

"A Messianic Jewish View of Divorce

Presented at the Hashivenu Form 2015

by Dr. Vered Hillel

Oceans of ink and forests of trees have given their substance for the plethora of biblical commentaries, books and articles written on divorce. Yet there is no definitive statement on the subject. Although both Judaism's and Christianity's position toward divorce can be traced to the same source and context, Tanakh and the first century debate between Beit Hillel and Beit Shammai, their conclusions are diametrically opposed. In Judaism a halakhically valid marriage can only be dissolved through the death of a spouse or by the issuing of a *get*. Divorce in Judaism is regarded as a tragedy but it is not forbidden or regarded as sin. The main concern is not with the permissibility of divorce, but rather with the proper grounds and procedures for divorce.¹ This emphasis is based on the scriptural injunction in Deut. 24:1-4, which regulates the rules of remarriage after a divorce. By the first century CE, Deut. 24:1-4 was regarded as the standard legal text regarding divorce. Paradoxically it is not a text about divorce, but about remarriage. It simply takes divorce for granted.

Modern Christianity also basis its understandings of divorce on Deut. 24:1-4 as interpreted by Yeshua in Mk. 10:2-12//Matt. 19:3-9, in Lk.16:18//Matt. 5:32 and in 1 Cor. 7:10-11. These references have been placed in the context of the rabbinic discussion on divorce between Beit Hillel and Beit Shammai (*m. Git.* 9.10 and the Gemara in *b. Git.* 90a) and evidence from the Qumran documents. Generally these texts have been studied with

¹ For more information, see the two classic works on Jewish divorce by Amram 1968 and Haut 1983.

² Taken from Instone-Brewer 2003, Kindle Edition, location 97.

³ See for example, Instone-Brewer 2002, 133-187; Kazen 2013, 193-282; Heth and Wenham, 112-137.

the goal of deciding whether Yeshua permitted or forbade divorce. Two main views have emerged, albeit with many variations. The first view is that there are two valid grounds for divorce—an adulterous partner (Yeshua) and desertion (Shaul)—but remarriage is not allowed unless one of the former spouses has died. The second view holds that there are no grounds for divorce, or even for separation.²

The complexity of the passages mentioned above is much more profound than a *peshat*, or simple reading of the text can proffer. Different exegetical techniques, text and source criticisms, as well as the institutionalization of marriage and divorce are just a few of the areas that elicit the passages' complexity and expose problems. For example:

- the references are highly abbreviated and need to be “unpacked”;³
- the role of Matthew’s “exceptive clause” (Matt. 19:9), including the meaning of the word *porneia*, can be complicated and needs to be unraveled; and
- the contextual placement of the passages in rabbinic halakhic discussions and evidence from Qumran is academic, needing to be qualified and expanded.

Compounding the issues are the social and political background, the relationship between the Synoptic Gospels and the existence of Q, as well as our own preconceived opinions and the copious scholarly studies written on Yeshua’s *halakha* on divorce.⁴

It is impossible to address all of these difficulties and challenges in this paper, nor is appropriate that we do so. The purpose of this paper is to present a Messianic Jewish view of divorce. We are not seeking to know whether Yeshua permitted or forbade divorce. Since Messianic Judaism shares a communal context with both Judaism and Christianity, any Messianic Jewish view toward divorce must consider both communities' traditions. This is a daunting task as the two communities hold opposing, irreconcilable

² Taken from Instone-Brewer 2003, Kindle Edition, location 97.

³ See for example, Instone-Brewer 2002, 133-187; Kazen 2013, 193-282; Heth and Wenham, 112-137.

⁴ For a short bibliography of scholarly studies, see Kazen 2013, 195-196, n. 1.

views. Our quest will look at the institutionalization of marriage in the Tanakh noting its ramifications for understanding divorce in the Tanakh, Apostolic Writings and incipient Jewish and Christian. In the process we will discuss the pivotal debate between Beit Hillel and Beit Shammai, the pertinent references to divorce in the Tanakh and Apostolic Writings, plus its communal aspects.

Divorce in 2nd Temple Judaism

Modern Judaism and Christianity's views on divorce are rooted in the 2nd Temple Jewish debate between Beit Hillel and Beit Shammai. The various Jewish groups of the 2nd Temple period debated the proper procedures for writing and presenting a certificate of divorce, and the grounds for divorce, all of which are based on the meaning of the phrase עֵרְוַת דָּבָר 'ervat davar in Deut. 24:1.⁵ Beit Hillel and Beit Shammai took polar positions. Beit Hillel interpreted the phrase to mean "indecent" and "any matter," thus introducing a new kind of divorce. They ruled that anything the husband found displeasing was grounds for divorce.⁶ Beit Shammai, on the other hand, interpreted 'ervat davar as matters of indecent and restricted the grounds for divorce to sexual misconduct, specifically adultery. The debate is recorded in a highly abbreviated form in *m. Git.* 9.10: cf. *Sifre Deut.* 269; *y. Git.* 50a; *b. Git.* 90a; *Sota* 16b-c.

Beth Shammai say, "No man may divorce his wife, unless he found in her scandalous behaviour [unchastity], for it is said [Deu. xxiv.], 'Because he found in her some scandalous behaviour [עֵרְוַת דָּבָר];'" but Beth Hillel say, "Even if she spoiled his food, because it is said, [וְתָעַר דָּבָר]". R. Akivah saith,

⁵ Deut. 24-1-4 has been intensely discussed. See, for example, Wenham 1979, 36-40; Westbrook 2009, 387-404; Bockmuehl 2000, 17-21.

⁶ Philo (*Laws* 3.80) and R. Akiva took the view point of Beit Hillel to the extreme, and Josephus states that divorce for "any matter" was common in his day (*Ant.* 4.8).

