

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 וכו': 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 – השיאוהּ 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 Ḥanina 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 שהשיאוהּ אמה ואחיה לדעתה, השיאוהּ שלא לדעתה – אינה צריכה למאן. רבי חנינא בן אנטיגנוס אומר: כל תינוקת שאינה יכולה לשמור קידושיהּ אינה צריכה למאן.

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

רבי אליעזר 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 כותבין גט מיאון: "לא רעינא ביה, ולא צבינא ביה, ולית אנא בעיא להתנסבא ליה". כיון 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,^{NH} she need not refuse her husband at all and may leave her husband without a declaration of refusal. Rabbi Ḥanina ben Antigonus says: Any girl who is so young that she cannot keep her betrothal, i.e., the money or document of betrothal, safe^N does not need to refuse, as the Sages instituted marriage only for a girl old enough to understand what she is doing.

Rabbi Elazar^N 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:

Perek XIII
Daf 108 Amud a

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

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

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).

Bridal chair [*apiryon*] – אִפְרִיּוֹן: From the Greek φορεῖον, *phoreyon*, meaning a chair used for carrying people.



Bridal chair

NOTES

אִפְרִיּוֹן יוֹשֶׁבֶת – Even if she is sitting in a bridal chair going – The Meiri explains these examples and shows that each describes a situation where one might not take her refusal at face value. The girl who is seated on the bridal chair while being carried to her husband's house seems to be willing to get married. Likewise, the girl serving drinks seems comfortable in her husband's house. The girl who goes to the shopkeeper appears to be demonstrating that she is willing to act as her husband's agent; the presumption that she has accepted the marriage is even stronger according to the version of the text cited by the Meiri, which states that she is bringing her husband one of her own possessions from the shopkeeper. Nevertheless, in all these cases, once she makes a statement indicating that she does not want her husband, it constitutes a refusal.

Other authorities explain that these examples demonstrate that her refusal is considered valid even though she is not making her declaration explicitly before a court but rather in the presence of members of her household, guests, or even a shopkeeper (see *Yam shel Shlomo*).

תנו רבנן: אי זהו מיאון? אָמְרָה: "אי אֶפְשִׁי בְּפִלוֹנִי בְּעָלִי," אי אֶפְשִׁי בְּקִידוּשֵׁי שְׂקִידוּשֵׁי אָמִי וְאָחָיו. יֵתֵר עַל כֵּן אָמַר רַבִּי יְהוּדָה: אֶפְּלוֹ יוֹשֶׁבֶת בְּאִפְרִיּוֹן וְהוֹלְכֶת מִבֵּית אָבִיהָ לְבֵית בְּעָלָהּ, וְאָמְרָה: "אי אֶפְשִׁי בְּפִלוֹנִי בְּעָלִי" – וְהוּא מִיֵּאוֹן.

יֵתֵר עַל כֵּן אָמַר רַבִּי יְהוּדָה: אֶפְּלוֹ הִיוּ אוֹרְחֵי מְסוּבֵין בְּבֵית בְּעָלָהּ, וְהִיא עוֹמֶדֶת וּמְשַׁקָּה עֲלֵיהֶם, וְאָמְרָה לָהֶם: "אי אֶפְשִׁי בְּפִלוֹנִי בְּעָלִי" – הֵרִי הוּא מִיֵּאוֹן. יֵתֵר עַל כֵּן אָמַר רַבִּי יוֹסֵי בַר יְהוּדָה: אֶפְּלוֹ שִׁנְגָרָה בְּעָלָהּ אֶצֶל חַנּוּנִי לְהָבִיא לוֹ חֶפֶץ מִשּׁוּלוֹ, וְאָמְרָה: "אי אֶפְשִׁי בְּפִלוֹנִי בְּעָלִי" – אֵין לָךְ מִיֵּאוֹן גְּדוֹל מִזֶּה.

"רַבִּי חֲנִינָא בֶן אֲנְטִיגוֹנוֹס אוֹמֵר: כָּל תִּינוּקָתָא וְכוּ'. אָמַר רַב יְהוּדָה אָמַר שְׂמוּאֵל: הִלְכָה כְּרַבִּי חֲנִינָא בֶן אֲנְטִיגוֹנוֹס. תֵּנָא: קִטְנָה שְׁלֵא מִיֵּאוֹנָה, וְעִמְדָה וְנִשְׂאָתָה, מִשּׁוּם רַבִּי יְהוּדָה בֶּן בְּתִירָה אָמְרוּ: מִשּׁוּאִיָּהּ הֵן הֵן מִיֵּאוֹנָהּ.

אֵיבְעִינָא לָהּ: נִתְקַדְּשָׁה מִהוּא תָא שְׂמַע: קִטְנָה שְׁלֵא מִיֵּאוֹנָה, וְעִמְדָה וְנִתְקַדְּשָׁה, מִשּׁוּם רַבִּי יְהוּדָה בֶּן בְּתִירָה אָמְרוּ: קִידוּשֵׁיהָ הֵן הֵן מִיֵּאוֹנָהּ.

אֵיבְעִינָא לָהּ: פְּלִיגִי רַבְּנָן עָלֶיהָ דְּרַבִּי יְהוּדָה בֶּן בְּתִירָה אוּ לֹא? אִם תִּמְצִי לֵאמֹר פְּלִיגִי בְּקִידוּשֵׁין אוּ אֶפְּלוֹ בְּנִשּׁוּאִין? וְאִם תִּמְצִי לֵאמֹר פְּלִיגִי אֶפְּלוֹ בְּנִשּׁוּאִין, הִלְכָה כְּמוֹתָ אוּ אֵין הִלְכָה כְּמוֹתָ? וְאִם תִּמְצִי לֵאמֹר הִלְכָה כְּמוֹתָ, בְּנִשּׁוּאִין אוּ אֶפְּלוֹ בְּקִידוּשֵׁין?

S The Sages taught: What constitutes a refusal?^h If she said: I do not want so-and-so as my husband, or: I do not want the betrothal in which my mother and brothers had me betrothed, that is a refusal. Rabbi Yehuda said more than that: Even if she is sitting in a bridal chair [*apiryon*]^l going^m from her father's house to her husband's house and said along the way: I do not want so-and-so as my husband, this constitutes a refusal.

