

This is a pre-publication version for consultation only. Please do not cite this. Consult the printed edition which is the official text. © D Instone-Brewer 1997

## Deuteronomy 24:1-4 and the origin of the Jewish Divorce Certificate

Abstract:

Westbrook and others have succeeded in identifying an Ancient Near Eastern context for the main thrust of the law of Deut.24:1-4. This paper seeks to find a social and literary context for further details within this law and link them to the Middle Assyrian Law code (MAL) of the second millennium BCE. A social context is found in the rights of a husband to reclaim an abandoned wife. This made it very difficult for her to remarry unless her husband abrogated that right in a divorce certificate. A literary context is found in the wording of the divorce certificate. This wording can be traced back from the Mishnah to sources in the first century CE, to marriage contracts of 7th-5th C BCE, and then to a parallel in MAL 45. This is a law about a tablet of widowhood which allowed a woman to remarry when a husband failed to return after war. This tablet had very similar function to a divorce certificate, and used wording which is syntactically identical to the traditional Mishnaic formula.

Deuteronomy 24:1-4 has become the basis of almost all Jewish divorce law, but the original purpose of the passage has been the subject of considerable debate. It will be argued here that the general purpose was to discourage hasty divorces, and to enable divorced women to remarry more easily. This general aim is based on case law from a specific instance when a man tried to gain financially by remarrying a former wife.

The general consensus, as seen in most modern translations, understands this text as a series of conditional clauses followed by a proscription. A Warren<sup>1</sup> has suggested the following structure, based on a discourse analysis approach. This concurs in most respects with the consensus of modern translations, though it also supports traditional rabbinic

---

<sup>1</sup> Andrew Warren, "Did Moses permit divorce? Modal *weqatal* as key to New Testament readings of Deuteronomy 24:1-4" (*Tyndale Bulletin* 49 (1998) 39-56).

interpretations<sup>2</sup>. Instead of a series of apodoses followed by one protasis (v.4), he finds an initial apodosis in v.1b.

- (1) **When** [yK] a man takes a wife and marries her [hl (bW]:  
**If** [M) hyhW] she finds no favour in his eyes  
because [yK] he has found some indecency in her  
**then** [W] he may/should write her a certificate of divorce  
and put it in her hand  
and send her out of his house, [Wtybm]
- (2) **and if** [W] she departs out of his house, [Wtybm]  
and goes and becomes another man's (wife) [rx) -#y) l ]
- (3) **and if** [W] the latter husband [NwrX) h #y) h] dislikes her  
and writes her a certificate of divorce  
and puts it in her hand  
and sends her out of his house,  
**or if** [yK W) ] the latter husband [NwrX) h #y) h] dies,  
who took her to be his wife [h#) l wl hxql ]
- (4) **(then)** her first husband [Nw#) rh hl (b], who sent her away,  
may not take her again to be his wife [h#) l wl twyhl htxql ]  
after she has been made unclean;  
for [yK] that is an abomination before the LORD,  
And you shall not bring guilt upon the land  
which the LORD your God is giving you for an inheritance.

The words in bold type show the general construction of the passage, which is determined mainly by the changes in grammatical subject and by the repetition of phrases or words. The repetition of “out of his house” [Wtybm] marks the boundary between the first and second sets of protasis-apodosis. The first set of protasis and apodosis are marked by a subject change from the first husband to the woman. The second set has three protases,

---

<sup>2</sup> Traditionally this passage has been the basis of divorce law, so the details about the divorce certificate have been read as a command. If they are part of a series of protases with a single apodosis in v.4, the divorce certificate becomes nothing more than part of a series of circumstances which lead up to the final ruling.

marked by subject changes from the first husband, to the woman and to the second husband, then back to the first husband for the final apodosis. The repetition of “latter husband” [NwrX) h #y) h] marks the fact that the second and third of these protases are alternatives, which is also marked by the phrase “or if” [yK w) ]. This repetition is linked to the similar phrase “another man” [rX) -#y) l ] which marks the boundary between the first and second protasis of the second set.

The main thrust of the final protasis is a prohibition of remarriage after an intervening marriage. The reason for this ruling, and the meaning of the details, has been the subject of a long debate.

The main question has been why a remarriage to the first husband should be prohibited after an intervening remarriage, while remarriage itself is permitted.

Yaron<sup>3</sup> interacted with the earliest explanation, found in Philo, who argued that the wife was divorced for committing adultery (or possibly, that she committed adultery by remarrying), and that her former husband become party to this by offering to marry her again.<sup>4</sup> Yaron pointed out that this ignores the fact that both the divorce and the remarriage are portrayed as legally correct, so she cannot have committed adultery by remarriage. Many others have also pointed out that the first divorce could not have been for adultery because the correct penalty for this was death (Deut.22:22).<sup>5</sup> He also

---

<sup>3</sup> R Yaron, ‘The Restoration of Marriage’ *JJS* 17 (1966), pp. 1-11.

<sup>4</sup> *Spec Leg* 3:30-31: “...she must not return to her first husband but ally herself with any other rather than him, because she has broken with the rules that bound her in the past and cast them into oblivion when she chose new love-ties in preference to the old. And if a man is willing to contract himself with such a woman, he... has lightly taken upon him the stamp of two heinous crimes, adultery and pandering. For such subsequent reconciliations are proof of both.”

<sup>5</sup> Also throughout the ANE. Milgrom argues that an injured husband may waive the death penalty in the ANE citing the Code of Hammurabi (CH) 129; Middle Assyrian Law (MAL) A 14-16; Hittite Law (HL) 192f (J. Milgrom, *Cult and Conscience: The Asham and the Priestly Doctrine of Repentance* Studies in Judaism in Late Antiquity 18 (Leiden: E J Brill, 1976), p. 134 ). However, as Hugenberger points out, this is because adultery is assumed to be crime against the husband or the King, while the OT regards it much more seriously, as crime against the Land or against God. (Hugenberger, G P, *Marriage as a Covenant. A*

interacted with the suggestion of S.R.Driver<sup>6</sup> that this ruling acts as a deterrent to hasty divorce. Yaron points out that the divorcing husband is unlikely to think ahead to the possible dissolution of another marriage when he is divorcing his wife in the heat of anger.

