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Jewish women divorcing their husbands in early Judaism: the background to papyrus Şe'elim 13

Papyrus Şe'elim 13 appears to be a divorce certificate written by a Jewish woman to her husband in the early second century C.E. According to orthodox Judaism, a divorce can only be initiated by a man, so this papyrus has been the subject of a heated debate. This controversy was partially responsible for the delay in publication from 1951 to 1995,¹ and since then it has been the subject of continued debate, including two recent articles in this journal. The first was by Tal Ilan, who argued that this papyrus was written by a wife to her husband.² This was replied to by Adiel Schremer who argued that the wife merely quotes a divorce certificate written to her by her husband.³

This paper will argue the middle ground, that this document is a divorce certificate written on behalf of the wife by a scribe, and that this was part of normal practice in some sections of early Judaism.

¹ Milik did not publish it with the rest of the finds from Murabba'at in DJD II. He passed it to Jonas Greenfield, who died in 1995 after passing it to Ada Yardeni, who published it in a thin booklet of all the readable Şe'elim papyri, *Naḥal Şe'elim Documents* (Jerusalem: Israel Exploration Society and Ben Gurion University in the Negev Press, 1995).

² Tal Ilan, "Notes and Observations on a Newly Published Divorce Bill from the Judean Desert" (*HTR* 89 (1996) 195-202).

³ Adriel Schremer, "Divorce in Papyrus Şe'elim 13 Once Again: A reply to Tal Ilan" (*HTR* 91 (1998) 193-202).

The first English translation of the Papyrus Şe'elim 13, as published by Ilan is as follows, with the Hebrew for contentious lines:

- 1 On the 20th of Sivan, year 3 of Israel's freedom.
2 In the name of Simon bar Kosibar, the Nasi of Israel
3 . . . I do not have
4 I, Shelamzion, daughter of Joseph Qebshan
5 of Ein Gedi, with you, Eleazar son of Hananiah
6 [y]d Nnd tmdq Nm hl (b tywh yd
who had been the husband before this time,
7 [Ny]kr tw Nyqb# +g hnm Kl)wh
that this is from me to you a bill of divorce and release.
8 [tn]) Km(yl yty) []]l h(dm tl [m]
? I do not have with you...
9 hl (Myqw M(dm l k tbc l (rz(l)
Eleazar anything (I wish for?), as is my duty and remains upon me.
10 I Shelamzion (accept) all that is written (in this document).
11 Shelamzion present, lent her hand writing(?).
12 Mattat son of Simon by her order
13 . . . son of Simon, witness.
14 Masbala, son of Simon, witness.

This translation suggests that it is a divorce certificate which has been addressed by the wife to her husband. Schremer questioned several aspects of this translation and suggested some dramatic changes (highlighted in bold).

- 6 [**trm**)]w Nnd tmdq Nm hl (b tywh yd
who **have been my** husband before this time, **and who have said:**

- 7 [Ny]kr tw Nyqb# +g hnm Kl)yh
 “this is to you from me a bill of divorce and release
 8 **without reservation**” - I do not have with you...
 9 Eleazar anything I wish for, **And I confirm** - I

His emendations and translation suggests that the document was written on behalf of the wife concerning some financial matter and that it cites the divorce certificate which her husband had sent her previously. If this rendition is accepted, it is likely that this is a *quittance* or receipt for a *get*,⁴ which accords with some pre-publication opinions concerning this document.⁵

Schremer makes three fundamental criticisms of Ilan’s translation, all of which are weighty. They are:⁶

- 1) hnm in line 7 should be translated “from him” or “from her”. The translation “from me” is only allowed if the context absolutely demands it.
- 2))wh in line 7 can only be translated “this is” if the last word of the previous line is Nyd (“this”) rather than yd (“which”).
- 3) hl (b in line 6 would more normally be translated “her husband”, though “the husband” is possible.

Schremer himself does not apply his first criticism, because he too finds that his proposed reading demands the unusual translation “from me”. He understands

⁴ Such receipts are referred to in early rabbinic literature, e.g. mKet.9.9. Evidence for such receipts is summarised well in Ilan’s paper, p.197. See also Cotton, Hannah “A Cancelled Marriage Contract from the Judaean Desert (*XHev/SE Gr.2*)” (*J Roman Studies* 84 (1994) 64-86) p.66.

⁵ This was the opinion of Jonas C. Greenfield and Ada Yardeni, as summarised by Ilan.