Rabbi Yehuda said even more than that: Even if guests are reclining at her husband's house and she is standing and serving them drinks as hostess, and she said to them: I do not want so-and-so as my husband, this constitutes a refusal, even though it is possible that she is merely complaining about the effort she is expending. Rabbi Yosei bar Yehuda said more than that: Even if her husband sent her to a shopkeeper to bring him an article of his and she said: I do not want so-and-so as my husband, there is no greater refusal than this.

S It was taught in the mishna: Rabbi Hanina ben Antigonus says: Any girl who is so young that she cannot keep her betrothal safe does not need to refuse. Rav Yehuda said that Shmuel said: The *halakha* is in accordance with the opinion of Rabbi Hanina ben Antigonus. It was taught: In the case of a minor girl who did not refuse her husband, but who went and married someone else, it was said in the name of Rabbi Yehuda ben Beteira: Her new marriage constitutes her refusal, as she made her state of mind known, that she does not want him, and that is sufficient.

A dilemma was raised before the Sages: What is the *halakha* if she was betrothed to another man without performing refusal of the first husband? Is her acceptance of the betrothal sufficient to indicate that she refuses the first husband? The Gemara suggests: Come and hear an answer from a *baraita*: If a minor girl did not refuse her husband but went and became betrothed^h to another man, then, as the Sages said in the name of Rabbi Yehuda ben Beteira: Her betrothal constitutes her refusal.

A dilemma was raised before the Sages: Do the Rabbis disagree with Rabbi Yehuda ben Beteira or not? And further, if you say that they do disagree with him, do they disagree with him with regard to betrothal alone, or do they also disagree with him with regard to marriage? And if you say that they disagree even with regard to marriage, is the *halakha* in accordance with his opinion or is the *halakha* not in accordance with his opinion? And if you say that the *halakha* is in accordance with his opinion, is this only with regard to marriage, or is it even with regard to betrothal?

HALAKHA

What constitutes a refusal – אי זהו מיאון – If a minor girl says: I do not want so-and-so as my husband, or: I do not want the betrothal in which my mother and brothers had me betrothed, or a similar statement, this qualifies as a refusal, in accordance with the *baraita* quoted by the Gemara (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:8; *Shulhan Arukh, Even HaEzer* 155:3).

Went and became betrothed – עִמְדָה וְנִשְׂאָתָה: If a minor girl

whose mother or brother arranged her betrothal or marriage became betrothed or married to another man, that betrothal to another is considered to be her refusal. This is in accordance with the ruling of the Gemara that explains that Rabbi Yehuda ben Beteira disagrees with the Rabbis, and that the *halakha* is ruled in accordance with his opinion in all of these instances of inexplicit refusals (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:8; *Shulhan Arukh, Even HaEzer* 155:3).

Let them be your husbands – נִהְיוּ גְבוּרֵיכֶם דִּידְכוּ – The connection between this story and the problem the Gemara wished to solve is not entirely clear. Some authorities cite a variant version of the text that has the women suggesting that the two Sages who came to investigate were the husbands of the girls, whereupon the girls said: If only these men were our husbands. The implication of this story is that such a statement suffices as a refusal. However, the authenticity of this version of the text is questionable.

Several interpretations have been offered for the standard version of the text. *Tosefot HaRosh* explains that this story shows that even an inexplicit refusal is valid, and is similar to the girl accepting the betrothal of another man. The Rashba explains that this story indicates that there is no need for an explicit verbal refusal; any statement from which it is clear that the woman does not want to be married to this man is sufficient (see Ritva and Meiri).

HALAKHA

Her husband has rights to items she finds, etc. – בעלה זכאי במציאתה: As long as a minor who was married off by her mother or brother has not refused her husband, the marriage is fully valid and her husband has the right to items she finds and to her earnings, as well as the right to annul her vows and to inherit her assets. In the event of her death, he must become ritually impure on her account even if he is a priest. Although she is considered his wife in every sense, she may leave him by means of refusal. This *halakha* is in accordance with the opinion of Rabbi Yehoshua, as the Gemara rules in tractate *Ketubot*, rather than that of Rabbi Eliezer, although the Sages praised the latter's opinion (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:4; *Shulhan Arukh*, *Even HaEzer* 155:10).

תא שמע, אָמַר רב יהודה אָמַר שְׁמוּאֵל: הַלָּכָה כְּרַבִּי יְהוּדָה בֶּן בֵּיתְרָה. הַלָּכָה – מִכְּלָל דְּפִלְגִי.

וְאֵבְתִי תִיבְעֵי לָךְ: דִּהוּהוּ נְסִיבָא מְעִיקְרָא, אוּ דְלָמָא מִיְקַדְשָׁא? תָּא שְׁמַע: דְּכַלְתִּיהָ דְּאַבְדָּן אִימְרוּד, שְׂדֵר רַבִּי זֹוּגִי דְרַבְּנָן לְמִיבְדִּיקִינְהוּ. אָמְרִי לְהוּ נְשִׁי: חֲזוּ גְבוּרֵיכֶם דְּקָאָתוּ, אָמְרִי לְהוּ: נִהְיוּ גְבוּרֵיכֶם דִּידְכוּ.

אָמַר רַבִּי: אֵין לָךְ מִיֵּאוּן גְּדוּל מְזָה. מֵאִי לָאוּ – דִּהוּהוּ נְסִיבָא! לָא, דִּהוּהוּ מִיְקַדְשָׁא קִידוּשֵׁי. וְהַלָּכָה כְּרַבִּי יְהוּדָה בֶּן בֵּיתְרָה, וְאִפִּילוּ בְּנִשְׁוֵאִין דְּקָמָא.

”רַבִּי אֶלְעָזָר אָמַר” וכו'. אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: חֲזוּרְנִי עַל כָּל צְדָדֵי חֲכָמִים, וְלֹא מִצָּאתִי אָדָם שֶׁהִשְׁוֶה מְדוּתוֹ בְּקִטְנָה כְּרַבִּי אֶלְעָזָר. שְׁעֵשָׂא רַבִּי אֶלְעָזָר בְּמִטְוִילֹת עֵמוּ בְּחֶזֶר וְעוֹמֶדֶת מִחִיקוֹ וְטוֹבְלוֹת וְאוֹכְלוֹת בְּתַרוּמָה לְעָרַב.