Yaron's own proposal was that this law prevented the first husband trying to break up the second marriage in order to regain his former wife. He would have no reason to try and break up the marriage, or even plotting the second husband's death, if he were banned from remarrying his former wife. However, this does not explain why the remarriage is described as an "abomination" [חב(ו)ט]. This is a very strong term which is normally reserved for sins of idolatry (especially in Deuteronomy and the later prophets) and occasionally of sexual matters, (Lev.18:22, 26, 27, 29; 20:13; Deut.22:5; 23:18; IKi.14:24).<sup>7</sup>

Wenham responded to Yaron<sup>8</sup> by suggesting that the first marriage made a family bond. A wife was regarded like a man's sister, and this close relationship would not end with divorce. So remarriage would be like committing incest, which would be an "abomination". However, even if this were so, it would not explain why remarriage was only forbidden after an intervening marriage, and there is no evidence that divorcees were regarded as having a family relationship of this kind. Carmichael<sup>9</sup> suggested that that there was in Israel an attitude of natural repulsion for taking back a wife who had cohabited with another man, citing the example of Abraham and Abimelech. However, as Hugenberg points out, the offensive act in the Abimelech story was adultery, not

---

*Study of Biblical Law and Ethics Governing marriage, developed from the perspective of Malachi (Supp to Vetus Test. 52, 1994), p. 184).*

<sup>6</sup> *Deuteronomy* (ICC, 2nd ed. Edinburgh 1896), p. 272

<sup>7</sup> Of these, Lev.18:27f is especially noteworthy because it shares the concept of defiling the land with Jer.3:1, which depends on Deut.24:1-4 (though 'defiled' in Lev.18 and Deut.24 is ) M+ and in Jer.3:1 it is PnX).

<sup>8</sup> G. J. Wenham "The Restoration of Marriage Reconsidered", *JJS* 30 (1979), pp. 37-40

<sup>9</sup> C. Carmichael *The Laws of Deuteronomy* (Cornell, 1974), pp. 203-207

remarriage, and other incidents suggest that remarriage was acceptable, such as David's request for Michal who had been given to another man, and other examples in the ANE.<sup>10</sup>

Westbrook<sup>11</sup> found what appears to be a convincing explanation which fits all the details, though his explanation of "abomination" is a little weak. He suggested that the difference highlighted between the two divorces is that the first is based on a valid ground, and the other is not. The first is based on the ground of "indecency" while the other is based on "dislike" which was a technical term for a groundless divorce.<sup>12</sup> He then pointed out that this would give the first husband a financial motive for remarrying his wife. When he divorced her on valid grounds, he would have retained the dowry, but when she suffered a groundless divorce, she would have been allowed to keep her dowry. If she had not brought a dowry into this second marriage, she would nevertheless have been awarded an equivalent amount. The dowry was awarded to the innocent partner after divorce throughout the ANE.<sup>13</sup>

---

<sup>10</sup> Hugenberger p. 392, citing CH 129; CH 133-135; MAL A 45

<sup>11</sup> R. Westbrook, "Prohibition of Restoration of Marriage in Deuteronomy 24:1-4" in *Studies in Bible 1986: Scripta Hierosolymitana* 31, S. Japhet, ed. (Jerusalem, Magnes, 1986), pp. 387-405.

<sup>12</sup> Westbrook argued for the technical meaning of the term  $\text{)n\#}$  "dislike" or "hate" from many parallels in the OT and ANE sources. Examples he cites include an Old Babylonian marriage contract which has the parallelism "If H divorces W... if W hates H" (*Cuneiform Texts from Babylonian Tablets etc., in the British Museum* (London, 6 (1898) p. 26a), where H and W abbreviate the names of the husband and wife. He also found a longer version "hate and divorce", e.g. a marriage contract from Alalakh: "If W hates H and divorces him...", and a Neo-Assyrian contract "if W hates H (and) divorces...". (Westbrook p. 400). This type of groundless divorce based on  $\text{)n\#}$  "hate" is not permitted in the OT, though it probably existed because of the influence of surrounding cultures. In Deut.22.13ff, the man who "hates" his new bride cannot simply divorce her on this ground, so he invents a non-virginity charge against her. Hugenberger has convincingly argued that Mal.2:16 criticises those who "hate (and) divorce" (*Marriage as a Covenant*, pp. 51-83). Slightly later examples are found in Elephantine documents (C15, K2, K44).

<sup>13</sup> This was not universally so, but it was certainly the case in some city states. Westbrook gives several references to primary sources on p. 394-400. In the the Code of Hammurabi the wife got financial compensation for unjustified divorce. (CH 138-140) and also in Codex Ur-Nammu (CU) 6-7: "If a man divorces his first wife, he must pay one mina of silver. if it is a (former) widow whom he divorces, he

Westbrook concluded that this law in Deut.24 was therefore preventing what modern law calls 'estoppel'. This is the legal principle that a person cannot profit by both asserting a set of facts and then profit again by later conceding this original assertion, whether it is objectively true or not. If the first husband remarried her, he would have profited by citing her "indecency" (whatever that means) and then later profited again by overlooking this "indecency" and remarrying her. Westbrook suggested that the term 'abomination' (hb(wt)) refers to this estoppel because it is used here in the sense of 'a hypocritical attitude', as elsewhere in Deuteronomy and Proverbs.<sup>14</sup>

Westbrook also said (less convincingly) that this estoppel is expressed by the term "after she has been made unclean". He said that the verb (h)m+h is *hof'al* form, which expresses passive causation, i.e. "he caused her to be unclean".<sup>15</sup> Walton strengthened Westbrook's case by arguing that the verb is an example of the rare *hutqattel* form<sup>16</sup> which has a reflexive passive meaning, so he translated it as "she has been made to declare herself to be unclean". He suggested that this is a reference to a judicial statement she was obliged to declare at her first divorce. She had to publicly declare that she was unclean in order for the divorce to be legal.<sup>17</sup> This makes the hypocrisy of the husband more apparent. He has taken his wife to court in order to divorce her and keep her dowry. He has cited some "matter of indecency" and has thereby caused his wife to be declared 'unclean' by the court. This has enabled him to divorce her and make her responsible for

---

must pay half a mina of silver." See also the discussion Elephantine practices in Porten, Bezael, *Archives from Elephantine* (Berkeley, Los Angeles, 1968), pp. 209f, 223.