"Even if he found one handsomer than her, for it is said [ibid.] 'If it happen that she found no favor in his eyes.'"⁷

The phrase *'ervat davar* is difficult to translate. It only appears twice in the Tanakh, Deut. 24:1 and Deut. 23:15, both of which deal with holiness. Deut. 23:15 deals with the holiness of the Israelite camp due to ADONAI's presence in the midst of them and the holiness of Deut. 24:1-4 is to avoid sexual defilement. The phrase could be translated "matter of indecency" but the word "indecency" is in the construct form, which necessitates a literal reading of "indecency of the matter", rendering the word "matter" (*davar* דבר) obsolete.

Deut. 24:1-4

In the beginning ADONAI told man to leave his father and mother and to cleave unto his wife (Gen. 2:24), establishing lifelong marriage between two people as the ideal. Marriage is called a *berith* ברית (covenant) consistently throughout the Tanakh (e.g. Prov. 2:17; Mal. 2:14; Eze. 16:8, 59-62). Theologically a marriage *berith* contains the idea of an agreement that a faithful person would not break even if the partner with whom that person were in covenant breaks the stipulations. This meaning stems from the covenantal relationship between ADONAI and Israel developed in the later prophets and the Apostolic Writings.

However, a marriage *berith* also carries with it the legal aspect of a marriage contract. In the Ancient Near East (ANE), the word "covenant" was used for any kind of legally binding agreement or contract, e.g. treaties, such as the Torah, business agreements, hired workers, and other legal agreements including marriage.⁸ Each covenant had stipulations agreed upon by both parties, and sanctions that occurred should the

⁷ Quote taken from *Sefaria*, http://www.sefaria.org/Mishnah_Gittin.9.10. Last accessed Feb. 2, 2015.

⁸ For the full range of meanings of "covenant," and a wide-ranging bibliography, see Weinfeld 1974.

stipulations be violated. The legal term for marriage in the Ancient Near East was ‘covenant’ because it was a legal agreement that contained stipulations and sanctions.⁹ There were payments, such as bride price (*mohar* Gen. 24:53; Ex. 22:36-17; Hos. 3:2) and dowry (*ketubah*), agreed upon stipulations, and penalties for not keeping the stipulations. The idea of marriage as a contract developed alongside the traditional theological meaning of marriage as a *berith*. Marriage *berith* and marriage contract are two aspects, theological and legal, of the marriage agreement that developed in tandem and show no evidence of ever being separated. This means that we need to differentiate between the breaking of a marriage *berith*, which is always wrong, and divorce, which is the legal recognition that a marriage contract has been broken. The breakup of a marriage is always due to the sin of breaking the marriage vows (stipulations) in the marriage contract. Divorce is simply the legal, communal recognition that the marriage covenant/contract has been broken.

Deut. 24:1-4 demonstrates how the Torah deals practically with the sin of broken marriage contracts. Though marriage was intended to be for life, the reality was that men were sending their wives away (divorcing them) or abandoning them. The Torah limits the damage that broken marriage vows inflict by requiring a written divorce certificate. The divorce certificate, later named a *get*, clarifies that the divorce is valid thereby enabling a woman to remarry. It is legal, communal approval that the marriage contract was broken and the divorce ensued on biblically valid grounds.

The Deuteronomy passage assumes divorce and remarriage but qualifies the condition and the consequences: vv. 1-3 list the conditions—palingamy is totally

⁹ On marriage as a contract, see Pope 1997, 74-78.

prohibited¹⁰— and verse 4 lays out the consequences, which are stated in purity language—the twice divorced woman’s remarriage to her first husband causes her to be “defiled” טמא (*tamei*) and the result of such an act is an “abomination” תועבה (*tō’evah*). The use of purity language in these verses is quite striking. First, it places the use of *‘ervat davar* in a purity/holiness setting similar Deut. 23:15, its only other appearance in the Tanakh. Second, the purity language connects Deut. 24:1-4 with adultery as stated in Lev. 18:20 and Num. 5:13, 14, 20. Adultery is one of the sexual crimes considered an “abomination” (*tō’evah*) to ADONAI that is punishable by death (Lev. 18:24-30; 20:10, 22-26; Deut. 22:22-24; *b. Sanh.* 52b), and that defiles the land of Israel causing the Land to be “sinful” or “guilty” and to vomit out its inhabitants (cf. Lev. 18: 24-25; cf. Jer. 3:1).

Jer. 3:1 views remarriage to a former wife who had married and divorced in a similar manner; it defiles the land (תהנהף *techanef*). Second Temple Jewish texts understood Deut. 24:1-4 similarly. For example, Philo equates a divorcee, who remarries her first husband, with an adulterous woman and vehemently derides men who resume sexual relations with a former wife after belonging to someone else.¹¹ *Jubilees* 33:7-8 and *T. Reuben* 3:10-15 in the retelling of Reuben’s transgression with Bilhah, stress that Jacob refused to have any further sexual relations with her after the affair.

The emphasis on purity in the Second Temple period brought Deut. 24:1-4 to the forefront. Valid grounds and procedures for divorce were determined in light of the contemporary situation in order to prevent illicit sexual relations, and further exile.

¹⁰ Palingamy is the sexual sin of remarrying a formerly divorced spouse after an intervening marriage. Jackson 2008, 196-197 discusses palingamy in light of Yeshua’s exegesis of Gen. 1:27 and 2:24.

¹¹ Philo, *Spec. Leg.* 3.30-31. Philo says that such a man is an effeminate weakling who has no manly courage or vigor, “as if he had been castrated and deprived of the most useful portion of the soul, namely, that disposition that hates iniquity”. This man is guilty of adultery and pimping.

