the marriage canopy but did not yet engage in sexual intercourse? The marriage goes into effect even though it has not yet been consummated. The Gemara replies: There are no conditions with regard to a wedding canopy, i.e., the wedding ceremony.**

HALAKHA

**The process of refusal – דרך המיאון –** A minor girl who was married off by her mother or brothers may refuse that marriage, whether she is betrothed or fully married. The refusal may be made in the husband's absence, and it need not take place before the court. These *halakhot* are in accordance with the opinion of Beit Hillel (Rambam *Sefer Nashim, Hilkhoh Geirushin* 11:3; *Shulḥan Arukh, Even HaEzer* 155:4).

**Her husband or her *yavam* – בבעל וביבם:** A minor girl who performs refusal may do so with regard to a husband or a *yavam*, in accordance with the opinion of Beit Hillel (Rambam *Sefer Nashim, Hilkhoh Geirushin* 11:3; *Shulḥan Arukh, Even HaEzer* 155:5).

**She may refuse several times – מִמְאָנֶת כְּמָה פְּעָמִים –** A minor girl who refused one husband and was married off a second time may refuse her second husband as long as she remains a minor. She may even refuse several subsequent husbands, in accordance with the opinion of Beit Hillel (Rambam *Sefer Nashim, Hilkhoh Geirushin* 11:3; *Shulḥan Arukh, Even HaEzer* 155:6).

**There are no conditions with regard to marriage – אין תנאי בנשואין:** If a man married a woman, even if he set a condition with regard to the betrothal, it is presumed that he nullified the condition in his mind when he brought her under the marriage canopy or had sexual relations with her (Rambam *Sefer Nashim, Hilkhoh Ishut* 7:23; *Shulḥan Arukh, Even HaEzer* 38:35–36).

NOTES

**Only betrothed girls may refuse – אין ממאנין אלא ארוסות:** The early authorities (Rambam; *Tosefot HaRosh*) argue convincingly that Beit Shammai's limitation of refusal to betrothed girls applies only *ab initio*, but not after the fact. That is to say, according to Beit Shammai, the court does not address cases of refusal for married minor girls but if in practice a married minor refuses her husband without asking the court's permission, it is effective. The Meiri shows how the language of the mishna supports this interpretation as the phrase: May refuse, is in its masculine form, indicating that its subject is the members of the court rather than the girl.

**Beit Hillel said to Beit Shammai – אמרו להם בית הלל לבית שמאי:** The commentaries note that framing Beit Hillel's statement as a response to Beit Shammai seems out of place here,

as Beit Hillel do not offer any argument against Beit Shammai. *Tosefot Yom Tov* explains that since the *tanna* of the mishna wished to teach why Beit Shammai reject Beit Hillel's opinion, he stated Beit Hillel's statement as though it were directed at Beit Shammai. The Meiri explains that the statement is connected to the previous dispute, in which Beit Shammai assert that one may only refuse in court. Beit Hillel respond that since the minor girl is allowed to refuse multiple times, it would seem frivolous to convene a court of experts several times. Beit Shammai then reply that according to their opinion, a minor is permitted to refuse only once.

**There are no conditions with regard to marriage – אין תנאי בנשואין:** *Tosafot* and other early commentaries find this matter challenging: It is stated explicitly elsewhere in the Gemara that

according to Shmuel, a condition with regard to marriage is valid. Some suggest emending the text to read Rav instead of Shmuel. Others argue that Shmuel holds that the *halakha* in this instance follows Beit Hillel, according to whom a condition with regard to marriage is valid (*Tosefot Had Mikamma'ei*). The Rashba concludes that the condition with regard to marriage referred to here is not the same as conditions in other contexts. Usually a condition pertains to a specific reason, such as one's monetary situation, or a condition that the woman does not have blemishes or has not taken any vows upon herself. In this case, however, the condition that is analogous to refusal is that of a man setting a condition that when he decides that he no longer wants to be married to his wife, the marriage will be retroactively nullified. Shmuel would agree that such a condition with regard to marriage is invalid.

A man would not readily render his sexual act licentious sexual intercourse – אין אדם עושה בעילתו בעילת זנות – If one betroths a woman with less than the worth of a *peruta* or with a borrowed item, the betrothal is invalid. If he then has sexual relations with her such that witnesses can testify to that effect, she requires a bill of divorce from him, as it is assumed that the sexual act was for the intention of betrothal. This is due to the legal presumption that an upright Jewish man would not readily render his sexual act a licentious one (*Rambam Sefer Nashim, Hilkhot Ishut 7:23*).

מסר האב לשלוחי הבעל מאי איכא למימר? לא פלוג רבנן.