<sup>14</sup>Westbrook cites M. Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford, 1972), pp. 267-269

<sup>15</sup> This form could also be translated "she has been caused to be unclean". This would mean that her second marriage made her unclean to her first husband.

<sup>16</sup> The *hutqattel* form occurs only three other times in the OT (Lev.13:55,56 both sbk ; Isa.34:6 N#d). John H Walton "The place of the *hutqattel* within the D-stem group and its implications in Deuteronomy 24:4", *Hebrew Studies* 32 (1991), pp. 7-17).

<sup>17</sup> Geoffrey Khan comes to a similar conclusion when he suggests that the traditional reading reflected in the vocalization is a piel with a declarative force, ie "she was declared to be unclean" (personal communication).

the divorce, so that she loses her rights to her dowry. If he later decided to remarry her, when she had gained another dowry, he would effectively be saying that the matter of indecency did not really concern him after all. He is blatantly changing his mind in order to gain financial benefit.

This financial explanation of Westbrook fits all the details of the text, except for the strength of the term “abomination”. However, this term is sometimes used with regard to the lack of general morals relating to money and vows etc. (Deut.25:16; Ezek.18:13?; Prov.20:10, 23)<sup>18</sup>. In the context of Deut.24:1-4 it might imply both sexual and financial immorality, because the remarriage of a former wife for profit was effectively the same as hiring out one’s wife for prostitution<sup>19</sup>. In both cases the woman is handed over to another man for a period, and the husband is paid for the woman’s service. Pickett has pointed out that the reason for the use of this strong term “abomination” may also be that there was no specific penalty attached to this offence, so that “the biblical writer has employed a clear-cut rhetoric which expands the scope of the consequences for remarrying an ex-wife to include both divine repugnance and collective guilt..”<sup>20</sup>

Another reason for the use of the word ‘abomination’ may be that remarriage would involve abrogating a sacred vow. This would strengthen Westbrook’s idea that the crime involved estoppel, based on two contradictory vows. There is good evidence that an oath was part of a divorce in the ANE. One of the two surviving ANE divorce documents ends

---

<sup>18</sup> Pickett, Winston H. *The Meaning and Function of T’B/TO’EVAH in the Hebrew Bible* (Unpublished PhD thesis for Hebrew Union College, 1985), p196 “Whereas in Leviticus it is the sexual customs and habits of the Canaanites that were intolerable to God and caused their expulsion from the land, in Deuteronomy an even broader range of offenses is subsumed under the TO’EVAH rubric.”

<sup>19</sup> Pickett p.153 “Although technically speaking the woman had *not* been defiled, according to Deuteronomy, her status vis à vis her first husband *is as if she were*. ... Thus, although the woman has herself committed no sexual infraction, to the biblical writer the resumed contact with her first husband is so objectionable it is virtually branded as “legalized prostitution.” J.H.Tigay in the *JPS Torah Commentary* (Philadelphia, Jewish Publication Society, 1996), *ad loc.*, compares this to the practice of *mut’a* (‘enjoyment’) marriage in some Islamic countries, where temporary marriages act as a legal veneer for prostitution.

<sup>20</sup> Pickett p. 154

with a standard oath before various deities<sup>21</sup>, and the absence of it on the other probably just means that it was not recorded. An oath would be expected because the financial security of the woman depended on this document, and oaths were normal practice in matters of financial probity throughout the ANE, including the OT.<sup>22</sup> There is also an ANE record of a court case between a man and the father of his betrothed, where the betrothal is ended by swearing a very graphic curse: “Hang me on a peg and dismember me!”. The man made the oath before witnesses to declare that he could no longer tolerate the thought of being married to his betrothed wife.<sup>23</sup>

It is likely that some kind of oath would be needed to establish that the ‘matter of indecency’ was too distasteful for him to continue in marriage with her. It is difficult to determine what this “indecency” was, though it was almost certainly not adultery, which was punished by death. The only other place where the precise phrase *rbd twr* ( occurs is Deut.23:15 which refers to physical cleanness of the camp and toilets. Driver suggests it is some type of improper or indecent behaviour short of adultery<sup>24</sup>. The context suggests that it was a proper ground for which divorce was permitted but it does not say that it was compulsory.<sup>25</sup> If the husband had to swear that this indecency made continued

---

<sup>21</sup> B. Meissner, *Beitrage zum altbabylonischen Privatrecht* (Leipzig, 1893) #91 p. 72.

<sup>22</sup> J. N. Postgate in his *Fifty Neo-Assyrian Legal Documents* (Aris & Phillips Ltd, Warminster, 1976) says that disputed contracts would be settled in court by oath if there was an absence of other evidence (p. 60), and contracts contained oaths to enforce compliance (p. 20). In Exo.22:9-10 [MT] a person who has lost animals entrusted with him must swear that he has not benefited from them. The more general case of entrusted goods in vv. 6-8 [MT] may also imply an oath when he is “brought to the House of God”, where one would fear immediate punishment for a false oath.