2nd Temple Jewish Literature

In an expanded narrative about Abram, Sarai and Pharaoh, the *Genesis Apocryphon* portrays the same attitude. The text claims that even though Pharaoh had seized Sarai and kept her for two years, in answer to Abram's plea to God that Pharaoh "not defile (make unclean) my wife away from me," Pharaoh and his household were afflicted by an evil spirit and disease that prevented any sexual relations between the king and Sarai. Had they had sexual relations, Sarai would have been unfit to return to Abram. The author reiterates this point twice, reassuring the reader that the Pharaoh never touched Sarai. As a result she was not defiled (*tamei*), and could return to Abram. Philo knows of a similar legend. He also shares the understanding that sexual relations between a woman and someone other than her husband would make her impure for her husband (*Abr.* 98). These examples demonstrate that during the Second Temple period the idea of intervening sexual contact defiled a woman, making her unlawful to her first husband.

Other developments in 2nd Temple Judaism inform the background for the debate concerning the grounds for divorce. Specifically this involved:

- the criticism of polygamy and the move toward monogamy;
- the developments of the *ketubah* and the instability of marriage; and
- the ease of divorce for both men and women in the Greco-Roman world.

These changes are mostly seen in the Dead Sea Scrolls and in the Elephantine Papyri.¹²

Dead Sea Scrolls

The move away from polygamy toward monogamy is seen quite early with the addition of the word "two" in Genesis 2:24 in the Septuagint and other early versions, "...the two

¹² A large body of papyri from the Jewish community at Elephantine, Egypt dating from the 5th century BCE. Most of the fragments were written in Aramaic and include letters, family legal contracts including marriage and divorce documents, the manumission of slaves and other business.

become one flesh”.¹³ The word “two” is not in the Masoretic text. It appears that the gloss was a common addition that was recognized as a comment on the text rather than a variant. This means the gloss affirmed that marriage is made by two individuals, thus making polygamy an anomaly. The Dead Sea sectarians actually forbade polygamy, or more specifically polygyny,¹⁴ because it was considered a sexual sin (CD 4.20-5.21).¹⁵ The *Damascus Documents* (CD) uses three proof-texts to support their position: Gen. 1:27 (“male and female He created them”), Gen. 7:9 (“two by two they [the animals] came...into the ark, male and female), and Deut. 17:17 (about the king that he should not “multiply wives for himself...”). This section of CD has been combined with passages from the *Temple Scroll*¹⁶ to conclude that the Qumran sectarians prohibited both polygyny and divorce.¹⁷ However, it has been successfully demonstrated that the Qumran community allows divorce.

Let’s take the two texts mentioned above as examples. CD 13.17 mentions the role of the overseer in concerns of marriage and divorce, and the *Temple Scroll* suggests that divorce was normally allowed (11 Q19 66.11). The *Damascus Document* uses a *peshat* reading of the three proof texts seeking to understand the divine purpose and the nature of things: God created humans male and female, paired all beings two-by-two, and the king is not supposed to have multiple wives. None of the Qumran texts say anything significant about divorce or remarriage. Instead they exegete the texts to apply to someone who takes two wives.

¹³ Septuagint, Syriac Peshitta, Samaritan Pentateuch, Vulgate, *Targum Pseudo-Jonathan* and *Targum Neofiti*.

¹⁴ Polygyny is a specific form of polygamy in which a man is married to more than one wife. Polygamy is a form of marriage which includes more than one partner, either husband or wife.

¹⁵ This passage discusses the three nets of Belial (4. 15-18)—fornication (*zenut* זנות), wealth and defiling the sanctuary. “Taking two wives in their lifetime” is given as an example of fornication (5.20-21).

¹⁶ 11Q19 16.16-19, 17.15-19 rewrite and expands the rules for a king in Deut. 17:14-20.

¹⁷ Joseph Fitzmyer is a strong proponent of this reading. See, Fitzmyer 1976. For further discussion, see Instone-Brewer 2002, 61-72, Kazen 2013, 236-242.

Women and Divorce

Divorce became easier for women in most ancient societies in the 2nd and 1st centuries BCE. This trend is reflected in Christian literature until the 5th century. In the Greco-Roman world women had almost equal rights as men to initiate divorce. In 18 BCE Augustus tried to control marriage and divorce by imposing laws that required seven Roman citizens over the age of puberty to witness a divorce, and by making adultery a crime. By the 1st century CE, women and men were allowed to divorce at will, without citing any grounds.¹⁸ In the case of adultery, a woman would lose her dowry, and a man had to return the dowry plus half. Divorce on any other grounds incurred no penalty.

The status of Jewish women during this time is debated. It is a fundamental principle in Jewish law that only a husband can enact a *get*. The function of the wife is limited to that of merely receiving the *get* (*m. Yeb.* 14.1, *b. B.B.* 167a). A woman in the first century could demand a divorce or petition the Jewish courts to force their husbands to grant the divorce if he broke his marriage contract and obligations (*t. Ket.* 12.3), or if he had a smelly occupation or personal defects that made him offensive to her (*m. Ket.* 7:10).

There is some evidence that Jewish women had mutual rights of divorce—marriage contracts among the Elephantine papyri, Josephus' mention of Herodian women initiating divorce (Salome, Herodias and Drusilla; *Ant.* 15:259-60; 18:136; 20:141-43), the Aramaic *get* from Naḥal Şe'elim dated to the second century CE,¹⁹ and two references to marriage contracts in the Jerusalem Talmud (*y. Ket.* 30b and *y. B.B.* 17c) that allow for either the husband or wife to initiate divorce. In the Elephantine marriage contracts the only

¹⁸ *Institutes of Gaius*, 137. Amram, 1975, 61 discusses Roman law in relation to women from the Herodian family divorcing their husbands.