The Gemara asks further: **But what is there to say if the father delivered his daughter to the agents of the husband to be married, so that she was considered married even before the marriage ceremony took place?** The Gemara answers: **The Sages did not distinguish** between different circumstances, and no marriages are conditional. It follows that refusal cannot take place once a minor girl is married.

ובית הלל: מידע ידעי דנישואי קטנה דרבנן נינהו. רבה ורב יוסף דאמרי תרויהו: טעמא דבית שמאי – לפי שאין אדם עושה בעילתו בעילת זנות.

And with regard to **Beit Hillel**, what is their reasoning? **It is known that marriage of a minor girl is by rabbinic law**, and therefore no one would confuse this type of marriage with an adult marriage. **Rabba and Rav Yosef both say: Beit Shammai's reason is that a man would not readily render his sexual act licentious sexual intercourse.**<sup>HN</sup> If he had intercourse with the minor girl and the marriage was later retroactively annulled by her refusal, then his sexual act was outside the context of marriage and is regarded as licentious.

נכנסה לחופה ולא נבעלה מאי איכא למימר? לא ניחא ליה דתיהוי חופה דאיסורא. מסר האב לשלוחי הבעל מאי איכא למימר? לא פלוג רבנן. ובית הלל: בין דאיכא קדושין וכתובה – לא אתו למימר דבעילתו בעילת זנות.

The Gemara asks: **What is there to say if she entered the marriage canopy but did not engage in sexual intercourse**, as this reason would not apply to such a case? The Gemara answers: **It would not be satisfactory for him**, i.e., the husband, if his would be a forbidden marriage canopy, because if the marriage is later annulled by her refusal, he will have stood under the marriage canopy with a woman who was not permitted to him. The Gemara asks: **What is there to say if the father delivered his daughter to the agents of the husband?** The Gemara answers: **The Sages did not distinguish** between different circumstances. **And how do Beit Hillel respond to Beit Shammai's reasoning? Since there is both betrothal and a marriage contract in this case, no one will come to say that his sexual act was licentious intercourse.** The primary reason Beit Shammai prohibit refusal after marriage is because it would render the sexual relationship of the marriage a licentious one. Beit Hillel do not regard sexual activity under such circumstances as licentious, so there is also no stigma attached to having stood under a wedding canopy with a girl who later refuses the marriage.

רב פפא אמר: טעמא דבית שמאי משום פירי, טעמא דבית הלל משום פירי. טעמא דבית שמאי משום פירי – דאי אמרה נשואה תמאן שמיט ואכיל להו מינה, דסוף סוף למיפק קיימא. ובית הלל: אדרבה, כעון דאמרת תמאן אשבוחי משבח להו, סבר דאי לא – עייצי לה קרוביה, ומפקי לה מיניה.

Rav Pappa said: **The reasoning for Beit Shammai's opinion is because of the profits from the property she brings into the marriage, and the reasoning for Beit Hillel's opinion is also because of the profits from her property.** He explains: **The reasoning for Beit Shammai's opinion is because of the profits from her property, for if you say that a married minor girl may perform refusal, then the husband of that minor might seize those profits from her and consume them,**<sup>N</sup> as ultimately she stands to leave him if she refuses him later. In the meantime, he will try to extract as much profit as he can. **And Beit Hillel say: On the contrary: Since you say she may refuse, he will seek to improve her property. He will think: if I do not do so, her relatives will advise her to refuse him and they will take her from him.**

NOTES

A man would not readily render his sexual act licentious sexual intercourse – אין אדם עושה בעילתו בעילת זנות – The Rambam phrases this statement slightly differently (see HALAKHA). He does not consider this statement to be a legal presumption that applies to all cases. Rather, it applies to an upstanding person with regard to whom there is no proof that he had licentious intentions when engaging in sexual relations. It is reasonable to assume that he would certainly want his sexual relationship to be permitted. It is noted in the Jerusalem Talmud that this reasoning is only according to Rabbi Eliezer's opinion that sexual relations between a single man and a single woman is considered licentious, implying that according to other *tanna'im*, such conduct is not considered licentious in the technical halakhic sense of the word.

שמיט ואכיל להו מינה – *Tosafot* explain that the concern is that perhaps the husband may take advantage of his young wife's assets even in ways that that are not normally permitted to a husband: While he is entitled to derive benefit from the profits, he may also attempt to consume the principal, to which he is not entitled. Some authorities say that in such an instance, the woman can sue the husband for these assets. The Rosh adds further that even if he is sued and ordered to pay, it is certainly inconvenient for the wife to be involved in such business affairs, particularly when it is difficult to prove the exact amount of damages (*Tosafot HaRosh*).

