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JEWISH WIFE REPUDIATES HER HUSBAND

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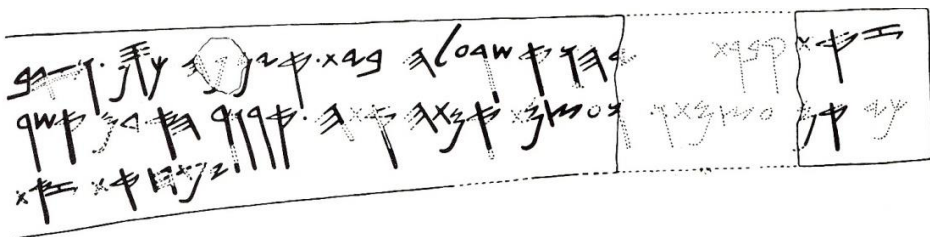
One of the ancient Semitic traditions, that goes back at least to the early 2nd millennium B.C., recognizes the same rights to divorce to the man and to the woman.¹ This tradition existed also among the Israelites and the Judaeans, as shown by the Jewish Aramaic marriage contracts from Elephantine (Egypt), dating from the 5th century B.C.² The assumption that this stronger woman's position is due to Egyptian influence results from the wrong belief that rabbinic legislation on divorce represents the entire legal practice in biblical times. Some Ancient Near Eastern documents prove instead that marriage contracts could recognize both spouses' right to dissolve the marriage without establishing any grounds in 'matrimonial offences'. The party initiating the divorce without objective reasons was nevertheless penalized, what shows that divorce was considered a negative element in the social life of the community.

The same legal practice existed in ancient Israel, as shown by Ex. 21:7–11, a passage belonging to the Book of the Covenant. The text is usually regarded as concerning sale of slave-girls or maidservants, but v. 11 shows that the woman might go free without any payment, if the 'master' was not accomplishing his conjugal duties towards her. She was certainly no slave-girl, but a wife, possibly a second-rank wife, whose children would perhaps increase the family without being the heirs of their father. Besides, the text implies that she might also go away in other circumstances, but she should then pay divorce money. This means that she had her own valuable belongings, probably also the 'bride-price' added by her father to the dowry. The text calls her *'āmāh*, while a husband is usually designated by the semantically correlated noun *ba'al*, replaced by *'ādōn* in Ex. 21:8.

¹ Examples are quoted by Lipiński 1981.

² Presentation with further literature: Lipiński 2014.

The Amorite use of *amtu(m)* in the sense of ‘wife’ appears clearly in a Mari census of free women, listing more than two hundred names. The women are qualified each time as *amtum* of a man, as *almattum* or *qaššatum*.³ It is obvious that they are designated as someone’s ‘wives’, as ‘widows’ or as ‘hierodules’, certainly not as ‘slave-girls’ or ‘maidservants’, as *amat* is translated by the editor. There are a few cases of bigamy. The use of *amtum* > *’āmāh* in the sense of ‘wife’ is attested also in Hebrew, at least until the 8th century B.C. In fact, a Hebrew tomb inscription in Jerusalem, dated in the late 8th century B.C., reports that the owner of the tomb, a high-ranking royal official bearing the title *’šr ‘l hbyt*, was buried there with his *’āmāh*.⁴



- 1 . זאת [קברת . . .] יהו אשר על הבית. אינ פֶּה כסף. וזהב
 2 . [כי] אִמִּי [עצמתו] ועצמת אמתה אתה. ארור האדמ אשר
 3 . יפתח את זאת

- 1) ‘This [is the tomb of ...]yahu, Royal Steward. There is no silver and gold here,
 2) [but] only [his bones] and the bones of his wife (*’mth*) with him. Cursed be the man who
 3) should open it.’

The mention of a sale in Ex. 21:7 creates no difficulty, because some Neo-Assyrian marriage contracts are still redacted in the 7th century B.C. according to the formulary of sale contracts. The Jewish Aramaic marriage contracts from Elephantine exclude the possibility of bigamy, but this is not the case in Ex. 21:10–11: ‘If he takes another (*’āmāh*), he shall not deprive the first one of meat, clothes, and conjugal rights. If he does not provide her with these three things, she may go free away without any payment’. There is no mention of a divorce bill, which does not seem to have been widely used even in the 5th century B.C., when the Elephantine documents were written. They do not mention it

³ Birot 1958 and 1960, no. 291.