<sup>23</sup> *Cuneiform Texts from Babylonian Tablets etc., in the British Museum* (London, 45 (1964), p. 86, cited in Hugenberger p. 261. The groom has paid the *biblum* and *terhatum* but he has his eyes on another woman. He declares: “I will not take your daughter”. He is questioned before witnesses and he swears “Hang me on a peg and dismember me! I will not do the taking”. He then binds up his bride’s hem and cuts it off in a recognised legal gesture for effecting a divorce.

<sup>24</sup> *Deuteronomy* p. 270

<sup>25</sup> It is impossible to decide from the form of the verb *btk* whether to translate “he may write..” or “he should/must write...”. The traditional Mishnaic interpretation was “must” because divorce was considered as mandatory after adultery (*mSot.*.4.1-5). Even when there was not enough evidence to retain her



marriage impossible for him, his hypocrisy in deciding to remarry her would certainly be equivalent to estoppel. The term ‘abomination’ [hb(wt)] would also make more sense because the offence would no longer be just improper financial gain, but it would also involve the abrogation of an oath.

The work of Westbrook and other earlier scholars as detailed above, together with the few additional factors detailed here, provides a convincing ANE social context for overall thrust of the law of Deut.24:1-4, and for the details concerning the grounds for the two divorces described in it. The rest of this paper will search for an ANE social and literary context for the divorce certificate mentioned in this law. It will be argued here that the main purpose of the divorce certificate is to enable the wife to remarry. This would make the certificate very important to the wife, as a legal proof of her freedom.

This is the only place in the Law where a ‘divorce certificate’ is mentioned. It therefore attracted a great deal of discussion. The three phrases which accompany the mention of the divorce certificate (“writes her a certificate of divorce”, “puts it in her hand” and “sends her out of his house”) were understood by the rabbis to be separate acts, each of which were necessary for a valid divorce. However, it seems likely that these were later distinctions which did not become part of Jewish tradition till at least the first century BCE.<sup>26</sup> Therefore, when seeking an ANE context for the divorce certificate, the rabbinic development of these additional details will be ignored.

---

*ketuvah*, R. Eliezer advised divorce (*mSot.6:1*). The only exception was when a suspected adultress was exempt from the ordeal of the bitter water for the sake of a baby (if she was suckling or pregnant). In this case a husband could choose to take his wife back after a period (*mSot.4:3*). The other interpretation, that divorce was permitted but not compulsory in this passage, is represented by Jesus in Matt.19:7f, where there is a contrast between the Pharisees who say “Moses commanded divorce” (for adultery) and Jesus who says “Moses permitted divorce”.

<sup>26</sup> The Hillelites divided the process of divorce into the writing of the *get*, putting it into her hand or her agent’s hand, sending her away, and the fulfilment of any other conditions specified in the *get* or the *ketuvah*. If any of these were not carried out, the divorce was invalid. This is equivalent to reading each of these phrases as separate acts which make up the process of divorce. The Shammaites said that the whole process of divorce was encompassed in the writing of the *get* and that once this was done, the woman was a divorcee. Even if the man changed his mind, if he never put the divorce certificate in her hand, and she never left, she would nevertheless be regarded as having been divorced and reconciled. As a result she

The function of the divorce certificate is not stated, but it can be inferred to some extent from the flow of the passage. It was given into her hand, which suggests that her possession of it was important, and she could not be sent from the house till she possessed it. The context implies that possession of this document was valuable to her.<sup>27</sup>

The value of this certificate to the woman would not be financial. When a woman was divorced, she was repaid all, some or none of her dowry.<sup>28</sup> The divorce certificate would not be necessary for recording the amount to be repaid, because the amount to be repaid in various circumstances would normally be agreed and detailed in her marriage contract. Neither could the certificate be a receipt for payments which she had to make to her husband after the marriage ended, because she made none. If money was owed by her, it

---

could not marry a priest if she was later widowed before the rest of the divorce procedure was carried out (*mGit.8.8*). The fact that this dispute was still carrying on in the first century CE, and that Shammaites usually represent an older or more traditional view, it seems likely that this division of the divorce process into the separate tasks outline above can be dated to the first century CE or the first century BCE. It is unlikely to be later, because the Shammaites virtually disappeared after 70 CE.

<sup>27</sup> It is tempting to read this through modern eyes and regard the divorce certificate like a writ which takes legal effect when it is put in the hands of the person it is addressed to. However, in the ANE, an oral statement was as sufficient as a written one. A written document was drawn up to inform a third party of what had happened in the past. Documents recorded a legal transaction, a debt, or a marriage contract, with the purpose of proving the transaction had taken place if a dispute arose at a future date. The divorce certificate must therefore have been more than just a demand that the woman leave the house.

<sup>28</sup> Generally a dowry was returned to a woman if the divorce was the husband's fault, or it was retained by the husband if it was the wife's fault. A good summary of local variations is given in Porten, Bezael, *Archives from Elephantine* (Berkeley, Los Angeles, 1968), pp. 209f, 223. A possible exception is the Elephantine Papyrus Cowley 14, which is a financial quittance (a receipt for the dowry) following a divorce. However this is a highly unusual case. The woman Mibtahiah is the aunt of the leader of the Jewish community, and owns much property in her own right. When she divorced her Egyptian husband, there was a division of their property which required this rather unusual quittance document - see Porten pp. 235-263. Normally a quittance or receipt for dowry was given by the woman to her former husband. For a recent discussion see Ilan, Tal. "Notes and Observations on a Newly Published Divorce Bill from the Judean Desert", *HTR* 89 (1996), p. 197.

was deducted from her dowry. It is true that financial matters are recorded in one of the two ANE divorce certificates which have survived but this was because it was merged with a quittance of debt to the father-in-law.<sup>29</sup> It was in the husband's interest to state in a document which was valuable to his wife for other reasons, that these payments have been made.<sup>30</sup>

The two ANE divorce documents which have survived speak about the freedom of the wife. In Kirkuk 33 the husband declares that "she has received her freedom [zi-iz-z] and in future I will make no demand on <name of wife>"<sup>31</sup>. Meissner #91 contains the same term for freedom: "<name of husband> expelled <name of wife>. She has got her freedom and she has received her divorce money".<sup>32</sup>

A certificate of freedom was necessary in the social context of the ANE where a husband had the legal right to reclaim a wife even after he had deserted her for a number of years:

CH 135: "If a man should be captured and there are not sufficient provisions in his house, before his return his wife enters another's house and bears children, and afterwards her husband returns and gets back to his city, that woman shall return to her first husband; the children shall inherit from their father."