⁶ As listed on p. 196 and expounded in pp. 196-199

it as part of a quotation from a *get* written by her husband. However there is no indication in other ancient records of the *get* that this strange form should be used. The most important records of the wording of the ancient *get* are the Masada *get*⁷ and the words of Judah in Mishnah.⁸

Masada *get* 8b-9a: Nyqb# +gw Nykrt rps ynm ykl ywhl
N[yd]bw

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

mGit.9:3: 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

Schremer made two emendations to the text. He changed the final *dalet* in line 6 to a *vav* to support his reading [trm)]w (“and you have said”). This was needed in order to introduce the quotation from the husband’s *get*. He also emended)wh to)yh (“this is”) in order to make a smoother start to the quotation from the *get*.

⁷ Roland de-Vaux, Jozef T. Milik & Pierre Benoit, *Discoveries in the Judaean Desert*, vol.2: *Les grottes de Murabba'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”. This *get* is dated 72 CE and the fact that the couple lived on Masada confirms this early date.

⁸ mGit.9:3. This line is part of an Aramaic tradition which is also given in a much shorter Hebrew form. It is difficult to know if this Aramaic tradition is an expansion of the Hebrew formula, or whether it is the traditional wording which was abbreviated to the Hebrew formula. The fact that R. Judah records his tradition in Aramaic, and the discovery of the almost identical wording in the Masada *get* suggests that the longer is the more ancient form. See my “Deuteronomy 24:1-4 and the origin of the Jewish Divorce Certificate” (*Journal of Jewish Studies*, 49 (1998) forthcoming)

If, instead of these emendations and proposed additions, one simply applied Schremer's three criticisms, the following reading would result:

- 4 I, Shelamzion, daughter of Joseph Qebshan
5 of Ein Gedi, with you, Eleazar son of Hananiah
[Ny]d Nnd tmdq Nm hl (b tywh yd
who had been **her** husband before this time,
7 [Ny]kr tw Nyqb# +g hnm Kl)wh
this is from **her** to you a bill of divorce and release.

The resultant text suggests that an authoritative scribe is writing on her behalf, so that although the document is theoretically from her, it also speaks about her in the third person.

We must now look for a situation in early Judaism which might have resulted in this kind of document. There are two possibilities. First, it may be a divorce certificate written by a court on behalf of the wife, though this will be shown to be unlikely. Secondly it may be a divorce certificate which has been influenced by the Egyptian Jewish marriage contracts which allowed a woman to divorce her husband.

It has been widely recognised, even within orthodox Judaism, that a court was able to force a husband to divorce his wife under certain circumstances.⁹ These

⁹ The right of women to divorce was concluded by several authors before the announcement of the *Şe'elim get*. The article "Divorce" in *Jewish Encyclopaedia* (12 vols, Funk & Wagnalls Co, New York & London 1905), vol.4 624ff gave the standard opinion that a woman could demand a divorce for refusal of conjugal rights or impotence. Abrahams, I., *Studies in Pharisaism and the Gospels* (London, Macmillan, 1917) p. 77 confirmed that this right extended to women whose husbands neglected to support them. Epstein,

circumstances could be characterised as those where the marriage vows or were broken or fertility was compromised.¹⁰ Some of the Mishnah texts dealing with court-enforced divorce can be dated back to the first century.¹¹

Lois M., *The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Law* (New York, 1927) pp. 201-205 has a long discussion which concludes that the rights seen in Elephantine and Roman law were enshrined to a lesser degree in early rabbinic practice and in biblical law. Others, writing after Milik's announcement, but before the publication of the *Ṣe'elim get*, argued in the same way without appearing to know anything about the new document. Ernst Bammel in "Markus 10.11f. und das jüdische Eherecht" *ZNW* 61 (1970) 95-101 argued mainly from the Elephantine documents and did not cite Milik. Hugh Montefiore in an appendix to the Anglican Synod Report *Marriage, Divorce & the Church - the report of a Commission appointed by the Archbishop of Canterbury to prepare a statement on the Christian Doctrine of Marriage*. (SPCK, London, 1971) p.79f argued from the obligations of Ex.21. Similarly Ben-Zion (Benno) Schereschewsky in his article "Divorce" in *Encyclopaedia Judaica* (16 vols, Keter Publ. House, Jerusalem, 1972) Vol. 6, 122ff argued from the Ex.21.10f obligations, citing the rabbinic discussions based on this. D.W. Amram in *The Jewish Law of Divorce According to Bible and Talmud*: (Reprint of undated original, New York, Sepher-Hermon, 1975) p.57f discussed the ways in which a husband was forced to grant a divorce. Several articles in *The Jewish Law Annual* 4 Ed. B. S. Jackson (Leiden: E.J.Brill, 1981) argued for the right of women to force a divorce from their husbands. Lipinski, E. "The Wife's Right to Divorce in the light of an ancient Near Eastern Tradition." pp. 9-26 argued mainly from the ANE background, in which it was possible for women to sometimes gain a divorce, but he also cites the *Ṣe'elim get*.. Alfredo Rabello, "Divorce of Jews in the Roman Empire" pp. 79-102 argues in pp. 93-99 from the woman's rights under Roman law but points out that later rabbis enforced these rights (mGitt.9.8). M.A. Friedman, "Divorce upon the Wife's demand as reflected in MSS from Cairo Geniza" pp. 103-126 showed that the medieval commentators also understood the Mishnah in this way. Shmuel Shilo "Impotence as a Ground for Divorce: To the End of the Period of the Rishonim" pp. 129-143 argued from the laws of a husband's impotence in Talmudic times, and Mark Washofsky "The Recalcitrant Husband: The Problem of Definition" pp. 144-166 showed that this law allows a woman to divorce her husband even in modern Israel.