תִּנְיָא, רַבִּי אֶלְעָזָר אָמַר: אֵין מַעֲשֵׂה קִטְנָה כְּלוּם, וְאֵין בְּעֵלָה זְכָאִי לֹא בְּמִצִּיאָתָהּ, וְלֹא בְּמַעֲשֵׂה יָדֶיהָ, וְלֹא בְּהִפְרַת נְדָרֶיהָ, וְאֵינוּ יוֹרְשָׁהּ, וְאֵין מִשְׁמָא לָהּ. כִּלְלוּ שְׁל דְּבַר: אֵינָה כְּאִשְׁתּוֹ לְכָל דְּבַר, אֶלָּא שְׂצָרִיכָה מִיֵּאוּן.

רַבִּי יְהוֹשֻׁעַ אָמַר: בְּעֵלָה זְכָאִי בְּמִצִּיאָתָהּ, וּבְמַעֲשֵׂה יָדֶיהָ, וּבְהִפְרַת נְדָרֶיהָ, וְיוֹרְשָׁהּ, וּמִשְׁמָא לָהּ. כִּלְלוּ שְׁל דְּבַר: הִרִי הִיא כְּאִשְׁתּוֹ לְכָל דְּבַר: אֶלָּא שְׂוִיצָאָה בְּמִיֵּאוּן.

אָמַר רַבִּי: נְרָאִין דְּבַרִּי רַבִּי אֶלְעָזָר מִדְּבַרִּי רַבִּי יְהוֹשֻׁעַ, שְׂרַבִּי אֶלְעָזָר הִשְׁוֶה מְדוּתוֹ בְּקִטְנָה וְרַבִּי יְהוֹשֻׁעַ חִלַּק. מֵאִי חִלַּק? אֵי אִשְׁתּוֹ הִיא, תִּיבְעֵי גַט.

The Gemara cites a tradition: Come and hear: Rav Yehuda said that Shmuel said: The *halakha* is in accordance with the opinion of Rabbi Yehuda ben Beteira with regard to both marriage and betrothal. From the fact that he ruled the *halakha*, one may derive by inference that the Rabbis disagree.

But still, you should raise the dilemma: Does Rabbi Yehuda ben Beteira say that her betrothal to another counts as refusal even when she had initially been married or perhaps only if she was betrothed but not married beforehand? Come and hear: The daughters-in-law of Abdan rebelled against their husbands. Rabbi Yehuda HaNasi sent a pair of Sages to examine them and determine what could be done to rectify the matter. Some women said to the daughters-in-law: See, it is your husbands that are coming. They said back to them: Let them be your husbands.^N

Rabbi Yehuda HaNasi said: There is no greater refusal than this. What is the case? Is it not that they were already married? The Gemara rejects this: No, they were merely betrothed, but not married. This story cannot establish unequivocally what the *halakha* is in the case when the girl is married. The Gemara nevertheless concludes: The *halakha* is in accordance with the opinion of Rabbi Yehuda ben Beteira in all of these matters, even with regard to her marriage to the first husband: Even if she had actually been married to the first man, the marriage is invalidated by her betrothal to another.

It is taught in the mishna: Rabbi Elazar says: The act of a minor girl is nothing. Rather, her status is as though she were a seduced unmarried woman. Rav Yehuda said that Shmuel said: I reviewed all the opinions of the Sages concerning these matters, and I did not find any person who applied a consistent standard with regard to a minor like Rabbi Elazar did. For Rabbi Elazar portrayed her as a girl walking with her husband in a courtyard, who stands up from his bosom after he engaged in intercourse with her, and immerses herself to become ritually pure, and partakes of *teruma* by evening as if there were no marital bond between them and as if she, as the daughter of a priest, could continue to partake of *teruma*. The daughter of a priest is prohibited from eating *teruma* once she is married to a non-priest.

It is taught in a *baraita*: Rabbi Eliezer says: The act of a minor girl is nothing, and therefore her marriage is not valid. And her husband has no rights to items she finds, nor to her earnings; nor does he have the right to annul her vows; he does not inherit her assets if she dies; and if she dies he may not become ritually impure on her account if he is a priest, i.e., through his presence in the same room as her corpse. The principle is: She is not his wife in any sense, except that she must perform refusal in order to marry someone else.

Rabbi Yehoshua says: In the case of a minor whose mother or brother married her off, her husband has rights to items she finds,^H and to her earnings; and he has the right to annul her vows; and he inherits her assets if she dies; and if she dies he must become ritually impure on her account even if he is a priest. The principle is: She is his wife in every sense, except that she can leave him by means of refusal and does not require a bill of divorce.

Rabbi Yehuda HaNasi said: The statement of Rabbi Eliezer appears to be more correct than the statement of Rabbi Yehoshua, as Rabbi Eliezer applied a consistent standard with regard to a minor, while Rabbi Yehoshua applied an inconsistent standard. The Gemara asks: In what way is his standard inconsistent? The Gemara answers: If she is his wife, she should require a bill of divorce from him.

Because the men are not suitable for me – **מחמת** **בני אדם שאינם מהוגנין לי**: *Tosafot* cite an opinion that in refusing the proposal without reference to her husband she is expressing her refusal of her marriage. They reject this explanation and assert that Shmuel's understanding of Rabbi Eliezer ben Ya'akov's point is to characterize the consent necessary in order for her marriage to require even refusal to dissolve it. Accordingly, if she refuses the proposal without mention of her husband and only because of the inappropriateness of the suitor, she clearly never consented to be married in the first place.

The Rashba explains that the case here is that of a minor whose husband died. If her refusal to remarry is due to her mourning for her husband, her original marriage is considered to have been valid and she is regarded as a widow and may receive her marriage settlement. However, if she refuses the proposal because she finds the suitor unacceptable, she is regarded as not having consented in the first place to the original marriage.