⁴ Avigad 1953.

at all. The correct text of Deut. 24:1–4 referred to the particular case of a wife given as personal gage (*'rbt* confused with *'rwt*) to a creditor,⁵ a practice that the lawgiver intended to obstruct by not allowing the return of the wife.⁶

The Jewish law practice attested at Elephantine in the 5th century B.C. has thus an older background in Israel, Judah, and the surrounding countries, and this practice continued down to the Roman period, as shown by a divorce bill from 135 A.D., sent by the wife to her husband. Attempts to change the meaning of the text do not respect its normal syntax and possibly have an ideological motif, viz. not contradicting rabbinic practice in the matter. The bill belongs to a group of texts brought by Bedouin discoverers to the Rockefeller Museum in Jerusalem in the early 1950s, claiming that they found them in the Wadi Seiyal, in Hebrew Naḥal Şe'elim. In reality, the text comes from a cave in Wadi Ḥabra or Naḥal Ḥever. It is usually listed as Papyrus Şe'elim 13 or Ḥever 13 and it was referred to with the siglum xHev/Se 13 or 5/6Hev/Se13. The text was published entirely in 1995⁷ and soon discussed by several authors,⁸ even with a polemic opposing T. Ilan to A. Shremer.⁹ The text will be translated and commented here by the writer, whose former translation¹⁰ requires important corrections and complements.

- | | |
|------------------------------------|-----|
| בעשרין לסיון שנת תלת לחרת ישראל | .1 |
| לשם שמעון בר כסבה נ[שי]א ישראל | .2 |
| [] ... [] ... [] לא איתי [לי] | .3 |
| אנה שלמצין ברת יהוסף קבשן | .4 |
| מן עינגדה עמך אנת אלעזר בר חנניה | .5 |
| די הוית בעלה מן קרמת דגן דין | .6 |
| הוא לך מנה גט שבקין ותרכין | .7 |
| [מ]לת מדעה [א] איתי לי עמך [אנת] | .8 |
| אלעזר על צבת כל מדעם וקים עלה | .9 |
| אנה שלמצין כול די על כת[ב] | .10 |
| שלמצין ברת יהוסף על נפשה שאלה כתב | .11 |
| מתת בר[ך] שמעון ממרא | .12 |
| ... בר שמעון עד | .13 |
| משבלה בן שמעון עד | .14 |

⁵ The words *l' tms' hn* reproduce a literary phrase, occurring very often in the Bible. It has no legal significance and was inserted in the text, when the latter's original meaning was no longer understood.

⁶ Lipiński 2014, 25–27.

⁷ Yardeni 1995, Şe'elim 13; 1997, P. Ḥever 13.

⁸ Fitzmyer 1999; Brody 1999.

⁹ Ilan 1996, 1997; Shremer 1998.

¹⁰ Lipiński 2009, 451.

- 1) 'On the twentieth of Siwan, year three of the Liberation of Israel,
- 2) in the name of Simon bar Kosibah, prince of Israel,
- 3) [in..., I declare that] there is nothing belonging [to me],
- 4) (to) me, Shelamzion, daughter of Joseph, ferryman
- 5) from Ein-Gaddah, in your possession,¹¹ yours, Eleazar, son of Ḥananiah,
- 6) who were her husband previously to this, what
- 7) is for you from her a bill of divorce and repudiation.
- 8) Decision to be known: There is nothing belonging to me in your possession,¹² yours,
- 9) Eleazar, of no kind whatsoever.¹³ And it is valid for her,
- 10) (for) me, Shelamzion, all what is written above.
- 11) Shelamzion, daughter of Joseph, – Shilah has signed for her,
- 12) Mattat, son of Simon, the reader,
- 13) [...], son of Simon, witness,
- 14) Masabbalah, son of Simon, witness.'

Noteworthy are the passages from the third to the first person, when the text refers to Shelamzion. The writer was obviously no professional scribe, what the occasional defective spellings confirm.

The text dates from May/June 135 A.D. and was thus written almost a year before the end of the Bar Kochba revolt, which lasted until the spring 136.¹⁴ The place-name is probably lost in line 3. The woman, in whose name the document was written, is Shelamzion, daughter of Joseph, who must have been a ferryman working on the Dead Sea, if *qbšn* can be related to Arabic *qabasa*, 'to take over'. She could neither write nor read. This is why a 'reader', *mmr*', was needed to read the text for her. *Mmr*' is the emphatic state of a derivative of 'mr, 'to speak, to read', qualifying the person who reads the document aloud for those who are unable to do it by themselves. The same word, spelled *mmrh*, is found also after a witness' name in a sale contract reconstituted by A. Yardeni from fragments published separately by J.T. Milik and dating from the same year 135 A.D.¹⁵

Two important things are expressed in the document of Shelamzion: first, she repudiates her husband; secondly, she renounces to all her belongings being in the house of her former husband. This corresponds to the financial penalty, as required by the Elephantine marriage contracts;¹⁶ it probably consisted in the loss of the dowry. Witnesses have assisted to the writing of the text and to its approval by Shelamzion. It is undoubtedly a legal document, a bill of divorce sent by the wife.

¹¹ Literally 'with you'.

¹² Literally 'with you'.

¹³ Literally 'regarding a matter of whatsoever'.

¹⁴ Eck 2014, 213–220.

