A minor girl whose father married her off and who was married off by her father was divorced from her husband and then remarried him, she is prohibited from entering into levirate marriage if her husband subsequently died while she was still a minor (Rambam Sefer Nashim, Hilkhot Yibbum 7:03, Shulchan Arukh, Even HaCzer 172:16).

**GEMARA** The Sage Eifa said: What is the reasoning of Rabbi Elazar, who prohibits a man from entering into levirate marriage with a woman whom his brother had divorced and remarried? It is because she was forbidden to him at one time; when the first brother divorced her, she became forbidden to the second brother due to her status as the first brother’s ex-wife. A husband’s relatives are forbidden to the wife even after death or divorce. However, the mitzva of levirate marriage grants a special exemption from the prohibition against marrying one’s brother’s wife. In this case, if the first brother had died while they were still divorced, the mitzva of levirate marriage would not have applied, and she would have been forbidden to him. The Sages said to Eifa: If that is so, she should also not require halitza, since she is a forbidden relative.

And if you would say: Indeed, Rabbi Elazar also exempts her from halitza, isn’t it taught in a baraita: It was said in the name of Rabbi Elazar that she performs halitza? Rather, Eifa said: I do not know the reason for the opinion of Rabbi Elazar.

Abaye said: This is the reasoning of Rabbi Elazar: He is uncertain whether the death of the husband determines that she is a candidate for levirate marriage, or whether the original marriage determines it. In other words, he is uncertain as to whether the obligation to perform levirate marriage is established only at the death of one’s brother or already from the beginning of the brother’s marriage. If death determines that she is a candidate for levirate marriage, then she has happened before him for levirate marriage, as she is the wife of his childless brother who died. If the original marriage determines that she is a candidate for levirate marriage, then she was forbidden to him for a time as his brother’s ex-wife and is consequently exempt from levirate marriage. According to Rabbi Elazar, it is due to this uncertainty that the brother may not enter into levirate marriage yet must perform halitza.

Rava said: Actually, it is obvious to Rabbi Elazar that death determines that she is a candidate for levirate marriage. However, everyone is well informed with regard to divorces. Everyone knows that the woman was divorced, while not everyone is well informed with regard to remarriage, and they do not necessarily know that she remarried him. Therefore, there is concern that people will mistakenly think that one entered into levirate marriage with his brother’s ex-wife.
He decreed to prohibit levirate marriage with these, due to the case of an orphan in the lifetime of her father — יותם. The base problem exists only in a case where the husband divorced her and subsequently remarried and then died while she was still a minor. If she reached majority before he died, then their marriage is by rabbinic law and she is forbidden to the yavam by rabbinic decree (Rashi; Tosafot).

However, some explain that even if she reaches majority while he is still alive, a man who marries a minor does not ordinarily take into consideration that she is her initial betrothal. Accordingly, even after she reaches majority, their marriage is by rabbinic law and she is forbidden to the yavam by Torah law (Rashba; Ralba).

The Gemara argues against this point: On the contrary, her return to her former husband, since she is living with him, generates publicity, so that it is known that they are remarried. The Gemara answers: Are we not dealing even with a case in which he remarried her in the evening and died in the morning? In this instance and others like it, not everyone would know that he remarried her, and they will think that the brother took his deceased brother’s ex-wife in levirate marriage. In order to avoid such situations, Rabbi Elazar decreed that she is always forbidden.

Rav Ashi said: This is the reasoning of Rabbi Elazar: He decreed to prohibit levirate marriage with these, i.e., women who were divorced and remarried, due to the case of a girl who is considered an orphan in the lifetime of her father, who was divorced by her husband and he subsequently remarried her. If a minor girl was married off by her father and was subsequently divorced, she is no longer subject to her father with regard to marriage and divorce, but because she is a minor, any marriage she enters into is by rabbinic rather than by Torah law. The Gemara comments: So too, this is reasonable based on what was taught in the latter clause of the mishna: A minor girl whose father married her off and who was subsequently divorced while she was still a minor, is like an orphan during her father’s lifetime. And if the husband remarries her while she is still a minor and then dies, everyone agrees that she is forbidden to the yavam and may not enter into levirate marriage.

What is the purpose of stating this halakha? It is obvious. Rather, is it not teaching us Rabbi Elazar’s reason for decreeing that these women who were divorced and remarried are forbidden due to that woman, the girl who is considered an orphan in the lifetime of her father? The Gemara concludes: Learn from here that this is his reason.