HALAKHA

The close relatives of a minor girl who performs refusal – **קרובות מקאנת**: A minor girl who refuses her husband is not considered to have been married to him. She is therefore permitted to marry his close relatives, he is permitted to marry her close relatives, and she is fit to marry into the priesthood. But if he gave her a bill of divorce, she is considered to be his ex-wife. Consequently, he is prohibited from marrying her close relatives, she is prohibited from marrying his close relatives, and she is disqualified from marrying into the priesthood, in accordance with the mishna (Rambam *Sefer Nashim*, *Hilkhot Gerushin* 11:16; *Shulhan Arukh*, *Even HaEzer* 155:10).

לרבי אליעזר נמי, אי לאו אשתו היא, מיאון נמי לא תיבעי אלא בכדי תיפוק?

According to Rabbi Eliezer too, there appears to be an inconsistency, as, if she is not his wife, she should not be required to perform refusal either. The Gemara answers: **But shall she leave with no ritual at all?** Some sort of act is required to indicate that their relationship is permanently severed. Rabbi Eliezer has a consistent standard, according to which the marriage of a minor has no substance and to dissolve it she need only indicate that she does not want her husband. Rabbi Yehoshua is inconsistent in treating the relationship as a marriage even though it can be dissolved easily.

”רבי אליעזר בן יעקב אומר” וכו’. היכי דמי עכבה שהיא מן האישי ועכבה שאינה מן האישי? אומר רב יהודה אומר שמואל: תבעיה לינשא, ואמרה: ”מחמת פלוגי בעלי” – זו היא עכבה שהיא מן האישי: ”מחמת בני אדם שאינם מהוגנין לי” – זו היא עכבה שאינה מן האישי.

§ The mishna stated: **Rabbi Eliezer ben Ya'akov says: 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. The Gemara asks: What are the circumstances of an obstruction due to the man, and an obstruction that is not due to the man? Rav Yehuda said that Shmuel said: If someone proposed marriage to her and she said: I do not wish to marry on account of so-and-so, my husband, this is an obstruction that is due to the man. When she declined the proposal, she made it clear that she views herself as his wife. But if she says: I do not want to marry because the men suggested to me are not suitable for me,^N this is an obstruction that is not due to the man, and she is not considered to be his wife.**

אביי בר אבין ורב חנינא בר אבין דאמרי תרוניה: נתן לה גט – זו היא עכבה שהיא מן האישי, והוא אסור בקרובותיה, והיא אסורה בקרוביו, ופסלה מן הכהונה. מיאנה בו – זו היא עכבה שאינה מן האישי, והוא מותר בקרובותיה, והיא מותרת בקרוביו, ולא פסלה מן הכהונה.

Abaye bar Avin and Rav Hanina bar Avin both say: If the minor's husband gave her a bill of divorce, this is an obstruction that is due to the man, since in presenting the bill of divorce, the marriage is being treated as valid. Therefore, from then onward, he is prohibited from marrying her close relatives, and she is prohibited from marrying his close relatives; and, as a divorced woman, she is disqualified from marrying into the priesthood. However, if she refuses him, this is an obstruction that is not due to the man. Therefore, he is permitted to marry her close relatives, and she is permitted to marry his close relatives, and she is not disqualified from the priesthood, since her refusal annuls the marriage retroactively.^H

הא קתני לקמן: הממאנת באיש – הוא מותר בקרובותיה, והיא מותרת בקרוביו, ולא פסלה מן הכהונה. נתן לה גט – הוא אסור בקרובותיה, והיא אסורה בקרוביו, ופסלה מן הכהונה! פרושי קמפרש.

The Gemara challenges: **But it is taught explicitly below, in the following mishna: If a minor girl refuses a man, he is permitted to marry her close relatives and she is permitted to marry his close relatives, and he has not disqualified her from marrying into the priesthood. If he gave her a bill of divorce, he is prohibited from marrying her close relatives, and she is prohibited from marrying his close relatives, and he has disqualified her from marrying into the priesthood.** Since the difference between refusal and a bill of divorce is already addressed in the following mishna, why is the same ruling repeated here? The Gemara answers: The following mishna is explaining the latter part of this mishna.

מתני' הממאנת באיש – הוא מותר בקרובותיה, והיא מותרת בקרוביו, ולא פסלה מן הכהונה. נתן לה גט – הוא אסור בקרובותיה, והיא אסורה בקרוביו, ופסלה מן הכהונה.

MISHNA If a minor girl refuses a man, he is permitted to marry her close relatives, such as her mother or her sister, and she is permitted to marry his close relatives, such as his father or brother, and he has not disqualified her from marrying into the priesthood, as she is not considered divorced. However, if he gave her a bill of divorce, then even though the marriage was valid according to rabbinic law and not Torah law, he is prohibited from marrying her close relatives, and she is prohibited from marrying his close relatives, and he has disqualified her from marrying into the priesthood.

נתן לה גט והחזירה, מיאנה בו ונשאת לאחר, ונתארמלה או נתגרשה – מותרת לחזור לו. מיאנה בו והחזירה, נתן לה גט ונשאת לאחר, ונתארמלה או נתגרשה – אסורה לחזור לו.

If he gave her a bill of divorce but afterward remarried her, and she subsequently refused him and married another man, and then she was widowed or divorced from her second husband, she is permitted to return to him. Since she left him the last time by means of refusal, the refusal cancels the bill of divorce that he gave her previously, and her status is that of a minor girl who refused her husband, who is not forbidden to her first husband after a second marriage. However, if the order was different, and if she refused him and he subsequently remarried her, and this time he gave her a bill of divorce and she married another man, and she was widowed or divorced, she is forbidden to return to him, like any divorced woman who married another man.

HALAKHA

Anyone she leaves by means of a bill of divorce, it is prohibited for her to return to him – כָּל שִׁוְצָאָה הֵימְנוּ – בְּגִט אֶסְוֶרָה לְחִזּוֹר לוֹ. If a husband divorced his minor wife and she married another man and refused him, it is prohibited for her to remarry the first husband. Likewise, if she refused her husband and remarried him and was subsequently divorced, and then married another man and refused him, it is prohibited for her to return to the first. This is because it is prohibited for a woman who left her husband the final time by means of a bill of divorce to return to him once she has married someone else. This ruling is in accordance with the opinion of Rabbi Akiva and Rav (Rambam *Sefer Nashim, Hilkhhot Geirushin* 11:16; *Shulhan Arukh, Even HaEzer* 155:10).