¹⁹ This document was discovered in 1951 and passed through the hands of several scholars before it was finally published in 1995 by Yardeni, and with translation in 1996 by Tal Ilan.

differences between Jewish men and women are in regard to money and to the dowry, which went to a woman in a divorce. Most remarkably both men and women could enact an oral divorce in which they stated publically that they “hated” their spouse, and that they were willing to pay the price for a divorce.²⁰ The *Şe’elim get* appears to have been written by or for a woman to her husband. The increasing popularity of “any matter/cause” divorce propagated by Beit Hillel favored the husband, and increasingly diminished any rights the woman may have had. This led to the solidification in Judaism of only men being able to initiate a *get*, which in turn has led to the modern problem of the *agunah*.

Beit Hillel and Beit Shammai Debate: Grounds and Procedures for Valid Divorce

With this background in mind let us refocus our attention on the debate between Beit Hillel and Beit Shammai. By the first century CE Jewish exegetes used the repetition of the *waw* “and” in Deut. 24:1-3 to divide the verse into several cases, instead of one with several conditions and consequences. This exegesis allowed them to use these verses as the basis for divorce law in general and to emphasize the grounds and procedures of divorce.²¹ Beit Hillel took this one step further. Using the common exegetical technique later known as *remez* רמז, they concluded that the unusual phrase ‘*ervat davar*’ in Deut. 24:1 referred to two different grounds for divorce—“indecentcy” and “a matter”. This meant an act of indecentcy or “any matter,” any single cause, could be used as grounds for divorce. R. Akiva added further weight to the argument when he pointed out that the phrase “does not find favor in his eyes” could refer to any petty matter such as a woman’s declining beauty. Beit Shammai, on the other hand, reversed the order of the two words, rendering the

²⁰ Instone-Brewer 2002, 75-80 discusses these texts at length.

²¹ This is seen in Josephus who paraphrases the verse to focus on a certificate of divorce as well as in later rabbinic rulings and discussions about the various aspects of divorce that ignore verse 4. For an overview and history of early Jewish interpretations of Deut. 24:1-4 see Kazen 2013, 224, n. 92.

reading “a matter of indecency”, which is equivalent to adultery.²² The view of Beit Hillel was dominant, as seen in both Philo and Josephus, who assumed that “any matter” divorce was the only type of divorce,²³ and the view of Beit Shammai had almost disappeared by the time of Akiva.

A second issue on which Beit Hillel and Beit Shammai disagreed was the procedure for getting a divorce. Here they reversed their roles of conservative versus liberal. Beit Shammai said that a divorce certificate could be given to a wife at any time after it was written. Beit Hillel said that the *get* had to be written immediately before handing it to her. He also detailed the rules of how the *get* could be served, as well as the conditions attached to the divorce (*m. Git.* 8:1-8; cf. *m. Git.* 7:3-8):²⁴

- “writes her a certificate of divorce;”
- “puts it in her hand;” and
- “sends her out of his house.”

Each of these three stages had a large number of associated regulations. This complex procedure offsets the ease with which someone could divorce for “any matter”. Without these regulations a husband could simply hand his wife a written divorce certificate in a fit of anger and dismiss her. Beit Shammai was conservative in their ruling on the grounds for divorce, but lenient on the procedures of writing and transmitting the *get*. Beit Hillel’s “any matter/cause” grounds for divorce was very lenient but their procedures for enacting a divorce were conservative.

The consequences of divorce were directly related to the stipulations/vows of marriage, specifically the dowry that was given in addition to the ancient custom of the

²² These conclusions are exegeted from *Sifre Deut.* 269: (*m. Git.* 9.10; *y. Git.* 9.11; *b. Git.* 90a; *y. Sot.* 1.1). For a detailed examination of the exegesis, see Instone-Brewer 1992.

²³ Philo *Special Laws* 3:30; Josephus, *Life* 426-427, *Ant.* 4.253.

²⁴ Amram 1975, 171-186 summarizes these laws.

mohar, the bride price.²⁵ These payments were weighted against divorce to insure the relationships and family properties for both parties. Whoever caused the divorce was penalized financially. For example, if a husband divorced his wife without cause, he usually returned the dowry. If the divorce was caused by breaking a stipulation in the marriage contract, known today as a *ketubah*, the guilty partner was deemed responsible, and the innocent partner kept the dowry.

Shimon ben Shetah in the first century BCE is credited as having reformed these established practices. He allowed the groom to forgo paying the normal bride price, with the stipulation that should he divorce his wife, the money had to be paid. The exact amount of goods and money that comprised the payment was written in the marriage contract. This practice became so extensive that the payment itself became known as the *ketubah* (*t. Ket.* 12:1; cf. *y. Ket.* 32b-c). These changes made marriage much less costly and divorce much more costly and even prohibitive. The ruling in the Tosefta attributed to Shimon ben Shetah has been questioned as legendary. Regardless of its historicity, the *tikkun* demonstrates that around the first century BCE/CE divorce was common, and that steps were being taken within Judaism to make it more difficult.

Other Grounds for Divorce

The debate between Beit Shammai and Beit Hillel recorded in *m. Git.* 9 is often referred to as “the authoritative” word on the views of Beit Hillel and Beit Shammai concerning divorce. However, this debate only disputes the grounds for divorce in relation to ‘*ervat davar*’ and the procedures for issuing a *get* exegeted from Deut. 24:1-4. It does not

²⁵ There is some confusion of terms and practices depending upon the time period and contexts being compared, but the accepted system seems to have been endowments from both the father and husband to be. The *ketubah* later filled a similar function as the earlier *mohar*, bride price.

encompass all the views of divorce. Before the destruction of the Temple in 70 CE there was general agreement that valid grounds for divorce included infertility, unfaithfulness, material neglect (either food or clothing, or both), and emotional neglect (the latter two are based on Ex. 21:10-11; *m. Ket.* 5.5-8). Furthermore, divorce was considered undesirable but sometimes necessary.