¹⁰ Marriage vows included material and emotional support (as defined by Ex.21.10f) so divorce could be demanded if there was a refusal of conjugal rights (mKet.5.6) or a refusal to support her (bKet.77a). Emotional neglect was expanded to include cruelty or deprivation of freedom (mKet.7.2-5). Procreation was considered as a positive law, so anything which interfered with this could be a ground for divorce,

It is not certain how such divorces were carried out in practice. A couple of undatable texts in Mishnah are the only clues:

mGit.9.8: A writ of divorce imposed by a court - in the case of an Israelite court, it is valid, and in the case of a Gentile court it is invalid. In the case of gentiles, [if] they beat him and say to him, “Do what the Israelites tell you to do” - it is valid.

mArak.5.6: And so do you rule in the case of writs of divorce for women: They compel him until he says, “I will it”.

It appears that the courts were able to maintain a legal fiction that the husband could be ‘persuaded’ to voluntarily agree with the divorce, even if they had to whip him.¹² Both texts can be read in two possible ways. Firstly the court could be persuading the husband to write his own divorce certificate, either by himself or by employing a scribe. This is the traditional interpretation of these texts, which maintains the principle that the husband must always be the author of the divorce certificate. Secondly, the court could merely be persuading the husband to agree with a document which a scribe has written on behalf of the wife.

Papyrus Şe’elim 13 may therefore be a document produced by a court on behalf of a wife who asked the court to enact a divorce from her husband. The evidence for this is, admittedly, very weak, though the evidence for the second proposal which follows, actually strengthens this one as well.

such as inability of various kinds (mNed:11:12) or something which caused revulsion (mKet.7.9). For further details, see my forthcoming book on the Jewish background to divorce and remarriage.

¹¹ In particular, the Hillel-Shammai debate concerning how long a man was allowed to refuse conjugal rights (mKet.5:6), and the description of the minimum material support which assumes a regular pilgrimage to Jerusalem.(mKet.5:8)

¹² As in bKet.77ab. It is not certain that these Amoraic commentators knew what was actual practice in the second century.

The second situation which might have produced a document like Papyrus Şe'elim 13 is the growing influence of Egyptian Judaism on Palestinian Jews. Evidence from the Elephantine documents show that some Egyptian Jewish women were able to divorce their husbands in the same way that their husbands divorced them, as far back as the fifth century B.C.E.¹³ It was written into their marriage contracts that they could divorce each other by publicly stating that they "hate" their partner and paying them compensation. The significant portion of their marriage contract is:

Tomorrow or (the) next day, should <the wife> stand up in an assembly and say:
"I hated you; I will not be your wife", silver of hatred is on her head. She shall give to <her husband> silver 7 shekels 2 quarters and all that she brought in her hand she shall take out, from straw to string.¹⁴

This right of women to divorce their husbands appears to have become a normal part of Egyptian Judaism, though it was assimilated into the more normal practice of writing a divorce certificate. Philo is completely orthodox in his summary of the divorce law, except that he assumes women can decide to divorce their husbands. He regards this as reprehensible, but not unlawful:

SpecLeg. 3.30 Another commandment is that if a woman after parting from her husband for any cause whatever, marries another and then again becomes a widow, whether this second husband is alive or dead, she must not return to her first husband but ally herself with any other rather than him., because she has

¹³ The marriage and divorce texts are published with a useful commentary by A. E. Cowley (*Aramaic Papyri of the Fifth Century BC*) and E. G. Kraeling (*The Brooklyn Museum Aramaic Papyri*). These and the other texts from Elephantine have been re-edited and translated in B. Porten & A. Yardeni *Textbook of Aramaic documents from Ancient Egypt*. (Jerusalem: Akedemon, 1989). The new edition uses a completely revised numbering system.