By means of refusal, she is permitted to return to him – בְּמִיאוֹן מוֹתֶרֶת לְחִזּוֹר לוֹ – If a minor refused her husband and married someone else, and was divorced from him, she is permitted to return to her first husband. Even if her first husband divorced her and remarried her, and she subsequently refused him and married another and was divorced again, she is permitted to return to the first husband. This is because in any case where she left her husband by means of refusal, it is as though she had never been married to him (Rambam *Sefer Nashim, Hilkhhot Geirushin* 11:16; *Shulhan Arukh, Even HaEzer* 155:10).

NOTES

Refusal comes and nullifies the bill of divorce – אָתִי – מִיאוֹן וּמִבְטֵל גִּט: The *halakha* is that a refusal nullifies a bill of divorce, given by the same husband. The *Shiltei HaGibborim* understands that this is the case even with regard to the priesthood: A minor who was given a bill of divorce, remarried her ex-husband, and subsequently refused him is permitted to marry a priest, because the refusal nullifies the divorce.

However, the Maharshah disagrees and rules that there remains the trace of a bill of divorce, which disqualifies the woman from marrying into the priesthood. He concedes that this is only a stringency and that consequently, if the woman nevertheless married a priest, the offspring of such a marriage is not disqualified from marrying a priest (*Yam shel Shlomo*). This issue is discussed in the Jerusalem Talmud, which states that according to the letter of the law, a divorced minor is not disqualified from marrying into the priesthood, but that the priests themselves regarded such women as if they were divorced.

He will lead her astray and bring her back – אָוֵל מְשִׁיב – וּמִיַּתִּי לָהּ: *Tosafot* ask: If this is the case, then the same concern should exist in a case where she refused the first husband and married another. The Sages should be concerned that the first husband might lead her astray and encourage her to refuse her second husband. Some commentaries explain that refusal is the complete annulment of the marriage, rendering irrelevant the prohibition against remarrying one's divorcée who was married to another in the meantime, as there was effectively no first marriage. Therefore, even if he did undermine the second marriage, he is not transgressing an explicit prohibition, and consequently the Sages did not see fit to issue a decree (*Tosafot HaRosh*).

LANGUAGE

His gestures [*keritzot*] – קְרִיצוֹת: This word has exactly the same meaning in the Bible (see Proverbs 6:13). Although its root, *k-r-tz*, generally refers to cutting, its meaning has been expanded to indicate winking or gestures made with the eyes that make them look like a crack or a cut.

זֶה הַכֵּל: גִּט אַחַר מִיאוֹן – אֶסְוֶרָה לְחִזּוֹר לוֹ, מִיאוֹן אַחַר גִּט – מוֹתֶרֶת לְחִזּוֹר לוֹ.

הַמְמָאֵנֶת בְּאִישׁ וְנִשְׂאָת לְאַחַר, וְגִירָשָׁה; לְאַחַר, וּמִיַּאֲנָה בּוֹ; לְאַחַר, וְגִירָשָׁה; זֶה הַכֵּל: כָּל שִׁוְצָאָה הֵימְנוּ בְּגִט – אֶסְוֶרָה לְחִזּוֹר לוֹ, בְּמִיאוֹן – מוֹתֶרֶת לְחִזּוֹר לוֹ.

גַּמְ' אֶלְמָא: אָתִי מִיאוֹן וּמִבְטֵל גִּט.

וּרְמִינָהּ: הַמְמָאֵנֶת בְּאִישׁ וְנִשְׂאָת לְאַחַר, וְגִירָשָׁה; לְאַחַר, וּמִיַּאֲנָה בּוֹ; לְאַחַר, וְגִירָשָׁה; זֶה הַכֵּל: כָּל שִׁוְצָאָה הֵימְנוּ בְּגִט – אֶסְוֶרָה לְחִזּוֹר לוֹ, בְּמִיאוֹן – מוֹתֶרֶת לְחִזּוֹר לוֹ. אֶלְמָא לֹא אָתִי מִיאוֹן דְּחַבְרִיָּה וּבִטְלֵי גִטָּא דִּידִיָּה!

אָמַר רַב יְהוּדָה אָמַר שְׁמוּעַל: תִּבְרָא, מִי שִׁשְׁנָה זֶה לֹא שִׁנָּה זֶה.

אָמַר רַבָּא: וּמֵאִי קוֹשְׁיָא? וְדִלְמָא מִיאוֹן דִּידִיָּה מְבַטֵּל גִּט דִּידִיָּה, מִיאוֹן דְּחַבְרִיָּה לֹא מְבַטֵּל גִּטָּא דִּידִיָּה. וּמֵאִי שְׁנָא מִיאוֹן דְּחַבְרִיָּה דְלֹא מְבַטֵּל גִּטָּא דִּידִיָּה, אֲיִידֵי דְמַכְרַת בְּרַמְיוּתָיו וּקְרִיצוֹתָיו אָוֵל מְשִׁיב וּמִיַּתִּי לָהּ, מִיאוֹן דִּידִיָּה נִמְי לֹא לִיבְטֵל גִּטָּא דִּידִיָּה, דְּאִיִּידֵי דְמַכְרַת בְּרַמְיוּתָיו וּקְרִיצוֹתָיו אָוֵל מְשִׁיב וּמִיַּתִּי לָהּ!

This is the principle concerning a minor girl who refused her husband and then married several times: If the bill of divorce followed the refusal and she remarried, she is forbidden to return to him. If the refusal followed the bill of divorce, she is permitted to return to him. Since the refusal followed the bill of divorce it is clear that she was a minor and neither the marriage nor the divorce were valid by Torah law. However, when the ultimate separation is by means of a bill of divorce, there is no indication that she was a minor at the time and there is potential for confusion with an adult divorcée.