MAL A 36: "If a woman is residing in her father's house, or her husband settles her in a house elsewhere, and her husband then travels abroad but does not leave her any oil, wool, clothing, or provisions, or anything else, and sends her no provisions from abroad - that woman shall still remain (the exclusive object of rights) for her husband for five years, she shall not reside with another husband. If she has sons, they shall be hired out and provide for their own sustenance; the

---

<sup>29</sup> Kirkuk 33, c. 1400 BCE, in C. J. Gadd "Tablets from Kirkuk", *Revue d'Assyriologie et d'Archéologie Orientale* 1926 (23), pp. 49-161. This financial element is discussed on pp. 58f.

<sup>30</sup> Allan Millard (personal communication) has suggested that the certificate may also be needed to establish that she is not a run-away wife, or that the dowry she holds has not been stolen. These two matters would be implied by the existence of this certificate, and may have been added specifically in some cases.

<sup>31</sup> Gadd "Tablets from Kirkuk" pp. 111f. discusses the meaning of *zi-iz-zi* which he reads as *zi-ik-ja* from *zaku*, "free", in agreement with Meissner.

<sup>32</sup> Meissner "Privatrecht" No.91. My translation of Meissner's German text.

woman shall wait for her husband, she shall not reside with another husband. If she has no sons, she shall wait for her husband for five years; at the onset of (?) six years, she shall reside with the husband of her choice; her (first) husband, upon returning, shall have no valid claim to her; she is clear for her second husband. .... And furthermore, if she should reside with another husband before the five years are completed and should she bear children (to the second husband), because she did not wait in accordance with the agreement, but was taken in marriage (by another), her (first) husband, upon returning, shall take her and also her offspring.”<sup>33</sup>

In this context it was a great advantage for a woman to have a certificate stating that her former husband relinquished any right to her, and allowed her to marry any man. Without it, she would have great difficulty finding a second husband if she was abandoned or dismissed from her home by her first husband. The negligent husband had the right to return at any time and to reclaim any children which had been born to him. This meant that the man she lived with could have the financial burden of bringing up the children, and then her first husband would enjoy the financial benefits of their labour when they were strong enough to work.

This understanding of a divorce certificate would also fit very well in the flow of Deut.24:1-4. The divorce certificate is mentioned as part of a long phrase which occurs twice, both times immediately before the wife becomes free to remarry: “he writes her a bill of divorce and puts it in her hand and sends her out of his house”. The implication may be that a divorce certificate, as well as divorce, is necessary for remarriage. The ANE right of reclaiming an abandoned wife meant that a woman did not have a legally proven right to remarry until her husband provided a certificate stating that he had relinquished any claim on her.

---

<sup>33</sup> Translated by Martha Roth in *Law Collections from Mesopotamia and Asia Minor* (SBL Writings from the Ancient World Series, Vol.6, Scholars Press, Atlanta, 1995), pp. 107, 165f.. The law in CH 135 has no time limit, so the law in MAL appears to be a concession, allowing a woman to remarry with security after five years.

All this fits well with the traditional wording of the rabbinic divorce certificate or *get*: “Lo you are permitted to any man”<sup>34</sup>. A certificate worded like the rabbinic *get* would eliminate the right of a former husband to reclaim his abandoned wife, and would enable the woman to remarry. This wording of the rabbinic *get* will now be traced from the first century CE back to a possible origin in the fourteenth century BCE.

It is very difficult to date the rabbinic *get* much before the first century. Even a date that early would have been regarded as extremely conservative before the discovery of the Masada *get* which uses almost precisely this wording.<sup>35</sup> The Masada *get* was discovered by a French archaeological team in a cave in Wadi Muraba‘at.<sup>36</sup> This *get* is dated 72 CE

---

<sup>34</sup> *mGit.9:3*, discussed in detail below. It was unnecessary to add that this excluded a former husband, her father, or any other person otherwise denied her by other laws. It was assumed that one law would be informed by all other laws.

<sup>35</sup> Tal Illan, “Notes and Observations on a Newly Published Divorce Bill from the Judean Desert”, *HTR* 89 (1996), pp. 195-202.

<sup>36</sup> Roland de-Vaux, Jozef T. Milik & Pierre Benoit, *Discoveries in the Judaean Desert*, vol.2: *Les grottes de Muraba‘at* (Oxford, Clarendon 1961), pp. 104-9. The *get* is known as *Papyrus Murabba‘at 20* or *Pmur.20*, or the “*get* from the Judaean Desert”. The only other *get* which has survived from the first two centuries and which has been published dates from approximately 135 CE. It was discovered by Milik who described it as a *get* written by a wife to her husband (Jozef T. Milik, “Le travail d’édition des manuscrits du Désert de Juda” (*VTSup* 4, Leiden: Brill, 1956), p. 21). The Dominican Fathers in Jerusalem had procured it from Bedouins who claimed to have found it with many other documents in Naḥal Şe‘elim, so it came to be known as the Şe‘elim *get* or *Papyrus Şe‘elim 13*. This latter is the name given by Ada Yardeni in her booklet containing all the readable Şe‘elim papyri. (*Naḥ al Şe‘elim Documents* (Jerusalem: Israel Exploration Society and Ben Gurion University in the Negev Press, 1995). She regards it as a document of receipt for a *get* and not a *get*, on the basis of the orthodox view that a woman could not initiate a divorce in rabbinic Judaism. Ilan in “Notes and observations...” convincingly shows that this is a *get*, and collects the evidence that women could initiate a divorce. However, the phrase “you are free to marry any man” is not present because it is addressed to a man, who does not need permission to marry another woman after a divorce or even before a divorce.

and the fact that the couple lived on Masada confirms this early date. The significant lines in this *get* read: <sup>37</sup>

Line 6b-7a: tn) yhmI w KhmI yk#pnb )y#r t) yd

that you are free on your part to go and become the wife

Line 7b-8a: Nybct yd ydwhy rbg I wkl

of any Jewish man that you wish.