The Gemara comments: It is taught in a baraita in accordance with the opinion of Rav Ashi: The Rabbis concede to Rabbi Elazar concerning a minor girl whose father married her off and who was divorced, that she is like an orphan in the lifetime of her father, and that if her current husband remarried her, she is forbidden to the yavam, because her divorce was a full-fledged divorce by Torah law while her remarriage was not a full-fledged remarriage, as she was still a minor. This implies that Rabbi Elazar’s ruling is prompted by the case of a girl who is like an orphan in her father’s lifetime and that this was the reason for his decree.

The baraita continues: In what case is this statement said? In a case where he divorced her while she was a minor and he remarried her while she was still a minor. But if he divorced her while she was a minor and remarried her when she was already an adult, or if he remarried her while she was a minor and she matured to legal adulthood while with him, and he subsequently died, she may either perform halitza or enter into levirate marriage. It was said in the name of Rabbi Elazar: She must perform halitza and may not enter into levirate marriage, since he decreed that all remarried women may not enter into levirate marriage due to the case of one who is like an orphan in her father’s lifetime.

He divorced her while she was a minor and remarried her when she was an adult — מתן. The same halakha applies to a deaf-mute whose sense of hearing was restored while she was married to the man or if he remarried her after her hearing was restored. These halakho are in accordance with the opinion of the Rabbis (Rambam Sefer Nashim, Hilkhot Yibtavo 7:14; Shulhan Arukh, Even HaEzer 173:7).
If two brothers are married to two minor sisters, one of whom was an adult and the other a minor, and the minor's husband died, she is exempt from levirate marriage due to the prohibition against marrying the sister of one's dead brother. This prohibition is due to the rabbinical decree, the rival wife is also prohibited from entering into levirate marriage (Rif). In the Jerusalem Talmud, the amoraim disputed this issue, and the majority of them permit her to enter into levirate marriage. However, it appears that the opinion in the Jerusalem Talmud with regard to the marriage of a minor differs from that in the Babylonian Talmud, as the former source considers the marriage of a minor who is an orphan in her father's lifetime to be a partial acquisition (see Rashba). And will we then proceed to issue a decree to prevent violation of a decree? Some commentaries point out that in other cases where a yevama is prohibited from entering into levirate marriage due to a rabbinical decree, the rival wife is also prohibited from doing so (see ibid). Why is this argument not made there? They explain that one decree of the Sages cannot be compared to another, as some are more expansive than others (Tosefta Had Mikamad).
Nullification of vows — halitza. It is written in the Torah (Numbers, chapter 30) that a father is authorized to nullify the vows of his daughter before she either attains the age of majority or marries. Similarly, a husband is entitled to nullify vows made by his wife. If a girl is betrothed before she attains the age of majority, her vows may be nullified by her husband and father acting together. For nullification to be valid, the vow must be nullified on the same day on which the father or husband hears of it. A husband is empowered to nullify only those vows that directly or indirectly affect the personal relationship between him and his wife. According to many opinions, this restriction applies to the father as well.

The Maharsha cites a ban by leading Ashkenazic scholars against the nullification of vows usually refers to the right of a husband to nullify the vows of his wife on the day that he hears about them. However, the minor came to the court on her own initiative and made a declaration of refusal. Rabbeinu Hayyim Volterra states that bar Kappara objects to vows in general. As it is taught in the Gemara that bar Kappara taught: A person should always cling to three things: For the sake of peace, and to the nullification of vows. To halitza; this is in accordance with the opinion of Abba Shaul, as it is taught in a baraita: Abba Shaul said: One who marries his yeveuma for her beauty, or for the sake of matrimony because he wants to be married to her, or for some other reason, such as her money, it is as if he is having intercourse with a woman forbidden to him, and in my eyes it is almost as if his offspring were a maimer. Therefore, it is preferable that one performs halitza and avoids sin.

One should cling to bringing about peace, as it is written “Seek peace and pursue it” (Psalms 34:15).

Cling to three things, etc. — halitza: The Maharsha explains the commonality among the actions bar Kappara lists: For each one, it is possible to state reasons in favor of or against performing them. Halitza is a mere substitute for the mitzva of levirate marriage, and the nullification of vows amounts to avoiding one’s obligations. Even the pursuit of peace has a negative side, as the sake of peace one is even permitted to lie (see Exodus 2). With regard to the actions to be avoided, refusal seems justified, as it dissolves a marriage that is valid only according to rabbinic law, and bailies and guarantors offer aid to those in need.