If a minor girl refuses one man and marries another, and he divorces her, and then she marries another man and refuses him, and then she marries another man and he divorces her, this is the principle for this case: With regard to anyone she leaves by means of a bill of divorce, it is prohibited for her to return to him.^H With regard to anyone she leaves by means of refusal, she is permitted to return to him.^H

GEMARA It was taught in the mishna that if the man gave his minor wife a bill of divorce but subsequently remarried her and she refused him, and then she married someone else, she is permitted to remarry the first husband when her marriage to the second is concluded. Apparently, refusal comes and nullifies a bill of divorce.^N

The Gemara raises a contradiction from the end of the mishna: If a minor girl refuses one man and marries another, and he divorces her, and then she marries another man and refuses him, and then she marries another man and he divorces her, this is the principle: With regard to anyone she leaves by means of a bill of divorce, she is prohibited from returning to him. With regard to anyone she leaves by means of refusal, she is permitted to return to him. Apparently, a refusal of another man does not come and nullify one's own bill of divorce. If the refusal completely nullified the marriage to the second husband, there would be no obstacle to her remarrying her first husband, as an ex-wife who did not marry another man is permitted to remarry her first husband. However, the divorce, combined with the second marriage, does generate a prohibition, and she is prohibited from remarrying in this case.

Rav Yehuda said that Shmuel said: This mishna is disjointed, and he who taught this *halakha*, that she may remarry her first husband if she refused him after he divorced her, did not teach that *halakha*, that her refusal of another man does not render her permitted to her divorced husband.

Rava said: What is the difficulty here? Perhaps her refusal of him nullifies his bill of divorce, while her refusal of the other man does not nullify the original husband's bill of divorce. The Gemara asks: In what way is her refusal of the other man different, that it does not nullify his bill of divorce? Isn't it that because she is familiar with the intimations and gestures [*keritzotav*]¹ of her first husband, he will lead her astray and bring her back^N to him, by causing her to refuse her new husband and then return to him? Consequently, it was decreed that she may not return to her first husband by refusing the second. But for this same reason the refusal against the first husband himself also should not nullify his own bill of divorce, as, since she is familiar with his intimations and gestures, he will lead her astray and bring her back to him after she has married another man.

הא כבר שבשא ולא אישבשא – But he already tried to lead her astray^N and she was not led astray. The reasoning for this statement can be explained as follows: If she left him by means of a bill of divorce, it is possible that she still loves him but he did not want to remain married to her. Therefore, if he leads her astray by telling her that he regrets the divorce, she may be susceptible to his charms. However, if she left him of her own free will, through refusal, he will not be able to lead her astray, and the possibility of his interference need not be taken into consideration (Ritva).

כגון ששילשה – Where she was divorced three times – Some commentaries ask how Ulla can suggest this, as three divorces are not mentioned in the mishna. They suggest that the mishna mentions only two divorces because it follows the opinion of Rabbi Yehuda HaNasi that even two occurrences create a legal presumption. Ulla's statement is based on the opinion of Rabban Shimon ben Gamliel, that a legal presumption is created only after three occurrences (Arukh LaNer).

Who is the tanna – מאן תנא: The phrase: It is disjointed, usually appears on its own, without attempting to prove the identity of the *tanna'im* who disagree about the particular matter. However, it appears that in this case, because the Sages had a specific tradition concerning this dispute, it made sense to connect it with the dispute in the mishna (Ramban).

מימינו בכסף – We have drunk our water for money – The Maharsha explains that the exegesis is also based on the verses that surround this one. The previous verse states: "We have become orphans and fatherless" (Lamentations 5:3). At the time of the destruction of the Temple, the Torah scholars, who are considered the nation's fathers, were killed, so that there was no one left with whom the people could inquire about Torah matters. In addition to understanding the term water as symbolizing the Torah, the Maharsha homiletically interprets the term "our wood [atzeinu]" as being derived from the word advice [eitza]. The Arukh LaNer notes that the Torah is called "the tree of life" (Proverbs 3:18), so that the allusion here may be a double one.

שכרו אדם אחד – Those involved hired one person, etc. – וכר: They paid the emissary such high wages because there was a twofold danger involved: He must enter the prison where Rabbi Akiva was incarcerated for his anti-Roman political activity and for teaching Torah, and subsequently must make the long and dangerous journey to Netzivin to ask Rabbi Yehuda ben Beteira. According to a tradition of the *ge'onim*, the agent sent to ask the question dressed up as a peddler, arrived at the prison with a box of spices on his head, and spoke as if he had a stutter. In this way he succeeded in approaching Rabbi Akiva in order to ask him the question.

הא כבר שבשא ולא אישבשא.

The Gemara answers: The Gemara answers: **But he already tried to lead her astray^N and she was not led astray.** In other words, he already remarried her after the divorce and she still refused him, which proves that he does not have sufficient influence to lead her astray.

אלא אי קשיא – דחבריה אדחבריה קשיא: מיאנה בו והחזירה, נתן לה גט ונשאת לאחר, ונתארמלה או נתגרשה – אסורה לחזור לו. טעמא דנתארמלה או נתגרשה, הא מיאנה – מותרת לחזור לו. אלמא, אתי מיאון דחבריה ומבטל גיטא דידיה.

But if there is a difficulty, it is the contradiction between one halakha involving a another man and a different halakha involving another man that is difficult, as the mishna states: **If she refused him and he subsequently remarried her, and this time he gave her a bill of divorce and she married another man, and she was widowed or divorced, she is prohibited from returning to her original husband. The reason is specifically that she was widowed or divorced by the other man. But if she had refused the second husband, she would be permitted to return to the first husband. Apparently, a refusal of the other man would have come and nullified his bill of divorce, permitting her to remarry the first husband, despite her erstwhile marriage to the other man.**

ורמינהי: הממאנת באיש ונשאת לאחר, וגרשה; לאחר, ומיאנה בו, זה הפלל: כל שיצתה ממנו בגט – אסורה לחזור לו, במיאון – מותרת לחזור לו. אלמא: לא אתי מיאון דחבריה ומבטל גיטא דידיה!

This raises a contradiction, as it is taught later: If a minor girl refuses one man and marries another and he divorces her, and then she marries another and refuses him, this is the principle: With regard to anyone she leaves by means of a bill of divorce, she is prohibited from returning to him. With regard to anyone she leaves by means of refusal, she is permitted to return to him. Apparently, refusal of the other man cannot come and nullify his own bill of divorce.