Infertility was grounds for divorce because the primary purpose of marriage was regarded as procreation (Gen. 1:28 “be fruitful and multiply”). Josephus wrote that procreation was the sole purpose for Jewish marriage (*Against Apias* 2.199) and that even the Essenes taught this (*Jewish Wars* 2.160-161). A couple that remained childless for ten years were expected to divorce. Simeon ben Yohai, a 2nd century CE rabbi, tried to prevent such a divorce (*Song of Sol. Rab.* 1:31). Additionally, Philo was very sympathetic toward childless couples, stating that they need our pardon (*Special Laws* 3.35).

Unfaithfulness, or adultery, was another ground for divorce. Theoretically adultery was a capital offence that was punishable by death. It is unlikely that the death penalty for adultery was ever applied in the 2nd Temple period.²⁶ The normal procedure for adultery was divorce without repayment of the *ketubah*.²⁷ Suspected adultery was much more common. The rite of bitter water given in Numbers 5:11-28, to determine the guilt or innocence of a suspected adultress, was probably abandoned after the Temple was destroyed in 70 CE.²⁸ The Mishnah implies that a husband was required to divorce his wife for adultery (*m. Sota* 5.1), but was only expected to do so in the case of suspected adultery

²⁶ The right of the Jews to carry out capital offenses ended around 30 CE (*b. Sanh.* 41a; *y. Sanh.* 18a, 24b). It is often assumed that they ended much earlier. The only possible example is in Yochanan 8.

²⁷ For example see *m. Sota* 6.1; cf. 2nd Enoch 71:6-7 [late 1st century] says that Noah’s brother Nir divorced his adulterous wife.

²⁸ The Mishnah states that the rite of bitter water was so common shortly before 70 that the practice was abandoned by Yochanan b. Zakkai (*m. Sota* 9.9).

(*b. Sota* 25a; cf. *b. Sanh.* 88a; *Sifre* 218). In such instances the husband was not required to repay the *ketubah*. This is exemplified in Yosef taking Miriam as his “apparent” unfaithful wife. The rite of suspected adultery was not applicable in this instance because this rite was not given to a pregnant woman. Instead, in keeping with later rabbinic teaching, Yosef simply abstained from relations with his wife until after the child was born. The right to divorce in cases of adultery only applied to a husband divorcing his wife. If he committed adultery with an unmarried woman, he simply married her; if with a married woman, the offense was against the other woman’s husband who then could divorce his wife.

Exodus 21:10-11

Ex. 21:10-11 provides three further grounds for divorce. The passage is a law about how a slave wife should be treated. The Exodus text states that a slave wife must be provided with food, clothing and love. If these are withheld, she is to be given her freedom. In a *kal v’homer* argument, this law was applied to a free wife: if it is true of the lesser wife, how much more so of the free wife who should have equivalent rights. This passage provided three valid grounds for divorce, and led to the comparison of the divorce certificate to that of a certificate of emancipation from slavery (*m. Git.* 1.4-6, 9:3). Much of the discussion about divorce in the Mishnah is based on Ex. 21:10-11, and later Rabbinic literature preserves detailed discussions about the limits for obtaining a divorce on these grounds. There are no debates about any of these grounds for divorce; there are simply details. This demonstrates the acceptance of these grounds for divorce.²⁹

²⁹ All extant second century marriage contracts contain the obligation for a man to feed and clothe his wife, and one includes conjugal rights. The manner in which vows were expressed varied over time and in different branches of Judaism. They consist of both oral and recorded vows. By the time of the Talmud, the wording of marriage contracts had become relatively fixed. Though the language is more euphemistic, they still follow the same model of marital fidelity, as well as the obligation to provide food, clothing and conjugal relations.

The provision of food and clothing were merged into one category entitled material neglect, and conjugal rights were treated separately as emotional neglect. The type of work expected of a wife (*m. Ket. 5.5*) differed from that of a husband (*m. Ket. 5.8*). The attribution of these two discussions to Eliezer ben Hyrcanus (80-120 CE), Ishmael b. Elish (120-140 and Yose b. Halafta (140-165) help date this ruling to at least the early second century. The comment about giving shoes for the festivals, allows for an earlier dating of before 70 CE when the Temple was still standing. *Mishnah Ket. 5:9* requires that a man provide other physical needs for a wife, and that she should expect a standard of living similar to or better than the one in which she was brought up (*b. Ket. 48a*). Another area of neglect is that a wife could not be expected to live in the Diaspora (*m. Ket. 13.11*) or that if in Israel she could not be moved far from her family (*m. Ket. 13.10*).

The last ground for divorce, emotional neglect, was defined in as much detail as material neglect (*m. Ket. 5.6, 7*). The ruling in *m. Ket. 5.6* is a debate between Beit Hillel and Beit Shammai about the length of time a husband can refrain from sexual relations with his wife. No limit is given for a wife. Because this was a school debate, it can be dated to pre-70. Eliezer ben Hyrcanus (80-120) comments on it are further evidence of an early dating. Cruelty and humiliation are further forms of emotional neglect recognized in the Mishnah as grounds for divorce without receiving the *ketubah*.³⁰ This list includes items such as forcing or abrogating a vow, or refusal to do so, and/or imposing demeaning or demanding conditions on the vow. In such cases husbands were forced to release the vow, or to divorce the woman with full payment of the *ketubah*. Any public act that was messy or demeaning to the wife, even the prohibition to wear certain types of adornment, was a serious act of humiliation. Wife beating was classed with acts of cruelty and treated

³⁰ *m. Ket. 7.2-5* a man toward a wife; *m. Ket. 7.6* a woman toward a husband.

as a criminal act of assault. Deliberate malice comprises matters of cruelty of a wife toward a husband, e.g. making him impure by giving him improperly tithed food, not warning of menstruation, behaving improperly in public, or cursing his parents. The difference between cruelty and neglect of conjugal rights is that cruelty results in divorce not fines.