The Rambam teaches that the two lists correspond to one another: One should distance himself from refusal and choose halitza instead; one should pursue peace but not take charge of deposits or become a guarantor; and if one becomes obligated to do so, he should nullify his vow. And to the nullification of vows — halitza. The term nullification of vows usually refers to the right of a husband to nullify the vows of his wife on the day that he hears about them. However, Rashi extends the concept to include the dissolution of one’s vows by a halakic authority, as one would expect from the implication in the Gemara that bar Kappara objects to vows in general.

Distance oneself from refusal — halitza: According to the Jerusalem Talmud, the court does not initiate refusal. Wherever the procedure of refusal is discussed, it is referring only to cases where the minor came to the court on her own initiative and made a declaration of refusal. Rabbeinu Hananel relates the tradition of the gebnim in this matter. They discouraged the practice of marrying off minors in order to avoid the occurrence of refusal (see Tosafot Rosh). The Maharsha cites a ban by leading Ashkenazic scholars against performing refusals, although this was not universally accepted in practice (see Shulhan Arukh Even HaEzer 155:10, and in the comment of Rema).
And Rabbi Abbahu said: It is derived by verbal analogy from the terms pursuit and pursuit. It is written here: “Seek peace and pursue it” (Psalms 34:15) and it is written there: “He who pursues righteousness and mercy finds life, prosperity, and honor” (Proverbs 21:21), indicating that pursuing peace is a mitzva, just as pursuing righteousness and mercy is. As for the nullification of vows, this is in accordance with the opinion of Rabbi Natan, as it is taught in a baraita: Rabbi Natan says: With regard to one who vows, it is as if he built a personal altar9 when it is prohibited to build an altar outside the Temple. And one who fulfills that vow, it is as if he sacrificed an offering on this personal altar, thereby doubling his sin. Therefore, it is preferable that he ask a halachic authority to dissolve the vow.

As Rabbi Yitzhak said: What is the meaning of that which is written: “He who serves as a guarantor for a stranger shall suffer evil, but he who hates those who shake hands is secure” (Proverbs 11:35)? This means: Evil shall befall those who accept converts, and Sheltziyon guarantors, and one who confounds himself in matters of halakha. The Gemara clarifies. Evil will befall those who accept converts: This is in accordance with the opinion of Rabbi Helbo. As Rabbi Helbo says: Converts are difficult for the Jewish people like a leprous sore on the skin.

Evil shall befall Sheltziyon guarantors because they practice: Pull out, thrust in. That is, they pull out the borrower and thrust the guarantor in his place as the one responsible for the loan. Evil befalls one who confounds himself in matters of halakha, as it is taught in a baraita: Rabbi Yosei says: Anyone who says he has no Torah, has no Torah. The Gemara asks: Is this not obvious? Rather, anyone who says he has nothing other than Torah, has nothing other than Torah.

The Gemara asks: But isn’t this also obvious? One does not receive more reward than he deserves. Rather, it means that he does not even have Torah. What is the reason? Rav Pappa said: The verse states: That you may learn them and perform them, which is an abridged version of the verse “Hear, O Israel, the statutes and the ordinances that I speak in your ears this day, that you may learn them, and take care to perform them” (Deuteronomy 5:1). The verse teaches that anyone who is engaged in performing mitzvot is engaged in Torah study, while anyone not engaged in performing mitzvot is not engaged in Torah study; the Torah study of one who wishes only to immerse himself in his studies without fulfilling the mitzvot is not considered to be fulfilling even the mitzva of Torah study.

One who vows, it is as if he built a personal altar and one who fulfills that vow, it is as if he sacrificed an offering on this personal altar – אֵינוֹ לִדְבַר רַבִּי fi personal altar – דַּאֲפִילּוּ מִן personal altar – אֵין דְּתַנְיָא לְיִשְׂרָאֵל. If one vows, it is as if he built an improvised personal altar at a time when it is forbidden to do so, and if he fulfills it, it is as if he sacrificed an offering on this altar. It is better for him to ask a halachic authority to dissolve his vow. This ruling is in accordance with Rabbi Natan’s opinion (Rambam Sefer Haflura, Hilkhot Nedarim 13:25; Shulhan Arukh, Yoreh De’ah 203:3).

NOTES

1. The destruction of the first Temple.
2. Spelled [th].
4. This baraita is a different source from the baraita of Simeon bar Yochai.
5. This baraita is a different source from the baraita of Simeon bar Yochai.
6. Spelled [kh].
7. Spelled [kh].
8. Spelled [kh].
9. Spelled [kh].