אמר רבי אלעזר: תברא, מי ששנה זו לא שנה זו. עולא אמר: כגון ששילשה בגיטין, דמיחזיא כגדולה.

Rabbi Elazar said: This mishna is disjointed, and he who taught this halakha did not teach that halakha. Ulla said: The last clause, in which it says her refusal does not nullify the bill of divorce, is referring to a case where she was divorced three times.^N Since she was divorced three times, she appears to be an adult, and therefore the Sages did not allow her refusal to cancel the effect of the divorce.

מאן תנא? אמר רב יהודה אמר רב: מאי דכתיב "מימינו בכסף שתינו עצינו במחיר יבאו" בשעת הסכנה נתבקשה הלכה זו: הרי שניצאה מראשון בגט ומשני במיאון, מהו שתחזור לראשון?

§ The Gemara asks: According to Rabbi Elazar, who holds that the mishna is disjointed, who is the *tanna*^N that taught that a minor may always remarry a husband she refused but not one who divorced her? Rav Yehuda said that Rav said: This can be determined based on the following incident. What is the meaning of that which is written: "We have drunk our water for money;^N our wood comes to us for a price" (Lamentations 5:4), implying that Torah, which is analogous to water, can be purchased with money. The Gemara explains: **During the time of danger, i.e., religious persecution by the Romans, this halakhic ruling was requested: If she, a minor, left her first husband by means of a bill of divorce and her second by refusal, what is the halakha with regard to her returning to the first?**

שכרו אדם אחד בארבע מאות זוז, ושאלו את רבי עקיבא בבית האסורין, ואסר. את רבי יהודה בן בתירה בנציבין, ואסר.

Those involved hired one person^N for four hundred dinars for the dangerous mission and asked Rabbi Akiva,^P who was incarcerated in prison by the Romans for teaching Torah, and he ruled that it is forbidden. They asked Rabbi Yehuda ben Beteira in Netzivin, in Babylonia, and he also deemed it forbidden.

PERSONALITIES

Rabbi Akiva – רבי עקיבא: Rabbi Akiva, who lived just after the destruction of the Second Temple, was one of the greatest of the *tanna'im*. Unlettered until the age of forty, Akiva was encouraged by his wife Raḥel to devote himself to the study of Torah. After years of study under the tutelage of Rabbi Eliezer ben Hyrcanus and Rabbi Yehoshua ben Hananya, he became a prominent Torah scholar with twenty-four thousand students and ultimately established his own academy in Benei Berak. Rabbi Akiva collected early rabbinic statements and began organizing the material of the Oral Torah. This collection was transmitted by his disciple, Rabbi Meir. The Mishna, redacted by Rabbi Yehuda HaNasi and his disciples, is based on this work.

Rabbi Akiva was the spiritual leader of the bar Kokheva revolt. He even proclaimed bar Kokheva to be the Messiah early in the struggle, though he later retracted this opinion. During the period of Roman emperor Hadrian's decrees, Torah study was prohibited, but the aged Rabbi Akiva continued to convene assemblies and teach Torah. Rabbi Akiva was arrested by the Romans, imprisoned, tried, and sentenced to death. As the Roman authorities were executing him through torture, he recited *Shema* and explained to his students that he finally had the opportunity to fulfill the true meaning of loving God with all of one's soul, as commanded in that prayer.

If you rendered permitted a prohibition for whose violation one is liable to receive excision from the World-to-Come [*karet*] – לְאִסּוּר בְּרַת הַתֵּרֶת – The early commentaries point out that the prohibition does not actually carry liability for *karet*, as the refusal nullifies the marriage. The conclusion of the Gemara is not based on this argument and understands the prohibition to be of rabbinic origin, instituted in order to prevent the husband from leading his ex-wife astray (Rashba).

Is refusal after death valid – יֵשׁ מֵיֵאוֹן לְאַחַר מִיתָה – It appears as though the question whether a refusal after the husband's death is valid has already been resolved, as it was already stated by Ulla that a minor whose husband died may refuse her *yavam*, thereby nullifying the levirate bond. Many early commentaries (Rif; *Tosafot*) explain that the question here is more specific. The Gemara states that a girl who becomes a candidate for levirate marriage with a forbidden relative is not permitted to perform refusal in order to nullify her original marriage and thereby render her rival wife permitted to her *yavam*, since it looks as though the rival wife of a forbidden relative were entering into levirate marriage. The question posed here is then: Did the Sages institute this decree only in the case of a primary forbidden incestuous relationship, or with regard to secondary forbidden relationships as well?

The Ramban offers a different explanation. He claims that a refusal may be used only in order to dissolve a bond that remains in existence between the woman and her husband. The reason that she may refuse her deceased husband is because there is a *yavam*, and her connection to the original marriage is perpetuated through the levirate bond. In this case, although she is prohibited in any case from marrying the *yavam*, she is not entirely disassociated from him, because he is a secondary forbidden relative, rather than a primary one. The question, then, is whether that tenuous connection is considered sufficient for the refusal to take effect.

HALAKHA

A minor who is considered a secondary forbidden relative – קִטְנָה שֶׁהִיא שְׂנִיָּה לְעֵרְוָה – If a minor girl who had been married to someone's mother's brother divorced him and subsequently married his paternal brother, who also died, the following *halakha* applies: She may not perform refusal in order to dissolve the first marriage and render her permitted to him in levirate marriage. Her rival wife performs *halitza* and may not enter levirate marriage. If there is no rival wife, the minor herself must perform both refusal and *halitza*. This *halakha* is in accordance with the opinion of Rabbi Yishmael, son of Rabbi Yosei (*Shulḥan Arukh, Even HaEzer* 173:13).

Just as she is forbidden to him, so is she forbidden to his brothers – בְּשֵׁם שְׂאִסּוּרָהּ לֹא כֵן אֶסְוֶהָ לְאַחֵין – A minor whose husband gave her a bill of divorce is forbidden to his brothers and to the rest of his close relatives, in accordance with the mishna (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:16; *Shulḥan Arukh, Even HaEzer* 155:10).