Line 8b-9a: Nyqb# +gw Nykrt rps ynm ykl ywhI N[yd]bw

And this is to be for you from me a writ of divorce and a *get* of release.

The wording of the Mishnah is very similar, as recorded in *mGit.9:3*:

+g I # wpwg

The essence of a *get*:

Md) I kl trtwm t) yrh

Lo, you are permitted to any man.

rmw) hdwhy br

Rabbi Judah said [in Aramaic]:

Nyrw+p +gw Nyqwb# trg)w Nykwryt rps y)nym ykyl  
ywhyd Nydw

And this shall be to you from me a writ of divorce and bill of release and  
*get* of dismissal

Nybctd rbg I kl )bsnthI KhmI

that you may be married to any man you wish.

This mishnah contains material which dates back to at least the first century. Judah b Illai (c. 140-165 CE) is commenting on a tradition which states the essential wording of a *get*. The only words which this mishnah regards as essential are: “You are permitted to any man”. R. Judah then adds a longer version in Aramaic. This Aramaic version may be either

---

<sup>37</sup> Translation from Ilan, Tal. “Notes and Observations on a Newly Published Divorce Bill from the Judaeen Desert”, *HTR* 89 (1996), pp. 195-202. See also Leone J Archer *Her price is beyond Rubies: The Jewish Woman in Greco-Roman Palestine* (JSOTSup 60, Sheffield, Sheffield Academic Press, 1990), pp. 291f

an interpretation for the common man, or a version used traditionally in Aramaic divorce documents.

If the longer Aramaic version is an explanatory interpretation, then R. Judah is making explicit what the shorter version only states implicitly. The longer Aramaic version states explicitly that the divorce must be by *written certificate*,<sup>38</sup> that she is permitted to *marry*, and that this is to any man *whom she wishes*. The Talmudic commentators understood R. Judah's longer Aramaic version in this way, saying that R. Judah would not recognise any stipulation which was not stated explicitly.<sup>39</sup>

However, the discovery of the Masada *get* makes it more likely that the longer Aramaic version was the original version, and the shorter version is an abbreviated version. The Masada *get* is dated two generations before R. Judah and its wording is much closer to the longer version. It contains all the details which are made explicit in the longer version - the fact that this was a *written certificate*, that she was permitted<sup>40</sup> to *become a wife*, and that she may marry any man *whom she wishes*.<sup>41</sup>

Another first century source also has a phrase which is very similar to this longer Aramaic version. Paul used this phrase with regard to the rights of a widow to remarry in 1 Cor.7:39:

---

<sup>38</sup> The three phrases “writ of divorce” [Nykwrýt rps] “bill of release” [Nyqwb# trg] and “*get* of dismissal” [Nyrw+p +g] are all translations of the phrase “certificate of divorce” [t tyrk rps] in Deut.24:1,3, as found in the Targums of Psuedo-Jonathan , Neofiti and Onqelos respectively.

<sup>39</sup> *bGit.85b*: “The Rabbis held that an indication which is not definite can still count as an indication... R Judah on the other hand held that an indication which is not definite does not count as an indication.”

<sup>40</sup> “To be permitted” in *mGit.9.3* is tr twm from r tn, ‘to loose, untie’, which is also used in Targum Deut.24:4. This is the equivalent of ) y#r from y#r ‘to have authority, permission’ in the Masada *get*.

<sup>41</sup> The Masada *get* adds a detail which is not in R Judah's longer version, when it says “any *Jewish* man”. This addition is found in an anonymous discussion in *mGit.9.2*, which should probably also be dated early, on the basis of the Masada *get*. This mishnah rules that the only exception to “any man” which can be made in a *get* is that which is already ruled out , such as marriage to her ex-husband's father or brother, to her own brother, to a bondman or to a non-Jew. This word “Jewish” was therefore an allowable addition to the essential formula. Any other addition, such as “except so-and-so” made the *get* invalid.

she is free to marry whichever man she wishes, (but) only in the Lord

This states explicitly that she is free to *marry* and that this is to any man *she wishes*, as in the longer version. The reference to marrying “only in the Lord” is equivalent to the Masada *get*’s reference to marrying any *Jewish* man. This was probably a common restriction, because it is also discussed in an early mishnah<sup>42</sup>

It is therefore likely that this longer Aramaic phrase was abbreviated to the Mishnaic Hebrew formula which was then declared to be the ‘essence’ of the *get*. The word “permitted” would imply “permitted to marry” (as at *mYeb.1.2*<sup>43</sup>), and the word “any” in the phrase “any man” would imply “any man you wish”. The term *get* (+ג, ‘certificate’) would by itself imply a written document. This summary would therefore encompass the whole of the traditional Aramaic wording, and could become the essence of the law to be memorised.

A similar formula is found in divorce provisions of marriage documents of Egyptian Jews of the 5th C BCE. Three marriage certificates survive in the Aramaic papyri of Elephantine, and two of them use the phrase “She may go wherever she wishes” (tybc yz N) hl Khtw)<sup>44</sup>. Almost identical phrases are found in Neo-Babylonian marriage documents when they are discussing provisions for divorce. The extant

---

<sup>42</sup> See note 41.