עלייהו קלא – עלייהו קלא – Publicity about them that they are married – **דאישות**: The woman benefits from this public knowledge for the same reason that the Sages created the institution of marriage of a minor girl: If she is known to be married she will not be treated dishonorably. The husband also enjoys an increase in social status as a married man.

**מאמר** – Levirate betrothal, which is consensual, etc. – **דמדעתה וכו'**: The Ritva explains that her consent to the levirate marriage can be nullified by her refusal, because as a minor she does not have full-fledged halakhic competence to give her consent in the first place. The levirate bond, which is not dependent on her consent, cannot be canceled by her verbal declaration.

But the consummation of the levirate bond may be against her will – **יהרי ביאה, דבעל כרחיה**: The early commentaries ask: Since the minor girl has the right to refuse him subsequent to the consummation of the levirate marriage, what is the source for thinking that he may effect that consummation against her will? Some say that this statement does not refer in particular to intercourse with the minor, but in general to intercourse with a *yevama*, who is required to submit to levirate marriage (Rashi). Others respond that if intercourse takes place against the girl's will, the levirate marriage will take effect even though she may then refuse him. Alternatively, it is possible that although the sexual act itself may have occurred against her will, the girl may still want this *yavam* as her husband in levirate marriage (Ritva).

The levirate bond, which the Merciful One imposes, etc. – **ויקה דרחמנא רמא וכו'**: The Ritva explains Rabbi Oshaya's statement as follows: The levirate bond is imposed upon a minor girl automatically with her husband's death and is not subject to annulment. The annulment would address her original marriage, but it cannot take effect because her husband is already dead and that marriage no longer exists.

At the time when she happens before her *yavam* she appears to be his father's daughter-in-law – **בשעת נפילה – נראית ככלתו**: The Ritva explains that people would not necessarily understand that the refusal nullifies the marriage with the deceased, and it therefore would seem to them that this man is marrying his daughter-in-law.

She may refuse his levirate betrothal and his levirate bond – **ממאנת למאמרו וליותו**: A minor girl may refuse a *yavam* regardless of whether he has performed levirate betrothal. Under such circumstances, she need not perform *halitza*. This *halakha* is in accordance with the opinion of Ulla (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:3; *Shulhan Arukh*, *Even HaEzer* 155:5).

A minor girl... who refuses a *yavam* is forbidden to his father – **מיאנה... ביבם אסורה לאביו**: It is prohibited for a girl who refuses a *yavam* in levirate marriage to marry his father, because she appears to be his son's bride, in accordance with the opinion of Rami bar Yehezkel. However, she is permitted to all other close relatives (Rambam). There are those who say that it is prohibited for her to marry other close relatives as well (Ramban and Rashba). This applies specifically to the close relatives of the deceased husband, but she is permitted to the close relatives of the *yavam* whom she refused (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:16–17; *Shulhan Arukh*, *Even HaEzer* 173:14, 155:11 and in the comment of Rema).

רבא אמר: היינו טעמא דבית שמאי – שאין אדם טורח בסעודה ומפסידה. ובית הלל: תרנויהו נחא להו, כדי דליפוק עלייהו קלא דאישות.

Rava said: This is the reasoning of Beit Shammai: A man will not bother to make a marriage feast and then lose it. If the wife is entitled to refuse him even after the marriage, the man will not be willing to marry a minor and bear the expenses of the wedding, when it is uncertain that she will stay with him. And Beit Hillel reason as follows: The marriage is convenient for both of them even if it is nullified later, so as to generate publicity about them that they are married.<sup>n</sup>

”בית שמאי אומרים בבעל” וכו'. אמר רבי אושעיא: ממאנת למאמרו ואינה ממאנת לזיקתו. אמר רב חסדא: מאי טעמא דרבי אושעיא – מאמר, דמדעתה, מציא עקרא. זיקה, דבעל כרחיה, לא מציא עקרא.

It is taught in the mishna: Beit Shammai say: Refusal may be directed only at her husband and not her *yavam*. If she wishes to refuse her *yavam*, she must perform *halitza* in order to dissolve the levirate bond. But Beit Hillel say that refusal may be directed at her husband or her *yavam*. Rabbi Oshaya said: A minor *yevama* may direct a refusal against a levirate betrothal but she may not direct a refusal against his levirate bond. Before the *yavam* betroths her, she cannot nullify the levirate bond by refusal. Rav Hisda said: What is the reasoning of Rabbi Oshaya? In the case of levirate betrothal, which is consensual,<sup>n</sup> she can nullify it. But with regard to the levirate bond, which applies to her even against her will, she cannot nullify it.

