**HALAKHA**

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. This halakhah is in accordance with the opinion of Rabbi Hanina ben Antigonus (Rambam Sefer Nashim, Hilkhot Geitounim 11:7, Hilkhot Ishut 4:7; Shulhan Arukh, Even Ha’Ezer 155:1–2).

**NOTES**

Without her consent – תֵּמֶנָּה קְטַנָּה. There is a pictur-esque 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. –ابلע לְדַּﬠְתָּהּ. The Rambam, following the geronym, 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 Eleazar.

Rabbi Elazar – רב אלעזר: It is apparent from the Gemara (rola) 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.

**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 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 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 Yaakov 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 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.

**NOTES**

Document of refusal – בַּלְתָּךְ יוּכְסִיד. 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 Geitounim 11:1).
The Sages taught: What constitutes a refusal? 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, going 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.

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 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?

What constitutes a refusal? 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, Hilkhhot Geirushin 11:8; Shulhan Arukh, Even HaEzer 155:3).

Went and became betrothed – 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).
Her husband has rights to items she finds, etc. — 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, Hilkhos Ishut 22:4; Shulhan Arukh, Even HaEzer 155:10).

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.

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 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, 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.
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 his husband. Rabbi Yehoshua is inconsistent in treating the relationship as a marriage even though it can be dissolved easily.

The mishna stated: Rabbi Eliezer ben Yaakov says: If there is any obstruction in the matter due to the man, it is as if she were his wife. If there is no 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? Ray 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 wish to marry because the men suggested to me are not suitable for me, this is an obstruction that is not due to the man, and she is not considered to be his wife.

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.

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.

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.

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.
This ruling is in accordance with the opinion of Rabbi Akiva and Rav (Rambam Sefer Nashim, Hilkhot Geirushin 11:16, Shulhan Arukh, Even HaEzer 155:10).

By means of refusal, she is permitted to return to him – חזרת הגרישה והערת הגרישה. 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, Hilkhot Geirushin 11:16, Shulhan Arukh, Even HaEzer 155:10).

The 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.6

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, 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 [keritot] of her first husband, he will lead her astray and bring her back 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.

Anyone she leaves by means of a bill of divorce, it is prohibited for her to return to him – מקרא: הוא интерпретирует את ההלכה. 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, Hilkhot Geirushin 11:16, Shulhan Arukh, Even HaEzer 155:10).

His gestures [keritot] – תרשים. This word has exactly the same meaning in the Bible (see Proverbs 6:13). Although its root, k-r-t, 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.
The Gemara answers: The Gemara answers: But he already tried to lead her astray 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.

But if there is a difficulty, it is the contradiction between one halakha involving 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.

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.

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. 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.

The Gemara asks: According to Rabbi Elazar, who holds that the mishna is disjointed, who is the tanna 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; our wood comes to us for a price” (Lamentations 5:3), 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?

Those involved hired one person for four hundred dinars for the dangerous mission and asked Rabbi Akiva, 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.

Rabbi Akiva – יֵאִבָּקָיו: 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 Rahel 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.
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 exicision from the World-to-Come [karet], 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 remarriage one’s ex-wife after she was married to another should be permitted? The opinion in the misha 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.

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 Yitzhak bar Ashyan said: Rav concedes that she is permitted to the brother of the man to whom she is forbidden. Rav Yitzhak 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 Yitzhak 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 Yitzhak bar Ashyan said: Just as she is forbidden to him, to the man who divorced her, so is she forbidden to his brothers. 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 and then dies childless, his wife is permitted to enter into levirate marriage with her yavam.