<sup>43</sup> “To be permitted” (trtwm) is used as an abbreviation for “permitted to marry” in *mYeb.1.2* “If one’s daughter or any other woman from all these prohibited degrees were married to his brother who had yet another wife, and his daughter died or was divorced, and afterwards his brother died, then her fellow-wife is permitted (trtwm)”.

<sup>44</sup> Cowley, A. E. *Aramaic Papyri of the Fifth Century BC* (Oxford, Clarendon Press, 1923), p. 43, Papyrus G, also known later as Cowley 15. The same phrase has been reconstructed in Kraeling Papyrus #7 - Kraeling, Emil G. *The Brooklyn Museum Aramaic Papyri: New Documents of the Fifth Century B.C. from the Jewish Colony at Elephantine* (New Haven, 1953), pp. 206f. This document also contains the similar phrase “she may go to the house of her father”. The third marriage contract (Kraeling #2) is very short and omits many other phrases which one would expect to find in a marriage document. These documents are now newly published and translated in Porten, Bezalel & Yardeni, Ada. *Textbook of Aramaic documents from Ancient Egypt* (Hebrew University, 3 vols, 1986-96).



Babylonian marriage documents of the 7th - 3rd century BCE have been collected by Martha Roth.<sup>45</sup> Of the 45 which have been found, 15 include stipulations about divorce which are still decipherable. Three of these say that “she may go back to her parental home” or “to her home” but most say “she may go wherever she wishes”<sup>46</sup>.

The concept of ‘going to live with’ is used as an equivalent to ‘marry’ in the ANE law codes,<sup>47</sup> although it was recognised that marriage also involved a ceremony or a marriage contract.<sup>48</sup> Therefore when the marriage contract said “she may go wherever she wishes”, this is directly equivalent to the formula “she may go and marry whoever she wishes”.

This clause in the marriage contract would have been very significant for the wife. In the contracts where this phrase occurs it most often linked to the situation where a man takes

---

<sup>45</sup> Roth, M.T. *Babylonian Marriage Agreements: 7th-3rd Centuries B.C.* AOAT 222 (Kevelaer: Verlag Butzon & Bercker; and Neukirchen-Vluyn: Neukirchener Verlag, 1989). It is perhaps significant that only 45 have been found. They are often recorded as if they were records of a spoken agreement, in the form of ‘so-and-so said this then so-and-so said that’, which suggests that most marriage agreements were verbal, and were not recorded on tablet.

<sup>46</sup> Seven marriage documents use the phrase “she may go wherever she wishes”, in two slightly different versions: nos. 2 (625-23 BCE), 6 (564 BCE), 19 (535/4 BCE), 20 (523 BCE): *as\_ar šebā t*; Nos. 4 (592 BCE), 15 (543 BCE): *as\_ar mah ri*; No. 16 (543 BCE) corrupt. Other documents have “she may go back to her parental home (Nos. 26, 30), or “she may go back to her home” (No.5).

<sup>47</sup> See the phrases ‘reside with another husband’ and ‘entered the house of another’ in MAL A 36 and LH 135 cited above. See also CH 133, 134.

<sup>48</sup> Laws of Eshnunna (LE) 27: “If a man marries the daughter of another man without the consent of her father and mother, and moreover does not conclude the nuptial feast and the contract for (?) her father and mother, should she reside in his house for even one full year, she is not a wife.” LE 28 “If he concludes the contract and the nuptial feast for(?) her father and mother and he marries her, she is indeed a wife; the day she is seized in the lap of another man, she shall die, she will not live.” CH 128: “If a man marries a wife but does not draw up a formal contract for her, she is not a wife.” But this did not necessarily apply for a widow: MAL A 34: “If a man should marry a widow without her formal binding agreement and she resides in his house for two years, she is a wife; she shall not leave.” (Roth *Law Collections* p.63, 165)

a second wife in preference to his first, and thereby neglects his first wife<sup>49</sup>. This clause made it known that she would be free to go to another husband in these circumstances, and that her first husband relinquished his normal rights to reclaim a wife whom he had abandoned.<sup>50</sup> There was nothing like the mandatory divorce certificate of Israelite law in the rest of the ANE. The paucity of the documents which have been found<sup>51</sup>, and the law of reclaiming an abandoned wife suggest that when a woman was dismissed, she was not given a certificate to state that she was free to remarry. A woman who did not have a marriage contract with these words would find it very difficult to remarry.<sup>52</sup>

Deuteronomy, unlike any other ANE law code, makes a divorce certificate mandatory for any woman who has been divorced, even if there is no doubt that she is divorced because she has been “sent out” of the house. In the rest of the ANE, the only mandatory document giving a right to remarry was known as a “widow’s tablet”. This was given to a women whose husband was presumed dead after being missing in war. This is mentioned in MAL A45, which dates from the second millennium BCE:<sup>53</sup>

If a woman is given in marriage and the enemy then takes her husband prisoner, and she has neither father-in-law nor son (to support her), she shall remain (the

---

<sup>49</sup> E.g. no.6 “Should <name of husband> release <name of wife> and marry another, he will give her six minas of silver and she may go where she wishes.”

<sup>50</sup> For this right, see MAL A 36 and LH 135, cited above.

<sup>51</sup> It is not even certain that the documents found are really divorce certificates. Kirkuk 33 in particular appears to be a record of a complex financial transaction, because the repayment of a debt to his father-in-law is recorded alongside a mention of his former wife’s freedom. See Gadd’s discussion on p. 58f.

<sup>52</sup> Roth struggled with the question of the purpose of these written marriage contracts, when most contracts were verbal. She assumed that these were written because they were different in some way, but she fails to find a consistent way in which they are different. (pp. 24-28). Her most plausible suggestion is that the contract is a record of the dowry. Many of the contracts contain details of the dowry, though not all. This clause abrogating the right of a husband to reclaim his abandoned wife would be a very significant reason for the contract to be recorded in a written form.