ויהרי ביאה, דבעל כרחיה,

The Gemara asks: But the consummation of the levirate bond may be against her will<sup>n</sup>

## Perek XIII

## Daf 107 Amud b

ומציא עקרא! אלא: ביאה ומאמר, דהוא קעביד, מציא עקרא. זיקה דרחמנא רמא עלה לא מציא עקרא. עולא אמר: ממאנת אף לזיקתו. מאי טעמא? נישואי קמאי קא עקרא.

and she can nullify it, as she can subsequently refuse the *yavam* with whom she entered into levirate marriage. Rather, the reasoning is: With regard to consummation of the levirate marriage and to levirate betrothal, both of which he performs, she can nullify them. But with regard to the levirate bond, which the Merciful One imposes<sup>n</sup> upon her at the death of her first husband, she cannot nullify it. Whereas Ulla said: She may direct her refusal even to his levirate bond.<sup>n</sup> What is the reason? By refusing, she nullifies the original marriage, rather than the levirate bond that resulted from the death of her husband.

אייתיביה רבא לעולא: כל שויכולה למאן ולא מיאנה – צרתה חולצת ולא מתיבמת. ואמאי? תמאן השתא, ותעקרניהו לנישואי קמאי, ותתייבם צרתה! צרת ערוה שאני, דתני רמי בר יחזקאל: מיאנה בבעל מותרת לאביו, ביבם – אסורה לאביו.

Rava raised an objection to the statement made by Ulla. It is taught in a *baraita*: In any case of levirate marriage in which a minor girl is forbidden to the *yavam* and she could perform refusal but does not perform refusal, her rival wife performs *halitza* and may not enter into levirate marriage. Rava continues: Why? Let her perform refusal now and nullify the first marriage retroactively, so that the so-called rival wife was never really a rival wife of a forbidden relative at all, and let her rival wife enter into levirate marriage. The Gemara answers: A rival wife of a forbidden relative is different, due to a rabbinic decree, as Rami bar Yehezkel taught in a *baraita*: A minor girl who refuses her husband is permitted to his father, because the marriage was annulled and she is no longer his daughter-in-law. But one who refuses a *yavam* is forbidden to his father.<sup>n</sup>

אלמא: בשעת נפילה נראית ככלתו, הכא נמי: בשעת נפילה נראית כצרת בתו.

Evidently, at the time when she happens before her *yavam* for levirate marriage she appears to be his father's daughter-in-law.<sup>n</sup> Since people would not understand that her refusal later on would annul her first marriage, the Sages decreed that the father-in-law may no longer marry her. Here, too, in a case, for example, of the rival wife of a girl who was married to her uncle, since at the time she happened before the girl's father for levirate marriage she appears to be his daughter's rival wife, the Sages decreed that even if the girl refuses her original marriage, the rival wife is forbidden to the girl's father.

NOTES

Just as it is in a case concerning a yevama who has a bill of divorce – מִיּוֹדֵי דִּהְיָה אֲבֵעֵלַת הַגֵּט – According to Tosafot, Rav's concern is that if the girl who refused one yavam is allowed to marry one of the other yevamin, people might think it is permitted for a yevama who has received a bill of divorce from one yavam to marry another yavam.

If she refused this yavam, she is permitted to that one – מִיֵּאֲנָה בְּזֵה מוֹתֶרֶת לָהּ: In Shmuel's opinion, this refusal does not dissolve the levirate bond and she is forbidden to the yavam she refuses only because it looks like a case of a yevama who has received a divorce. Therefore he is not stringent with regard to the other yevamin and looks upon her refusal as her merely expressing her preference for one yavam over the other (Ritva).

A minor girl who refuses this yavam is permitted to the brothers – מִיֵּאֲנָה בְּזֵה מוֹתֶרֶת לְאֶחָיו: In the Jerusalem Talmud it is explained that Rabbi Yohanan's opinion is that refusal dissolves the original marriage. It is stated there that if the woman tells her yavam that she does not want him nor did she want her previous husband, then she certainly dissolves the marriage even according to Rav. The Sages disagreed only in a case where the girl wishes to dissolve her marriage to the yavam but not her previous marriage with his brother.

Who did not agree with him? – מֵאֵן לֹא הוֹדוּ לוֹ: The early commentaries disagree with regard to the interpretation of the Sages' dispute. According to the Ramban, Ulla, Rav, Shmuel, and Rav Asi disagree with Rabbi Oshaya and think that refusal annuls the original marriage to the dead brother. Those who rule that she is forbidden to one or all of the brothers do so because she appears to be the wife of a brother.

