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 nulling the marital bond. The Sages disagreed with regard to the details of this halakha: Beit Shammai say: Only betrothed girls may refuse. 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.\(^{\text{11}}\)

Beit Shammai say: Refusal may be directed only at her husband and not at her yavam. In such a situation, she must perform halitza in order to dissolve the levirate bond. But Beit Hillel say: It may be directed at her husband or her yavam.\(^{\text{12}}\)

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.\(^{\text{13}}\)

Beit Hillel said to Beit Shammai: 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.\(^{\text{14}}\) 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.\(^{\text{15}}\) 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.

Only betrothed girls may refuse – רבי יהודה אמר רבי יהודה: לא מייד אף אכדית רבי יהודה אמר רבי יהודה: לא מייד אף אכדית. The early authorities (Rambam; Tosefot HaHalakha) 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: Therefore, the commentaries note that framing Beit Hillel’s statement as a response to Beit Shammai seems out of place, 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 – רבי יהודה אמר רבי יהודה: לא מייד אף אכדית. Tosefot 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 MiKammanai). The Rishba 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 – מִין הָאָדָם מֵי לָא לֵא לָאָדָם מֵי לָא. 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, Hilchos Ishto 7:23).

HALAKHA

תורה: מקדימהʼ י會議י רע ו赎回 משיא חכמים

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.

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, 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 – מִין הָאָדָם מֵי לָאָדָם מֵי לָא. 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 tannaim, such conduct is not considered licentious in the technical halakhic sense of the word.

Seize from her and consume them – תוספות אındא ל׳ ינייה דינא. Tosafot explain that the concern is that perhaps the husband may take advantage of his young wife’s assets even in ways 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 Hakosh).
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.\(^a\)

\(^a\) 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 yavam 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,\(^b\) she can nullify it. But with regard to the levirate bond, which applies to her even against her will, she cannot nullify it.

The Gemara asks: But the consummation of the levirate bond may be against her will\(^b\)

\(^b\) Tha Gemara as: The levirate bond, which the Merciful One imposes, etc. – ומקרא חוקא אֵילָא רָבִּי יְהוּדָה הַנִּחַלָּא. 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 – בְּדָרוֹ לְאִיבֵיהּ יְרֵם. The early commentators 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 any woman, 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).

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 Yechezkel 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.\(^c\)

Evidently, at the time when she happens before her yavam for levirate marriage she appears to be his father’s daughter-in-law.\(^c\) 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.

\(^c\) מָצְיָא מָעָלָה מֵאָמוֹת אֱלֹהִים. The Ritva explains that people who 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 – בְּדָרוֹ לְאִיבֵיהּ יְרֵם. 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 3:13, Shulhan Arukh, Even HaEzer 155:5).

A minor girl…who refuses a yavam is forbidden to his father – בְּדָרוֹ לְאִיבֵיהּ יְרֵם. 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 Yechezkel. 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 (Rambam 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 173:1, 155:17 and in the comment of Rema).
Just as it is in a case concerning a yevama who has a bill of divorce — §173:14). Among the Rishonim, Rabbi Shmuel’s opinion is that refusal does not dissolve the levirate bond and is forbidden to the yevama. In his opinion, the refusal does not dissolve the levirate bond and is forbidden to the yevama. Therefore, he holds that the refusal annuls the original marriage. In his opinion, the refusal does not dissolve the levirate bond and is forbidden to the yevama. However, in the case of a yevama who has a bill of divorce, he holds that the refusal annuls the original marriage.

If she refused this yevama, she is permitted to that one — §155:11, 156:11. According to Tosafot, Rav’s concern is that if the girl who refused one yevama is allowed to marry one of the other yevamim, people might think it is permitted for a yevama who has received a bill of divorce from one yevama to marry another yevama.

If she refused this yevama, she is permitted to that one — §155:11, 156:11. In Shmuel’s opinion, this refusal does not dissolve the levirate bond and she is forbidden to the yevama she refuses only because it looks like a case of a yevama who has received a bill of divorce. Therefore, he holds that the refusal annuls the original marriage. In his opinion, the refusal does not dissolve the levirate bond and is forbidden to the yevama. However, in the case of a yevama who has a bill of divorce, he holds that the refusal annuls the original marriage.

A minor girl who refuses this yevama is permitted to the brothers — §155:11, 156:11. In the Jerusalem Talmud, it is explained that Rabbi Yohanan says that refusal annuls the original marriage. It is stated there that if the woman tells her yevama that she does not want him nor did she want her previous husband, then she certainly dissolves the marriage according to Rav. The Sages disagreed only in a case where the girl wishes to dissolve her marriage to the yevama but not her previous marriage with his brother.

Who did not agree with him? — §155:11, 156:11. The early commentators disagree with regard to the interpretation of the Sages’ dispute. According to the Rambam, 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 Zeraia Halivi 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 yevanim and she must perform halitza. According to Shmuel, the effect of refusal is less far-reaching than that of divorce and she is forbidden only to the yevama she refused. She may enter into levirate marriage with a different yevama or perform halitza with any of one of them. According to Ulla, who believes that refusal does annul the original marriage, it does so completely, and she can marry anyone, so she is considered not to have been married.

One of the geonim writes that according to Rabbi Oshaya, refusal of one yevama 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 Riva).

HALAKHA

If she refused this yevama, she is permitted to that one — §155:11, 156:11. In Shmuel’s opinion, this refusal does not dissolve the levirate bond and is forbidden to the yevama. In his opinion, the refusal does not dissolve the levirate bond and is forbidden to the yevama. However, in the case of a yevama who has a bill of divorce, he holds that the refusal annuls the original marriage. In his opinion, the refusal does not dissolve the levirate bond and is forbidden to the yevama. However, in the case of a yevama who has a bill of divorce, he holds that the refusal annuls the original marriage.

The Gemara relates: When Rav in Eretz Yisrael said that Rabbi Yohanan said: A minor girl who refuses this yevama is permitted to the brothers, and they did not agree with him. The Gemara asks: Who did not agree with him? 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 says: 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. The marriage in that case was annulled by the Sages and the refusal was not treated as a standard refusal.

Ravin — § Ravin, whose name is abbreviated from Rabbi Avin, or Rabbi Bin 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 Dima 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.
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.

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 13a): Halitza and refusals take place in the presence of three judges. The Gemara asks: Who is the tanna who taught this? Rabbi 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 for a refusal, but we do require three upright people, who constitute a court of laymen.

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. 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.

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.

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.

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 – חכמים: Some authorities wonder why one would think that Beit Shammai require experts for performing refusal, 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 – חכמה בהלכות: 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, Hilkhot Geirushin 11:8, Shulhan Arukh, Even Haézer 155:4).


**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, she need not refuse her husband at all, and may leave him, 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 does not need to refuse, as the Sages instituted marriage only for a girl old enough to understand what she is doing.

Rabbi Elazar 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:

This document may come to be confused with a bill of divorce 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.