<sup>53</sup> T J Meek in Pritchard, James B. *Ancient Near Eastern Texts relating to the Old Testament* (3rd ed. with supplement. Princeton, Princeton University Press, 1969), p. 180:. The tablets themselves date from the time of Tiglath-pileser I (12th C), but the laws may go back to the 15th C. Roth *Law Collections*, p. 154: They are 11th century BCE copies of earlier 14th century originals.

exclusive object of rights) for her husband for two years. . . .She shall allow two full years to pass, and then **she may go to reside with the husband of her own choice; they [the judges] shall write a tablet for her as if for a widow.**<sup>54</sup>

Driver argued that this provision was not for all women in this situation. The wider context suggests that this particular ruling was a privilege for the widow of someone presumed killed in war, and only if that person was an officer.<sup>55</sup> However, the details which refer solely to the widow of an officer are the provisions for the support of the widow during these two years, and the privileges which the officer had if he returned.<sup>56</sup> The tablet of widowhood, on the other hand, is referred to without explanation as if it were a common document which was also given to other widows.

It is not certain what this tablet of divorce consisted of, but certain inferences can be made. It appears that it was a document which confirmed that she was a widow. It may

---

<sup>54</sup> Roth, *Law Collections*, p. 170f

<sup>55</sup> Driver, G. R. & Miles, J. C. (eds) *The Assyrian Laws* (Clarendon Press, Oxford, 1939), pp. 262, 265

<sup>56</sup> The complete text of this law code is: “ If a woman is given in marriage and the enemy then takes her husband prisoner, and she has neither father-in-law nor son (to support her), she shall remain (the exclusive object of rights) for her husband for two years. During these two years, if she has no provisions, she shall come forward and so declare. If she is a resident of the community dependent upon the palace, her [father(?)] shall provide for her and she shall do work for him. If she is a wife of a *bupsu*-soldier, [...] shall provide for her [and she shall do work for him]. But [if she is a wife of a man(?) whose] field and [house are not sufficient to support her(?)], she shall come forward and declare before the judges, “[I have nothing] to eat”; the judges shall question the mayor and the noblemen of the city to determine the current market rate (?) of a field in that city; they shall assign and give the field and house for her, for her provisioning for two years; she shall be resident (in that house), and they shall write a tablet for her (permitting her to stay for the two years). She shall allow two full years to pass, and then she may go to reside with the husband of her own choice; they shall write a tablet for her as if for a widow. If later her lost husband should return to the country, he shall take back his wife who married outside the family; he shall have no claim to the sons she bore to her later husband, it is her later husband who shall take them. As for the field and house that she gave for full price outside the family or her provisioning, if it is not entered into the royal holdings(?), he shall give as much as was given, and he shall take it back. But if he should not return but dies in another country, the king shall give his field and house wherever he chooses to give.”

have been issued to all widows, or just to those where the death was doubtful, as in this case. This document was not necessary for providing support for the widow (which had already been given to her for two years) but it was necessary to enable her to remarry. This law also states that if the officer returns, he has certain privileges. He can take back his wife and his sons, though not the sons of her second husband. This is the normal rights of a husband who returns after being lost at war or after abandoning his wife.<sup>57</sup> The fact that these rights are stated in this context as a privilege of an officer suggests that he lost this right when the tablet of widowhood was granted.

The tablet of widowhood therefore appears to be a document which allowed a woman to remarry and which removed the rights of a husband to reclaim her, if it transpired that he was not dead. This latter aspect of the tablet of widowhood was specifically overruled in the case of an army officer.

The wording of the tablet of widowhood is not stated, but it is likely that it was similar to the wording found in the law code concerning a widow which is also in the MAL:

MAL A 33 If her husband and her father-in-law are both dead, and she has no son, she is indeed a widow; **she shall go wherever she pleases.**<sup>58</sup>

This phrase from the second millennium BCE is semantically identical to the phrase “she may go wherever she pleases” found in the divorce stipulations of Neo-Babylonian marriage certificates from the 7th and 6th centuries BCE<sup>59</sup> and Egyptian Jewish marriage certificates from the 5th century BCE. It is also very similar to the traditional Jewish *get* formula “she is permitted to marry any man she wishes” from the first century CE. It therefore seems likely that the traditional wording of the Jewish *get* was influenced by the

---

<sup>57</sup> See MAL A 36 and LH 135 cited above

<sup>58</sup> Roth *Law Collections* p. 165. Cardascia points out that “widow” is not just someone whose husband has died. The context of MAL A 33 suggests that she must have no other living male relatives who can support her. The woman in MAL A 45 also falls into this category, so it is valid to link these two laws. (Cardascia, Guillaume *Les Lois Assyriennes* (Paris: Cerf, 1969), p. 180).

<sup>59</sup> In the marriage certificates collected by Roth the phrases are *as<sub>u</sub>ar šebā<sub>t</sub>* or *as<sub>u</sub>ar mah ri*. (see note 46 above). In MAL A 33 the phrase is *as<sub>u</sub>ar h adiūni tallak*, which Roth translates “she shall go wherever she pleases” Roth, *Law Collections*, p. 165.

traditional wording of Egyptian and Babylonian marriage contracts, which were influenced in turn by a tradition of a tablet of widowhood<sup>60</sup>.

In conclusion, Deut.24:1-4 can be understood in both the social context and the literary context of the second millennium BC. In the social context of the ANE, a husband who abandoned his wife was allowed to reclaim her, and his children, at any time. This right was abrogated by some husbands in their marriage documents and occasionally in a divorce certificate. In Israel such a certificate was mandatory. The certificate had a very similar purpose and wording to the widow's tablet which can be dated back to the second millennium BCE.

---

<sup>60</sup> It is perhaps significant that Paul in 1Cor.7:39 uses this phrase from the *get* to describe the rights of widows. Widows did not need a certificate of widowhood in rabbinic law, but it was still recognised that their rights were identical to those defined by a divorce certificate.