Rabbi Zerahya HaLevi says that Rav and Shmuel agree with Rabbi Oshaya that refusal does not annul the original marriage. According to Rabbi Oshaya, she may even enter into levirate marriage, as the levirate bond is intact. Rav regards the effect of the refusal to be like that of a bill of divorce, in that it is subsequently prohibited for her to enter into levirate marriage with the other yevamin and she must perform halitza. According to Shmuel, the effect of refusal is less far-reaching than that of a divorce and she is forbidden only to the yavam she refused. She may enter into levirate marriage with a different yavam or perform halitza with any one of them. According to Ulla, who believes that refusal does annul the original marriage, it does so completely, and she can marry anyone, since she is considered not to have been married.

One of the ge'onim writes that according to Rabbi Oshaya, refusal of one yavam does not release the girl from the levirate bond, but it prevents her from entering into levirate marriage with any of the brothers. She must consequently perform halitza (see Tosafot and Ritva).

HALAKHA

If she refused this yavam, she is permitted to that one – מִיֵּאֲנָה בְּזֵה מוֹתֶרֶת לָהּ: If a minor yevama refuses one of her yevamin in levirate marriage, she is permitted to marry any of the other yevamin, in accordance with Shmuel's opinion. Even though generally the halakha follows Rav's opinion in disputes between Rav and Shmuel with regard to ritual matters, in this case, Rabbi Yohanan concurs with Shmuel and their opinion takes precedence (Rambam Sefer Nashim, Hilkhoh Geirushin 11:16; Shulhan Arukh, Even HaEzer 155:11, 173:14).

LANGUAGE

Defective standard [midda kefusha] – מִדָּה כְּפוּשָׁה: Possibly related to the word kavash, meaning crush or lower. The expression midda kefusha may be based on the image of a measuring utensil that has been crushed or bent out of its usual shape, causing it to be defective. Alternatively, a kefisha is a shallow, wide basket.

אָמַר רַב: מִיֵּאֲנָה בְּזֵה – אֲסוּרָה לָהּ, מִיּוֹדֵי דִּהְיָה אֲבֵעֵלַת הַגֵּט: בְּעֵלַת הַגֵּט, לֹא בִּיּוֹן דְּאִיתְסָרָא לָהּ לְחַד אִיתְסָרָא לָהּ לְכֹלְהוּ, הֵכָא נִמְי לֹא שָׂנְא.

וְשִׁמוּאֵל אָמַר: מִיֵּאֲנָה בְּזֵה – מוֹתֶרֶת לָהּ, וְלֹא דְמִיָּא לְבֵעֵלַת הַגֵּט. בְּעֵלַת הַגֵּט – הוּא דְקָא עֲבִיד בֵּיהּ, הֵכָא – הִיא קְעֵבְדָא בֵּיהּ, דְאָמְרָה: "לֹא רְעִינָא בְּךָ, וְלֹא צְבִינָא בְּךָ," בְּךָ הוּא דְלֹא רְעִינָא. הָא בְּחִבְרֵךְ – רְעִינָא.

רַב אָסִי אָמַר: מִיֵּאֲנָה בְּזֵה – מוֹתֶרֶת אֲפִילוּ לֹו. לִימָא בְּרַבִּי אוֹשְׁעִיא סְבִירָא לֵיהּ, דְאָמַר: אֵינָה מְמַאֲנַת לְוִיקְתוּן! בְּחַד יְבָם הֵכִי נִמְי דְמַצִּיא עֲקָרָא, הֵכָא בְּשִׁנֵּי יְבָמִין עֲסָקִינוּ, דְאִין מִיֵּאֲוִן לְחִצֵּי זִיקָה.

כִּי אֵתָא רַבִּין אָמַר רַבִּי יוֹחָנָן: מִיֵּאֲנָה בְּזֵה – מוֹתֶרֶת לְאֶחָיו, וְלֹא הוֹדוּ לוֹ. מֵאֵן לֹא הוֹדוּ לוֹ? אָמַר אֲבֵי: רַב, רַבָּא אָמַר: רַבִּי אוֹשְׁעִיא, וְאָמְרֵי לָהּ: רַב אָסִי.

"בֵּית שְׁמַאי אוֹמְרִים בְּפָנָיו" וְכוּ. תִּנְיָא, אָמְרוּ לָהֶן בֵּית הִלֵּל לְבֵית שְׁמַאי: וְהִלֵּא פִישוֹן הַגְּמֵל מִיֵּאֲנָה אֶשְׁתוּ שְׁלֵא בְּפָנָיו! אָמְרוּ לָהֶן בֵּית שְׁמַאי לְבֵית הִלֵּל: פִּישוֹן הַגְּמֵל בְּמִדָּה כְּפוּשָׁה מִדָּה, לְפִיכֵךְ מִדְּרוּ לוֹ בְּמִדָּה כְּפוּשָׁה.