¹⁴ C15=B2.6; K2=B3.3; K7=B3.8 with slight variations.

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.

Philo assumed that a woman was able to get divorced from her husband “for any cause”. This is very different from Palestinian and later rabbinic Judaism where a woman could only demand a divorce on the specific grounds named above.

Palestinian Judaism and Egyptian Judaism influenced each other in many ways, though the direction of the influence is often difficult to decide. Sandmel considered this problem for a long time and eventually gave up trying to decide, concluding that “Independent, parallel developments seem the better explanation than that of major dependency in either direction.”¹⁵ However, his earlier, more detailed work, showed that Philo had more similarities with later Palestinian rabbis than with his contemporaries.¹⁶ My work in rabbinic exegesis showed that before 70 CE the Palestinian rabbis did not use techniques such as allegory which were very popular in Egyptian Judaism.¹⁷ These methods were well known in Palestine, and were used by non-rabbinic groups such as the authors of the Qumran documents, but they were resisted by rabbinic exegetes till after the disruption which came with the destruction of Jerusalem.

The gradual influence of Egyptian Judaism can also be traced specifically in the area of marriage law. Early rabbinic sources mention Alexandrian marriage

¹⁵ Sandmel, Samuel. *Philo of Alexandria: An Introduction* (Oxford, Oxford University Press, 1979) p. 134.

¹⁶ In his *Philo's Place in Judaism: A Study of Conceptions of Abraham in Jewish Literature* (New York, 1971) he tried to show what Ginzberg's *Legends* and Wolfson's *Philo* had showed, that dissimilarity was as common as similarity, and similarities were more often with rabbis who flourished long after Philo. This is his own summary of what that work achieved, as stated in *Philo of Alexandria* p. 133.

¹⁷ *Techniques and Assumptions in Jewish Exegesis before 70 CE* (Mohr, Tübingen, 1992)

customs and the wording of their *ketuvoth*, though Hillel is regarded with wonder when he deigned to interpret the legal implications of an Alexandrian *ketuvah*.¹⁸ The significance of this, according to the Amoraim, was that he accepted the Aramaic phrases in their marriage documents as legally binding.¹⁹ Aramaic legal documents were common in Egypt long before Hillel, but it appears that rabbinic Judaism was reluctant to accept them till the first century.²⁰ Monogamy is another teaching which became popular very early in Egypt and spread to sectarian Judaism, but which spread only gradually through rabbinic Judaism. Elephantine marriage contracts sometimes added a monogamy clause as far back as the fifth century BCE,²¹ and the LXX translation of Gen.2:24 portrayed this doctrine by adding the word “two” to the text so that it read “they two shall become one flesh”. This gloss became so popular that it found its way into almost all the ancient versions.²² This form of the text became the basis for the New Testament teaching on monogamy by Jesus and Paul.²³ The Qumran exegetes also taught monogamy, though they did not refer to this gloss.²⁴ In rabbinic Judaism, however, the text was never quoted in this form,

¹⁸ tKet.4:9, parallels at yYeb.15:3; yKet.4:8; bBM.104a.

¹⁹ According to the context of the debate in bBM.104a.

²⁰ R.Judah’s summary of the “essence” of the *get* in mGit.9:3 is in Aramaic. This phrase was already in use at the end of the first century, as seen in the Masada *get*..

²¹ As in K7= B3.8 and C18=B6.4

²² The gloss “two” is found in the Peshitta, Samaritan Pentateuch, Vulgate, Targum Pseudo-Jonathan and Targum Neofiti. The only versions it does not appear in are the Massoretic and Targum Onkelos which was edited to agree with the Hebrew text.

²³ Mark 10:8; Matt.19:5; 1Cor.6:16; Eph.5:31.

²⁴ The Qumran documents taught monogamy at CD 4:20-5:6; 11QT 57:15-19 - see my “Nomological Exegesis in Qumran 'Divorce' Texts” (*Revue de Qumran*, forthcoming).

and polygamy continued to be allowed, though it was increasingly discouraged after 70 CE.²⁵

Rabbinic Judaism in Palestine no doubt tried to resist such changes, including the right of women to divorce their husbands, which even Philo found reprehensible. However, Palestine was also influenced by the surrounding Greco-Roman culture, in which women had equal rights to divorce as their husbands. Some rich or influential Jewish women divorced their husbands under the Roman law.²⁶ Although Josephus regarded this as contrary to Jewish law,²⁷ it indicates the influence which Roman law was beginning to have on Jewish practice. This Roman influence would have helped to reinforce the Egyptian influence which was more acceptable because it was regarded as Jewish.