During the 1st century CE the debate about divorce between Beit Hillel and Beit Shammai permeated society. Beit Hillel's "any matter" divorce was rapidly replacing all other biblically based grounds for divorce—infertility, unfaithfulness (adultery), material neglect and emotional neglect. So much so that after 70 CE it had almost completely replaced all other grounds for divorce. In fact, the only time "any cause" divorce was not more beneficial, was when a man could prove his wife had been unfaithful. Normally the penalty for breaking the marriage contract was divorce with the forfeiture of the *ketubah*. If a man could prove adultery, he could take his wife to court on the basis of the Tanakh, and not have to pay the *ketubah*.

Section Summary

Marriage was intended to be a lifelong *berith* between a man and a woman but sin derailed this ideal. The breakup of a marriage *berith* is always sin, but the Torah deals practically with this sin by the legal process of issuing a written divorce certificate. This legal document is communal approval that the grounds and procedures for the divorce were valid, and that the woman had the right to remarry without committing adultery, except for pilingamy.

All the Jewish groups in the Second Temple Period accepted divorce and remarriage after a valid divorce. The grounds and procedures for a halakhically valid divorce were highly influenced by the extreme emphasis on purity and by the

contemporary culture and society. Thus the main purpose of the debate between Beit Hillel and Beit Shammai was to properly exegete Deut. 24:1 in order to establish halakhically legitimate grounds and procedures for divorce to ensure valid divorce. Without a valid divorce, remarriage would cause a woman to commit adultery, and put the community at risk of being exiled once again. Beit Hillel created a new kind of divorce called an “any matter or cause” divorce, expanding the grounds for valid divorce to cover almost anything. Beit Shammai rejected “any matter divorce” stating that Deut. 24:1 accepted divorce only for “matters of indecency”. While both Beit Hillel and Beit Shammai accepted sexual indecency as a ground for divorce, they also accepted infertility, unfaithfulness, material neglect, and emotional neglect.

Apostolic Writings

In light of the foregoing, let’s look at Yeshua’s words on divorce in the Apostolic Writings. For clarity and ease of reference, the five primary passages dealing with Yeshua’s words on divorce are laid out side-by-side in Appendix 1.

Mark 10:2-12

Mk. 10:2-12 is traditionally understood as a pericope on divorce. Although the passage begins with certain Pharisees engaging Yeshua in a halakhic debate about the lawfulness of a man divorcing his wife, Yeshua’s reply shifts the discussion from divorce to marriage and remarriage. The Pharisees’ question appears to test Yeshua about the permissibility of divorce. Such a universal question, however, is strange because all Jewish groups at that time permitted divorce. The first century audience would have understood that an “any matter/cause” divorce was intended. It is much like asking if it is “lawful for a sixteen-

year-old to drink”. We automatically understand that alcoholic beverages are implied—a person would dehydrate and die without drinking anything. Matthew 19:3 removes any ambiguity by including the phrase “for any cause,” which was a legal term referring to Beit Hillel’s “any matter or cause” divorce. Therefore, the question is best understood in relation to the debate between Beit Hillel and Beit Shammai over the proper grounds and procedures for divorce.

After the Pharisees’ initial question, a cat and mouse game ensues. Yeshua questions the Pharisees about what Moshe *commanded* them, and they reply that he *permitted* them to write a certificate of dismissal, paraphrasing Deut. 24:1-3. Yeshua countered with two proof texts from Gen. 1:27 and 2:24. It has been suggested that the difference in terminology between command and permitted indicates a common assumption understood by both Yeshua and the Pharisees that the commandments of Moshe (Deut. 24:1) are juxtaposed against God’s commandments (Gen. 1:27; 2:14), indicating that Moshe’s permission to divorce was God’s concession. In other words, Moshe transmitted his own commandments and ADONAI simply acquiesced.³¹ Such an exegesis is unsustainable in Besorat Mark because the Besorah clearly identifies the commandments of Moshe as equal with ADONAI’s (e.g. 7:8-13; 12:26). Furthermore, Yeshua Himself returns to Deut. 24:1-4 when He expounds His teaching privately to the disciples (10:10-12), treating it as the Word of ADONAI. The Pharisees were simply using common terminology for what may or may not be done (cf. the rabbinic contrast of אסור forbidden and מותר permitted).

Yeshua links the two texts from Genesis in a type of exegesis later known as *gezerah sh’vah*, so that 1:27 is inferred in 2:24, specifying that it is God who joins the two

³¹ For more on this topic, see Fraade 2004, 399-422.

together. By doing this He indicates to the Pharisees that He is not interested in their debate and reminds them that marriage was meant to be monogamous and lifelong. The Genesis passages were the standard proof-text for monogamy; a man should only marry one wife as in Eden. Notice that Yeshua includes the word “two” when He cites Gen. 2:24, indicating that He upheld the teaching that monogamy was ADONAI’s original intention. Yeshua’s combining of the two texts refocuses the debate away from Deut. 24:1-3, to creation and to the dawning of an eschatological era that would restore Edenic conditions.

These proof-texts broaden the discussion from one specific form of illicit sexual relationships called palingamy, which is the main concern of Deut. 24:1-3, to include all illicit sexual relationships. All sexual relations, other than those between the two (male and female) who have become one, are outside ADONAI’s original intent. Any adaptation of this pattern affects creation, the community, and those in the community, as well as the image of ADONAI and His holiness. Yeshua does not contradict the Torah by forbidding divorce. Rather, He emphasizes the weightier matter giving precedence to creation and allowing it to correct the picture.