Rav said: A minor girl who refuses this yavam who married her in levirate marriage is forbidden to that yavam, his brother, just as it is in a case concerning a yevama who has received a bill of divorce<sup>N</sup> from one of her yevamin. Is it not so that since the yevama who has received a bill of divorce is forbidden to one of them, i.e., the one who gave her the divorce, she is forbidden to all of them? Here too, it is no different.

And Shmuel said: If she refused this yavam, she is permitted to that one,<sup>NH</sup> and it is not comparable to a yevama who has received a bill of divorce. For in the case of the yevama who has received a bill of divorce, it is he who performed the act of giving the bill of divorce to her, and he thereby renders her forbidden to his brothers as well. Here, she is performing an act on him, as she says: I do not desire you and I do not want you, indicating: It is you whom I do not desire, but I may desire your fellow.

Rav Asi said: If she refuses this yavam she is permitted even to him if she changes her mind. The Gemara asks: Shall we say that he holds in accordance with the opinion of Rabbi Oshaya, who said: She cannot refuse his levirate bond, and since the bond still exists and is not dissolved by her refusal, she is consequently permitted to engage in sexual relations with him to consummate it. The Gemara rejects this: Rav Asi's opinion is consistent with that of Ulla, that refusal of a levirate bond is effective. In the case of one yavam who had no additional brothers, she can indeed nullify the levirate bond. However, here, we are dealing with two yevamin, and there cannot be refusal of half a levirate bond. Since she refuses only one yavam, her status as a yevama remains intact, the levirate bond remains intact, and she is permitted to consummate the levirate bond even with the one she initially refused.

The Gemara relates: When Ravin<sup>P</sup> came from Eretz Yisrael he said that Rabbi Yohanan said: A minor girl who refuses this yavam is permitted to the brothers,<sup>N</sup> and they did not agree with him. The Gemara asks: Who did not agree with him?<sup>N</sup> Abaye said: It was Rav, as Rav claims that she is forbidden to the brothers. Rava said: It was Rabbi Oshaya, who claims that refusal cannot nullify the levirate bond. And some say: It was Rav Asi who did not agree with him, since according to Rav Asi she is permitted to marry even the brother she refused.

It is taught in the mishna: Beit Shammai say: The refusal must take place specifically in the presence of the husband, but Beit Hillel say: Either in his presence or in his absence. It is taught in a baraita: Beit Hillel said to Beit Shammai: But didn't the wife of Pishon the camel driver refuse him in his absence? Beit Shammai said to Beit Hillel: Pishon the camel driver measured using a defective standard, as he did not properly take care of the property she brought into the marriage, and therefore the Sages measured him with a defective standard [midda kefusha].<sup>L</sup> The marriage in that case was annulled by the Sages and the refusal was not treated as a standard refusal.

PERSONALITIES

Ravin – Ravin, whose name is abbreviated from Rabbi Avin, or Rabbi Bon in the Jerusalem Talmud, was a third- and fourth-generation Babylonian amora. He studied Torah with Rabbi Yohanan and subsequently with several of Rabbi Yohanan's prominent students after Rabbi Yohanan's death. Ravin was the most prominent of the scholars referred to as: Those who descend, i.e., those who traveled from Eretz Yisrael to Babylonia, disseminating the Torah of Eretz Yisrael to the Diaspora, which

he did several times. Although Rav Dimi played a similar role, Ravin's revised formulations of halakhot are considered more authoritative, and the halakha is generally decided in accordance with his opinion.

Little is known about his family and his life beyond the tradition that his father died before he was born and his mother died giving birth to him. Some say that his father's name was also Rabbi Avin and that he was named after him.

מדקא אכיל פירי, פשיטא נשואה היא, והאמרי בית שמאי נשואה לא ממאנה! תרי קיטרי עבדו ביה.

The Gemara asks: **Since he was consuming the profits** from her property, it is obvious that it is speaking of a case where she was married, as a man is not entitled to the profits of the property of his betrothed. **But didn't Beit Shammai say that a married minor girl cannot perform refusal?** The Gemara answers in accordance with Beit Shammai's opinion: **They tied him in two knots**, i.e., the Sages punished Pishon in two ways: They permitted the refusal against him to take place in his absence, and they permitted it even though she was already married to him.

”בית שמאי אומרים בפני בית דין וכו’. תנן התם: החליצה והמיואונן – בשלשה. מאן תנא? אמר רבה: בית שמאי היא. אבוי אמר: אפילו תימא בית הלל, עד כאן לא קאמרי בית הלל אלא דלא בעינן מומחין, אבל שלשה – בעינן.