It is derived from pursuit and pursuit – אַבָּהוּ בִּלְמִידָה. In tractate Nedairim Rashi explains this statement as relating to an altar for idol worship, whereas here, like most of the commentaries, he interprets it as relating to a personal altar.

Some commentaries explain this as follows: Even though one who builds a personal altar does so for the purpose of serving God, he nevertheless transgresses a severe prohibition. Vowing is similarly prohibited even though it appears to be a legitimate activity (Ran). Others explain slightly differently: One who builds a personal altar has not yet transgressed the actual prohibition, which is offering sacrifices on that altar, but is preparing for a transgression that will occur later. Likewise, in the case of the vow, the transgression does not lie in the act of vowing but in one’s subsequent behavior in which one might not fulfill the vow (Maharsha).

A different explanation of the comparison is that one who vows is adding prohibitions that the Torah does not impose upon him, which is similar to sacrificing an extraneous offering that the Torah does not require. It should be noted that both early and later commentaries qualify this negative attitude to vows, explaining that certain vows that are designed to strengthen one’s commitment to Torah and mitzvot are appropriate and even recommended.

He will treat the bailee’s home as his home – בֵּיתוֹ fi. The Maharsha explains this differently. He says that this statement refers to a case where the owner’s house is as secure as the bailee’s, and consequently the bailee is taking on additional responsibility for no purpose.

He...has nothing other than Torah – אֵין קאַ נָלֵא fi. This refers to someone who studies Torah solely in order to derive pleasure from his learning and not for the purpose of performing the mitzva of Torah study. Such a person does not receive the reward for performing a mitzva (gebim).
**HALAKHA**

He should...view himself as if a sword were placed – לָא כְּאִילָּה. Judges must preside in a state of dread, awe, and seriousness. They must not engage in idle talk in court, and each judge must view himself as if a sword were at his throat (Rambam, Shifri Shofetim, Hilkhot Sanhedrin 25b; Shulhan Arukh, Hoshen Mishpat 8:2).

**NOTES**

When she reaches majority the betrothal reaches majority with her – מִי קִי. The Rashba explains this understanding of a minor’s betrothal: When a husband betroths a minor it is as if he were setting a condition that the betrothal will take effect according to Torah law when she reaches maturity. Although she did not yet possess full intellectual capacity when she was betrothed, and although the betrothal money may no longer exist when she reaches maturity, nevertheless, the Sages decreed that this betrothal takes effect when she reaches majority if she does not refuse him in the interim (see Ramban).

According to a different opinion, the validity of the marriage of a minor is not a function of the initial betrothal but rather of the agreement implied by the fact that she became an adult without dissolving the bond between her and her husband (see Koveitz Hador, citing Rabbeinu Perez and Mahari). This is also debated in the Jerusalem Talmud, where the conclusion is that the betrothal is not a result of intercourse subsequent to her majority, but depends upon the initial betrothal.

And if you wish, say: Actually, it is as you initially said: Anyone who says he has nothing other than Torah has nothing other than Torah. Rather, this statement is necessary with regard to one who teaches others and they go and perform the mitzvot. Lest you say that there is reward for him in it, Rabbi Yosef teaches us that since that person engaged in Torah study without the intention of observing the mitzvot himself, he does not receive a reward for the mitzvot that he taught others and which they performed.

And if you wish, say that one who confines himself in matters of halakha is referring to a judge who had a case come before him, and he learned the tradition about a ruling in a similar case, and he likens one matter to the other in order to reach a conclusion; and he has a teacher nearby but he does not go and ask him. This is inappropriate, as judges must be very careful not to err in judgment.

As Rabbi Shmuel bar Nahmani said that Rabbi Yonatan said: A judge should always view himself as if a sword were placed between his thighs, so that if he leans right or left he will be injured, and as if Gehenna was open beneath him, as it is stated: Behold, it is the bed of Solomon; sixty mighty men are around it, of the mighty men of Israel. They all handle the sword, and are expert in war; every man has his sword upon his thigh, because of dread in the night” (Song of Songs 3:7–8), i.e., because of the dread of Gehenna, which is similar to the night. Rabbi Shmuel bar Nahmani understands the mighty men of Israel in this verse to refer to the judges who sit in judgment around the bed of Solomon, i.e., in the Temple.