The disciples however, did not seem to understand Yeshua’s answer. After they were alone in the house, they asked for clarification of Yeshua’s statements. He explains that any man who sends away/divorces his wife and marries another commits adultery against her (meaning the first wife) and if a wife divorces her husband and marries another she commits adultery. This extends the teaching of verses 6-9, and focuses on Deut. 24:4, which the Pharisees did not include in their argument.

If the two, who have become one through marriage, divorce and then remarry another person, they commit adultery because in essence they are still “married” to the

original partner. Technically this is bigamy, not adultery. Adultery in the Tanakh, in 2nd Temple period literature and in rabbinic literature, is defined as a man having intercourse with a woman married or betrothed to another man. We have already seen that it is one of the sexual abominations that defile the land causing exile. Bigamy on the other hand describes a person who marries another while still married. Neither bigamy nor polygamy are forbidden or defined as a sin in the Tanakh. Although monogamy was strongly encouraged in the 2nd Temple period, polygamy and bigamy were not officially banned in Judaism until the thirteenth century.³² Mark's highly abbreviated account of the Beit Hillel/Beit Shammai debate does not resolve this tension. If we relocate Yeshua's words to a broader context, we could conclude that He condemns any remarriage after divorce as the sin of adultery. However, the account in Besorat Matthew specifies divorce for "any cause" "except for *porneia*," which confines the context to that of the debate. It also implies that Yeshua is referring to an invalid divorce (see below).

As was pointed out above, the holiness/purity language in Deut. 24:1-4 influenced the interpretation of remarriage after invalid divorce as adultery, as in Jer. 31 and other Second Temple Period texts. Yeshua's statement "What God has joined together, let no man separate," links to His *drash* on Genesis, thereby extending the basis of the correlation between divorce and adultery from purity issues to creation. The choice of vocabulary plays an important role in understanding Yeshua's statements. The Greek uses *chōrizetō* "to separate" instead of *apolyō* "to release", which the Pharisees used in questioning Him. Though both words were standard terms for "to divorce," and had a very similar semantic field, the Apostolic Writings use *chōrizetō* only in relation to Yeshua's statements on divorce in Mk. 10:9//Matt. 19:6 (cf. 1 Cor. 7:10-11). *Chōrizetō* is a third person

³² Schereschewsky 1972, 986-988.

prohibition. It is not a direct command (cf. Eph. 4:26, 28; 2 Sam. 14:25 LXX). A third person imperative in Greek does not carry the force of a direct command; rather it carries the sense of a request, entreaty, summons or exhortation (e.g. 2 Pet. 3:8; 1 John 3:7). For example, Yeshua taught the disciples to pray, "... may your name be honored, may your kingdom come, may your will be done ..." (Matt. 6:9). These are entreaties, not commands. The same nuances apply to prohibitions. Most prohibitions entreat the audience to abstain from one behavior and engage in another (e.g. Ro. 14:3; 2 Thess. 3:10; LXX: Ex. 20:19; Lev. 25:14; 2 Sam. 11:25; cf. John 14:27). His words are a prohibition against divorce, yet they do not carry the force of a direct command. They do not say "You shall not divorce" or "Divorce is forbidden." Yeshua is not saying that divorce can't happen, but that it shouldn't happen. This interpretation does not condone divorce; the Tanakh and Yeshua clearly equate divorce with sin. Instead it places the statement into the context of the weightier matters of creation, of the eschatological Edenic restoration, and of the Torah's pragmatic dealing with the breakup of marriages.

One possible reason for the specific choice of vocabulary may lie in the difference between "joining/yoking" and "binding". ADONAI "joins/yokes" the two together as one (Gen. 1:27) in a 'mystical/spiritual' relationship, whereas the two bind themselves together through their marriage contract. This differentiates between the concept of a marriage *berith* and of a marriage contract. The breaking of a marriage *berith* is always wrong, but a broken marriage contract for valid grounds is recognized by the legal action of divorce.

The prophets present a picture of ADONAI divorcing Israel because she consistently broke her marriage contract.³³ The main message is not that ADONAI is a divorcé, but that

³³ Jeremiah, Ezekiel, Hosea. The words that ADONAI speaks in Hosea 2.2 (MT v. 4) "she is not my wife and I am not her husband," are an ancient Near Eastern divorce formula.

Israel and Judah had broken their marriage contract. Malachi extends this criticism to all marriages where marriage vows are broken (e.g. 2:10-16; 3:5, 8-10). ADONAI Himself witnessed these vows (Mal. 2:14). He urges that they be faithfully maintained (v. 15), and becomes angry when the vows are broken (v. 16). He even states that He hates divorce. Yet He does not criticize the legal process, or the person who carries it out.

One further word on Yeshua's statement that the "two become one flesh." This phrase has often been interpreted to indicate that the physical act of sexual intercourse binds the two in marriage. This is difficult to substantiate in light of Shaul's statement in 1 Cor. 6:15-20 that people can become "one flesh" with a prostitute. This means that those at Corinth who were sexually immoral, adulterers, etc. (6:9) would have to remain single. Yet he says "you were washed, you were made holy, you were set right in the name of the Lord Yeshua the Messiah and by the Ruach of God" (v. 11). Paul uses the phrase "one flesh" to describe a relationship that is intended to be lifelong, but has no guarantees that the relationship will last a lifetime.

We can conclude from the foregoing discussion that Mk. 10:2-12 advocates inseparable monogamous marriage as the standard, and that divorce should not happen. All sexual relations except for those between the one male and one female are outside ADONAI's original intent. They are an abomination to ADONAI. The consequences of such acts affect individuals, families, communities, creation and the holiness of ADONAI.