²⁵ E.g. bAb.2.5: "He who multiplies wives multiplies witchcraft"; bYeb44a - polygamy creates strife in a house, no more than four wives are permitted so that each gets their conjugal rights at least each month. The (erem of R Gershom of Mayence (960-1040) finally prohibited polygamy (Responsa "Asheri" 42.1), probably in 1030 at Worms (the document has not survived), but it had probably ceased to be practised long before this.

²⁶ Josephus recorded that Salome divorced by issuing a repudium - a Roman divorce certificate (Ant. 15:259-60). Other women in the Herodian family were likewise known to divorce their husbands (Herodias - Ant.18:109-111; Berenice, Drusilla and Mariamme - Ant.20:141-147). Even Josephus' own wife walked out before he could divorce her, but without giving him a divorce certificate of any kind (Life 415).

²⁷ "Some time afterwards Salome had occasion to quarrel with Costobarus and soon sent him a document dissolving their marriage, which was not in accordance with Jewish law. For it is (only) the man who is permitted by us to do this, and not even a divorced woman may marry again on her own initiative unless her former husband consents. Salome, however, did not choose to follow her country's law but acted on her own authority and repudiated her marriage, telling her brother Herod that she had separated from her husband out of loyalty to Herod himself."(Ant. 15:259-60, Loeb).

By the mid second century something very similar to the Elephantine divorces was occurring in Palestine, and was accepted as legally binding by R. Yose b. Halafta:

yKet 5.8 (L&V 5.10): Said R. Yose, “In the case of those who write in the marriage settlement, ‘If he should hate’, ‘If she should hate’, this is a stipulation concerning a monetary matter, and such a stipulation remains in effect [despite the circumstances of the break-up of the marriage].”

This appears to be a ruling based on a dispute which concerned an Elephantine type divorce.²⁸ Like the Elephantine divorces, this was based on a statement of “hatred”²⁹ and a financial compensation. Yose ruled that this type of divorce was valid. Falk concluded that this type of divorce was “common in Judea after the Destruction . . . It may be assumed that in such a case the wife could apply to court and demand that the husband be forced to divorce her”.³⁰ No-doubt this form of divorce soon fell into disuse, but in the confusion of the second century there were many areas where the growing influence of ‘normative’ rabbinic Judaism was confused and laws were changing quickly.

The evidence from Philo and second century Talmudic sources show that women were able to divorce their husbands in second century Palestine, even against their husband’s wishes and without the grounds normally necessary. It appears from Philo that this procedure had, in some ways, been integrated into more orthodox Jewish divorce laws. One way in which this procedure may have been integrated would be to demand a written certificate rather than just an oral

²⁸ This link was pointed out in Falk, Z. W., *Introduction to Jewish Law of the Second Commonwealth* (Leiden, Brill, 1978) vol.II pp. 310f.

²⁹ This was originally an ancient Near Eastern technical term for “divorce”. See Yaron, R. "On Divorce in Old Testament Times" p. 117-119. Westbrook, Raymond "Prohibition of Restoration of Marriage.." p. 399-402

³⁰ Falk, *Introduction to Jewish Law*, vol.II pp. 311.

statement in the Assembly, and perhaps to encourage the use of a recognised scribe.

In conclusion, the Şe'elim papyrus 13 is an example of a divorce certificate written on behalf of a woman to her husband, using the Egyptian form of divorce law which found its way into Palestine by the second century. It may have been prepared for her by a court, which was able to order a divorce against a husband who neglected his wife or who was infertile. In second century Palestine it was also possible for a wife to divorce her husband without persuading a court that she had sufficient cause, employing the Egyptian-Jewish law, and a divorce certificate may have been issued in these cases. The Şe'elim papyrus 13 is a curious blend of orthodox terminology and Egyptian Jewish divorce practice. As such, it fits very well into second century Palestinian Judaism.

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Actually, this should properly be called "XHev/Se 13" because actually it comes from Seiyal, not Se'elim. The mistake was due to Adriel Schremer who published his paper titled: Divorce in Papyrus Se'elim 13 Once Again: A reply to Tal Ilan" (HTR 91 (1998) 193-202). When I replied to it, I referred to it with the same name. Perhaps one could refer to it as "XHev/Se 13 aka Se'elim 13".