One who divorces a woman and remarries her – הַמְּגֵרֵשׁ אֶת הָאִשָּׁה וְהַחֲזִירָהּ – If a man divorces his wife, whether she is an adult or a minor, and remarries her, and then dies childless and his wife becomes a candidate for levirate marriage with his brother, the brother is permitted to enter into levirate marriage with her, in accordance with the first *tanna* in the mishna (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:12; *Shulḥan Arukh, Even HaEzer* 173:16).

אָמַר רַבִּי יִשְׁמַעֵאל בְּרַבִּי יוֹסֵי: לֹא לֹא הוֹצַרְכָנוּ, לְאִסּוּר בְּרַת הַתֵּרֶת. לְאִסּוּר לֹא לֹא בִלְשׁוֹנֵנוּ!

בְּרַם, כִּךְ שֶׁאֵלּוּ: הֲרֵי הִיְתָה אִשְׁתּוֹ אַחֵי אִמּוֹ שֶׁהִיא שְׂנִיָּה לּוֹ, וְנִשְׁאַה אַחֵיו מֵאִבּוֹ וּמֵת, מֵהוּ שֶׁתִּמְאַן הַשְּׂתָא וְתִעֲקִינְהוּ לְנִישׁוּאֵין קַמְאֵי וְתִתִּיבֵם (צָרְתָה)? יֵשׁ מֵיֵאוֹן לְאַחַר מִיתָה בְּמִקּוֹם מִצְוָה אוֹ לֹא?

שָׁכְרוּ שְׁנֵי בְנֵי אָדָם בְּאַרְבַּע מֵאוֹת זָוָה, וּבָאוּ וְשֶׁאֵלּוּ אֶת רַבִּי עֲקִיבָא בְּבֵית הָאֶסְרוּן, וְאָסַר: אֶת רַבִּי יְהוּדָה בֶּן בְּתִירָה בְּנִצְבִינ, וְאָסַר.

אָמַר רַב יִצְחָק בַּר אֲשִׁיָּאן: וּמוֹדָה רַב שְׁמוּעֵרָה לְאַחֵיו שֶׁל זֶה שֶׁנִּשְׁאַרָה עָלָיו.

פְּשִׁטָא, הוּא נִיהוּ דְמִבְרַת בְּרַמְיוּתָיו וְקִרְיָוּתָיו, אָבֵל אַחֵיו לֹא! מֵהוּ דְתִימָא לִיגֹר הָאֵי אִטּוּ הָאֵי, קָא מְשַׁמַּע לָן.

וְאִיכָא דְאִמְרֵי אִמְרֵי רַב יִצְחָק בַּר אֲשִׁיָּאן: בְּשֵׁם שְׂאִסּוּרָהּ לּוֹ, כִּךְ אֶסְוֶהָ לְאַחֵין. וְהָאֵי אִינְהּ מִבְּרַת בְּקִרְיָוּתָהֶם וְרַמְיוּתָהֶם! גִּירָה אַחֵיו אִטּוּ הוּא.

מִתְנִי' הַמְּגֵרֵשׁ אֶת הָאִשָּׁה וְהַחֲזִירָהּ – מוֹתֶרֶת לִבָּם

Rabbi Yishmael, son of Rabbi Yosei, said: This question was not what they asked, as it was unnecessary: If you rendered permitted a prohibition for whose violation one is liable to receive excision from the World-to-Come [*karet*],^N i.e., if the prohibition against sexual intercourse with a married woman is dissolved by the refusal, as the marriage is nullified retroactively, then is it not clear all the more so that after a refusal, the regular prohibition against remarrying one's ex-wife after she was married to another should be permitted? The opinion in the mishna that refusal does not cancel the effect of divorce is in accordance with that of Rabbi Akiva and Rabbi Yehuda ben Beteira, while the opinion that she is permitted to return to her first husband after refusing the second one is in accordance with the opinion of Rabbi Yishmael, son of Rabbi Yosei.

Rabbi Yishmael, son of Rabbi Yosei, continued: Rather, this is what they asked: If the minor was the wife of someone's mother's brother, a secondary forbidden relative, i.e., a relative forbidden to him by rabbinic law,^H and afterward his paternal brother married her and died, so that she became eligible to him for levirate marriage, what is the *halakha* with regard to the following: May she refuse now and uproot the first marriage to the mother's brother, so that she will no longer be a forbidden relative, and likewise her rival wife will not be the rival wife of a forbidden relative, so that her rival wife may enter into levirate marriage? In other words, in a case where there is a *mitzva* of levirate marriage, is refusal after the husband's death valid^N or not?

Those involved hired two people for four hundred dinars, and they came and asked Rabbi Akiva in prison and he deemed it prohibited. They asked Rabbi Yehuda ben Beteira in Netzivin and he deemed it prohibited.

Rav Yitzḥak bar Ashyan said: Rav concedes that she is permitted to the brother of the man to whom she is forbidden. Rav Yitzḥak is referring to a case of a minor who refused her husband, remarried the same man, and was subsequently divorced, and then married another man and refused him. Although she may not remarry the first husband, she may marry his brother, despite the fact that one may not ordinarily marry one's brother's divorcée.

The Gemara asks: It is obvious. It is he, her former husband, whose hints and gestures she recognizes, but not those of his brother, so that there is no concern that the brother will persuade her to refuse her husband. The Gemara explains: Rav Yitzḥak bar Ashyan saw fit to point this out, lest you say: Issue a decree rendering it prohibited for her to marry this brother due to the risk that such a marriage would lead people to think she is permitted to marry that brother, her original husband. Therefore, he teaches us that no such decree was instituted.

And there are those who say a different version of the discussion: Rav Yitzḥak bar Ashyan said: Just as she is forbidden to him, to the man who divorced her, so is she forbidden to his brothers.^H The Gemara asks: But she is not familiar with their intimations and gestures. Why is it prohibited for her to marry them? The Gemara answers: It is a rabbinic decree concerning the ex-husband's brothers due to him, the ex-husband. If she were to be permitted to her ex-husband's brothers, people might mistakenly think that she is even permitted to remarry the ex-husband himself.

MISHNA With regard to one who divorces a woman and remarries her^H and then dies childless, his wife is permitted to enter into levirate marriage with her *yavam*,