§ It was taught in the mishna that Rabban Gamliel says: If the minor refuses of her own accord, her refusal is valid. And if not, she should wait until she reaches majority, whereupon her marriage is valid by Torah law, and the widowed adult sister shall be exempt from levirate marriage due to her status as the sister of a wife. Rabbi Elazar raised a dilemma to Rav: What is Rabban Gamliel’s reasoning? Is it because he holds that the betrothal of a minor girl is in suspension and when she reaches majority, the betrothal reaches majority, i.e., is fully realized, with her? Accordingly, the betrothal would then be realized even if he did not engage in intercourse with her after she reached majority.

Or perhaps, is it because he holds that when a yavam betroths the sister of his yevama, causing the yevama to be forbidden to him, the yevama is exempt and is released even though her levirate bond came first? If he engaged in sexual intercourse with his betrothed after she reached majority, then yes, the yevama is exempt as a forbidden relative, because only then does Rabban Gamliel consider the betrothal to be fully realized, but if he did not engage in intercourse with his betrothed, then the yevama is not exempt from levirate marriage.

Rav said to him: This is Rabban Gamliel’s reasoning: Because he holds that in the case of one who betroths the sister of his yevama, the yevama is exempt and is released, then if he engaged in sexual intercourse with the sister after she reached majority then yes, the yevama is exempt from levirate marriage, but if he did not engage in intercourse with his betrothed, then the yevama is not exempt.

Rav Sheshet said: I say that Rav said this halakha when he was dozing and lying down, as it is difficult. As it is taught in a Bavaita: In the case of one who betroths a minor girl, her betrothal is in suspension. What does it mean that it is in suspension? Is it not that when she reaches majority, the betrothal reaches majority with her and is fully realized even if he did not have intercourse with her after she reached majority?
Ravin, son of Rav Nahman, said to Rav Sheshet: This matter, that the betrothal of a minor girl remains in suspension, should be understood differently. It means that her betrothal is provisional as long as she is still a minor. If he has sexual intercourse with her after she reaches majority, yes, her betrothal is realized; if he does not engage in intercourse with her after she reaches majority, her betrothal is not realized. For she says to herself: He has an advantage over me in that he can divorce me, and I have an advantage over him, as I can refuse him. Since the marriage of a minor depends upon her ongoing consent, as she can refuse him at any time, it remains provisional until it is consummated when she is an adult.

The Gemara asks: But does Rav truly think that only if he has intercourse with her after she becomes an adult, then yes, her betrothal is realized, but if he did not engage in intercourse with her, then no, it is not realized? Wasn’t it stated that with regard to a minor who had not refused her husband and reached majority, and then went and married another, Rav said: She does not require a bill of divorce from the second man, as she is fully married to the first and consequently her second marriage is invalid? And Shmuel said: She does require a bill of divorce from the second man, as it is uncertain whether her second marriage is valid.

NOTES

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NOTES

One who betroths a minor who reaches majority is: הלכה התinja לאריה: If one betroths a minor girl who is orphaned of her father, the legal status of this betrothal is defined as uncertain until they have had intercourse after she has reached her majority. During this period, if he wishes to divorce her, she requires a bill of divorce by rabbinic law. If he has not divorced her and she marries another, she requires a bill of divorce from each of the husbands. The first must divorce her but the second may remain married to her if he wishes (Rambam Sefer Nashim, Hilkhot Geirushin 11:6; Shulhan Arukh, Even HaEzer 155:20–21).

HALAKHA

But they already disagreed about this once: הארי לא סתימו התinja לאריה: This question, like the similar question that appears elsewhere in the Gemara: but he already said this once, does not imply that a scholar would never repeat the same thing twice. It means, rather, that if the scholar makes a halakhic statement, there is no reason for him to repeat the same thing in a different form with no original content. Likewise, with respect to a halakhic dispute, there is no reason to differentiate between two topics when the foundation of the dispute is identical (Yosipov; Tosafot; Tosheft Harash).

HALAKHA

Betrothed a woman on some condition, and married her without mentioning it: מחסן לאריה: If a man betrothed a woman based on a condition, but married her or engaged in sexual intercourse with her without specifying any such condition, she requires a bill of divorce from him in order to be released from the marriage even if the condition was not fulfilled. This is because he retracted the condition when he married her or engaged in intercourse with her. This ruling is in accordance with Rav, whom the halakha follows in cases of prohibitions (Rambam Sefer Nashim, Hilkhot Ishut 7:23; Shulhan Arukh, Even HaEzer 38:35).