§ It was taught: **Beit Shammai say:** The refusal must take place specifically **before a court**, but Beit Hillel say: It may take place either before a court, or not before a court. **We learned** in a mishna elsewhere (*Sanhedrin 2a*): **Halitza and refusals take place in the presence of three judges.** The Gemara asks: **Who is the tanna who taught this?** **Rabba said:** It is Beit Shammai who say that refusal must take place specifically before a court. **Abaye said:** You can even say that it is Beit Hillel. **Beit Hillel state only that we do not require expert judges<sup>n</sup> for a refusal, but we do require three upright people, who constitute a court of laymen.**

כדתניא, בית שמאי אומרים: בפני בית דין, ובית הלל אומרים: בפני בית דין ושלשה בפני בית דין, ואלו מודים שצריך שלשה. רבי יוסי בר יהודה ורבי אלעזר ברבי שמעון מכשירין בשנים. אמר רב יוסף בר מניומי אמר רב נחמן: הלכה כאותו הזוג.

As it is taught in a *baraita*: **Beit Shammai say: Before a court, and Beit Hillel say: Either before a court or not before a court, but both this school and that school concede that three people are required.**<sup>4</sup> **Rabbi Yosei bar Yehuda and Rabbi Elazar, son of Rabbi Shimon, validate a refusal in the presence of two.** Rav Yosef bar Manyumi said that Rav Nahman said: **The halakha is in accordance with that pair.**

”בית שמאי אומרים תמאן וכו’. והא מיאנה חדא זימנא! אמר שמואל: עד שתגדיל ותאמר: רוצה אני במיאוניס הראשונים.

§ The mishna states that **Beit Shammai say: She refuses once. And then she must wait until she reaches majority, and refuse, and marry.** The Gemara asks: **Didn't she already refuse once?** Why must she refuse again? **Shmuel said:** Beit Shammai's statement means: The refusal does not take effect **until she reaches majority and says: I wish to uphold my initial refusal**, in case she changed her mind in the interim.

עולא אמר: תרתי קתני: או שתמאן ותגדיל ותיארכ, או שתמאן ותנשא לאלתר.

**Ulla said:** Two different possibilities are taught in Beit Shammai's statement: **Either she should refuse, and then once she has matured she should become betrothed; or she should refuse and marry immediately.** She should not refuse and then only become betrothed again. According to Beit Shammai, as a minor, she may not refuse again.

בשלמא עולא – היינו דקתני ”עד שתגדיל ותנשא“, אלא לשמואל – ”עד שתגדיל ותאמר“ מיבעי ליה! קשיא.

The Gemara challenges this: **Granted**, the explanation of **Ulla** is consistent with that which is taught: **Until she reaches majority and marries.** That is: Until she reaches majority, or until she marries. **But according to the explanation of Shmuel**, the mishna should have said: **Until she reaches majority and says that she wishes to uphold the refusal.** The Gemara comments: This phrase is **difficult** according to his explanation.

#### NOTES

**Expert judges – מומחין:** Some authorities wonder why one would think that Beit Shammai require experts for divorce, which is by rabbinic law, when they are not required for divorce, which is even more stringent, or for monetary law. The Ramban

suggests that the requirement may refer not to actual experts who are appointed judges, but rather that at least one of them is familiar with the relevant area of *halakha*, as required by Beit Shammai in monetary cases (see *Bava Metzia 32a*).

#### HALAKHA

**Refusals before three – המיאוניס בשלשה:** There is no need for three people to validate a refusal; it is sufficient that two testify that she refused in their presence. This *halakha* is in accordance with

the ruling of Rav Nahman. Some authorities (Rabbeinu Hananel; *Tosafot*) say that there should be three *ab initio* (Rambam *Sefer Nashim, Hilkhoh Geirushin* 11:8; *Shulhan Arukh, Even HaEzer* 155:4).

NOTES

Without her consent – שלא לדעתה: There is a picturesque depiction in the Jerusalem Talmud of a scenario in which a girl is dressed up for a wedding and told that she is to be married to a particular man. Her acquiescence in it constitutes marrying her off with her consent. Some authorities say that consent depends upon the age of the girl, and the extent to which she comprehends what it means to be married.

Who cannot keep her betrothal safe, etc. – שאינה יכולה: The Rambam, following the ge'onim, explains that in this case, the girl does not need to perform any act of refusal whatsoever, and she may marry another man even without refusing the first. However, the Rashba points out that her marriage to another man is in itself an act of refusal. According to him, not needing to perform refusal means that the husband has no rights with regard to her; her status is like that of any girl who is a candidate for refusal according to Rabbi Eliezer.