¹⁵ Yardeni 1999, line 26.

¹⁶ Yaron 1961, 53–60.

Similar cases on a much higher social level are recorded in the same period by Josephus Flavius. According to Josephus, Salome, Herod's sister, sent a divorce bill to her husband and Herodias, daughter of Aristobulus, divorced her husband Herod Philip to marry his brother.¹⁷ Josephus stigmatizes these divorces as contrary to Jewish law, although the divorce bill, mentioned by Josephus, witnesses to a typically Jewish practice. His partiality in dealing with the activity of Roman prefects¹⁸ invites to consider Josephus' declarations in the light of his personal case, since his own wife 'left' him without being repudiated by her husband.¹⁹ Josephus avoided saying that his wife formally 'repudiated' him. This shows that 'Jewish laws' in Josephus' statements should be understood in the sense of Jewish legal practice that suited Josephus and probably was widespread in those times. However, the other Semitic tradition was firmly established in Jewish society, as shown by the marriage contracts from Elephantine and the document of Shelamzion. It is still attested in a mitigated form by texts from the Cairo Genizah, dated *ca.* the 10th century A.D.



Lower fragment of a divorce bill from the Cairo Genizah, signed by witnesses, the last one being 'Abraham bar Shabbetai, witness' (Or. 1700.10)

¹⁷ Josephus Flavius, *Jewish Antiquities* 15. 7 §259; 18.5.4 §136.

¹⁸ Cf. Eck 2014, 170–182.

¹⁹ Josephus Flavius, *The Life* 75 §415. Cf. Yaron 1964, 174–175.

A wife ‘divorcing’ (*tlq*) her husband is found in several documents and letters from the Cairo Genizah,²⁰ but commentators try saving the rabbinic tradition and refer to the *moredet* institution aiming at liberating the ‘rebellious’ wife, who persistently refuses to cohabit with her husband, while the latter does not want to give her a divorce bill, because he should then pay her the sum mentioned in the *ketubbah*. In fact, she must ‘ransom’ herself from the marriage, what corresponds to the Arabic *iftidā*. The qualification *moredet* can hardly suit certain cases appearing in the texts, as in the letter of a wife longing for her husband absent for business.²¹ The complicated rabbinic legislation in the matter does not need to be discussed here. Its beginning can be found in the Mishnah, *Ketuboth* 5:7, around 200 A.D.

The Gospel of St. Mark 10:11–12, which can be dated *ca.* 70 A.D., preserves a version of the evangelical account on divorce according to which the woman may initiate the divorce, and this is probably the original version changed in Matthew 5:31–32 and Luke 16:18: ‘and if she herself divorces her husband and marries another man, she is committing adultery’. This statement might have a relation to the rule of the First Epistle to the Corinthians 7:12–16, but this is uncertain. One could also wonder whether Mark’s version is inspired by a Jewish practice or by Roman law, according to which the wife could put an end to the marriage also against the will of the husband (*repudium*). However, such a unilateral divorce by the wife was not possible, if the marriage was linked to the *conventio in manum*, by which the wife had entered the husband’s family and was placed under the authority of her husband or of the latter’s father. In such a case, the unilateral divorce with its financial consequences could be decided only by the man.²² It was nevertheless easy for Roman women to obtain divorces, and the *Epigrammata* VI, 7 say: *Quae nubunt toties, non nubunt: adultera lege est*, ‘Women who marry often do not contract marriages: in law, it is adultery’.

The approach of Matthew 5:32 and 19:9, that only adultery justifies divorce, is shared by the School of Shammai according to the Mishnah treatise *Gittin* 9:10, but the problem is seen only from the point of view of the man and does not concern the question of women’s rights in divorce questions. In any case, the rabbis stated that ‘whosoever divorces his first wife, even the altar sheds tears’.²³

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²⁰ Friedman 1981.

²¹ Friedman 1981, 120–122.

²² Wołodkiewicz/Zabłocka 1996, 108–110, §122–123.

²³ Babylonian Talmud, *Gittin* 90b.

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Abstract

The wife's right to initiate the divorce and to repudiate her husband is attested by Near Eastern documents from the early second millennium B.C. on and it is implied by Ex. 21:7–11, where *'āmāh* possibly designates a second-rank wife. This right is clearly formulated in the Jewish Aramaic marriage contracts from Elephantine, which follow a Near Eastern tradition, and it is attested by the legal repudiation of the husband by his wife, written on a papyrus found in the Judaean Desert. The document answers the requirements of such acts: it contains the declaration of divorce, a renunciation to belongings which correspond to the divorce money; it is dated and names the witnesses. The text dates from A.D. 135 and is thus somewhat posterior to the divorce bills sent to their husbands by women belonging to the Herodian family. The wife's initiative in divorce matters is still well represented in texts from the Cairo Genizah, dated about the 10th century A.D.