Rabbi Elazar – רבי אלעזר: It is apparent from the Gemara (108a) that the mishna is citing the opinion of Rabbi Eliezer ben Hyrcanus, Rabbi Akiva's teacher and Rabbi Yehoshua's rival, rather than one of several Sages who were named Rabbi Elazar. It is a common phenomenon that these names are confused, both in the manuscripts and various printed editions of the Talmud.

HALAKHA

They married her off without her consent – השיאוה שלא לדעתה: A minor girl who was married off by her mother or brother with her consent is considered married by rabbinic law, and she may annul the marriage by means of a refusal. If she was married off without her consent, a refusal is not required. Likewise, if she was married off with her consent when she was a minor so young that she did not know to keep her betrothal safe, a refusal is not required. This halakha is in accordance with the opinion of Rabbi Hanina ben Antigonus (Rambam Sefer Nashim, Hilkhot Geirushin 11:7, Hilkhot Ishut 4:7, Shulhan Arukh, Even HaEzer 155:1–2).

מתני' אי זו היא קטנה שצריכה למאן – כל שהשיאוה אמה ואחיה לדעתה, השיאוה שלא לדעתה – אינה צריכה למאן. רבי חנינא בן אנטיגנוס אומר: כל תינוקות שאינה יכולה לשמור קידושיה אינה צריכה למאן.

רבי אלעזר אומר: אין מעשה קטנה כלום, אלא במפיתה. בת ישראל לכהן לא תאכל בתרומה, בת כהן לישראל תאכל בתרומה.

רבי אלעזר בן יעקב אומר: כל עכבה שהיא מן האיש – כאילו היא אשתו, כל עכבה שאינה מן האיש – כאילו אינה אשתו.

גמ' אמר רב יהודה, ואמרי לה במתניתא תנא: בראשונה היו בותבין גט מיאון: "לא רעינא ביה, ולא צבינא ביה, ולית אנא בעיא להתנסבא ליה." ביון דחזו דנפיש דיבורא אמרי

**MISHNA** Who is a minor girl who needs to perform refusal in order to annul her marriage? Any minor whose mother or brother married her off with her consent. If they married her off without her consent,<sup>HH</sup> she need not refuse her husband at all and may leave her husband without a declaration of refusal. Rabbi Hanina ben Antigonus says: Any girl who is so young that she cannot keep her betrothal, i.e., the money or document of betrothal, safe<sup>N</sup> does not need to refuse, as the Sages instituted marriage only for a girl old enough to understand what she is doing.

Rabbi Elazar<sup>N</sup> says: The act of a minor girl is nothing, so that if a minor girl's mother or brothers marry her off, the marriage is essentially invalid. Rather, her status is as though she were a seduced unmarried woman. Therefore, a minor daughter of a non-priest married to a priest may not eat teruma, and the minor daughter of a priest married to an Israelite may eat teruma.

Rabbi Eliezer ben Ya'akov says otherwise: If there is any obstruction in the matter due to the man, it is as if she were his wife. If there is any obstruction in the matter that is not due to the man, it is as if she were not his wife. This statement will be explained in the Gemara.

**GEMARA** Rav Yehuda said, and some say it was taught in a baraita: At first, they would write a bill of refusal in this manner: I do not desire him, I do not want him, and I do not wish to be married to him. Once they saw that the text was too long, the Sages said:

אתי לאיחלופי בגיטא, תקינו הכי: "ביום פלוני מיאנה פלונית בת פלוני באנפנא".

This document may come to be confused with a bill of divorce<sup>N</sup> and perhaps a man will err and give a bill of divorce using the text of refusal. Therefore, they decreed that one should write as follows: On such and such a day, so-and-so, the daughter of so-and-so, performed refusal in our presence, and no more.<sup>H</sup>

NOTES

This document may come to be confused with a bill of divorce – אתי לאיחלופי בגיטא: Some authorities explain that if the text of the bill of refusal were similar to the text of a bill of divorce, people would mistakenly think that even a woman

with a bill of divorce is permitted to marry her ex-husband's close relatives and that he may marry her close relatives, as is the case with regard to refusal (Ritva; Nimmukei Yosef; see Arukh LaNer).

HALAKHA

Document of refusal – שטר מיאון: A bill of refusal is written as follows: I do not want so-and-so, my husband. However, following the Rambam's text, the following is also added: On such and such day, so-and-so, the daughter of so-and-so,

performed refusal in our presence. The entire bill of refusal is written in a style that is different from that of a bill of divorce, so there will be no cause for error (Rambam Sefer Nashim, Hilkhot Geirushin 11:11).

Perek XIII  
Daf 108 Amud a