Matt. 19:3-12

The Matthean pericope corresponds in substance to the Markan pericope, though not in precise detail. There are additions and omissions, and a different order to the narrative. The differences pertinent to our quest of a Messianic Jewish view of divorce are the two

additional, strategic phrases, “for any cause” (Matt. 19:3) and “except for *porneia*” (Matt. 19:9). Both phrases recall the popular debate between Beit Hillel and Beit Shammai over the phrase ‘*ervat dvar*’ in Deut. 24:1. The appearance of the phrase “for any cause” in Matthew delimits the Pharisees’ question as recorded in Mark, where it appears that they ask Yeshua if He thought divorce itself was lawful or not. This phrase was a legal idiom similar to modern terms as “irreconcilable differences” and “joint custody”. When we hear these phrases, we automatically know that the subject being discussed is divorce with children involved. When the phrase “for any cause” is read as a legal term, the Pharisees’ question specifically asks Yeshua His opinion about the new “any cause” type of divorce, and about His interpretation of Deut. 24:1-4. This well-known idiom would have been understood this way by all the protagonists in the narrative. The popularity of the subject is evidenced by Philo, Josephus, Qumran and other 2nd Temple Jewish literature, several high profile divorces among aristocracy at that time, and the fact that divorces were issued in court. A person seeking divorce would need to know the legal opinions of the courts so they could submit their plea to the *beit din* most sympathetic to their situation.

The second phrase “except for *porneia*” (Matt. 19:9; cf. Matt. 5:32) clarifies that Yeshua did not accept Beit Hillel’s “for any matter/cause” divorce, but that the interpretation of Deut. 24:1 meant nothing more than “sexual immorality.” Most Christian commentators from the Early Church Fathers till today have not taken into account the legal aspect of these two phrases. As a result they have tried to answer the wrong question. They have sought to determine whether Yeshua recognized divorce as lawful or not, as acceptable or forbidden, in all of Scripture. Yeshua was not responding to such a universal question, otherwise it would contradict Shaul’s allowance of divorce for abandonment (1

Cor. 7:15). He was responding to the specific question about the grounds for a halakhically valid divorce as exegeted from Deut. 24:1-4. Through the use of the two legal idioms, Yeshua emphasizes that divorce for “any cause/matter” “except for *porneia*” is not a valid divorce. Consequently, anyone who remarries after a divorce for “any cause” commits adultery.

The search for a universal statement on divorce from the entire Bible created the need to determine the exact meaning of the word *porneia* as used in the Matthean exceptive clause.³⁴ Many different interpretations have been proposed. These include polygamy, incest, adultery, sex before marriage, and prostitution.³⁵ Each of these is correct because the basic meaning of *porneia* is “to engage in any type of sexual immorality.” *Porneia* captures the nuance of *‘ervah* in the legal idiom “except for sexual indecency/immorality.”³⁶ The word introduces a sense of universality in that it encompasses all types of sexual immorality, not one specific form. Thus, in answering the Pharisees’ specific question about the grounds for divorce based on Deut. 24:1-4, in its 1st century context, Yeshua repudiates any grounds (“any matter/cause”) for divorce “except [for any type of] sexual immorality.”

The exceptive clause also clarifies Yeshua’s statement that remarriage after divorce is adultery. In light of the historical debate over Deut. 24:1-4 which was about both the grounds and the procedures for a valid divorce, Yeshua was saying that a divorce for any reason other than sexual immorality was invalid. Therefore remarriage would be adulterous because they are still married to their original partner. Conversely, divorce for sexual

³⁴ There is a vast amount of literature written on this topic. For a detailed account of the interpretation of this phrase and its implications for divorce in the church, see Heth and Wenham 2009.

³⁵ Fitzmyer 1976, specifically 221.

³⁶ The Septuagint translates *‘ervat davar* in Deut. 24:1 as *aschemon pragma*. However, this translation does not capture the sense of its use in the 1st century as legal terminology in the debates on divorce.

immorality constituted a valid divorce, and remarriage after such was acceptable. This understanding does not contradict Yeshua's prohibition that humans should not separate what ADONAI has joined. From the beginning, before sin entered the world, inseparable marriage was the ideal, but because their hardheartedness, their obduracy to continue in their sin that breaks the marriage covenant, the Torah specified a written certificate of divorce.

The Greek word σκληροκαρδία (*skēlrokardia*) is important in understanding the text. *Skēlrokardia* was coined in the Septuagint to translate the Hebrew ערלת לבב '*orlat levav* meaning obduracy, stubbornness, hardheartedness. The word only appears in the context of divorce in Jer. 4:4 where ADONAI warns Judah that they are being stubborn in their adultery. Earlier Jeremiah describes Israel as ADONAI's wife (2:1-2) who had committed adultery with other gods (2:20-26) so that ADONAI was forced to divorce her (3:1-8). Jeremiah warns that Judah is going the same way as Israel (3:10-14). Unless they repent of their hardheartedness and get rid of the sin that is ruining their lives (4:3-4), ADONAI will divorce them. It can be exegeted from these verses that a spouse who continues in their sinful ways hardheartedly, and does not repent, has broken the marriage vows, and can be divorced by their spouse. However, the opposite also holds true. The injured spouse cannot divorce unless the offending spouse continues hardheartedly in his/her sinful ways without repentance. If the offending spouse repents of his/her hardheartedness, which includes changing his/her sinful ways, he/she is to be accepted back into the marriage. This passage also negates the halakhic requirement that divorce was mandatory for adultery. An adulterous spouse may be taken back into the marriage after true repentance.

In Matthew 19:10 the disciples were astonished at Yeshua's teaching. On one hand, He made divorce much more difficult than the norm of His day. He taught that marriage was monogamous and intended to be inseparable from the beginning. The breakup of a marriage was sin with serious consequences, because ADONAI witnessed the couple's marriage vows and joined them together. He repudiated Beit Hillel's "any matter" divorce, and advocated divorce only if the erring partner continued in his/her sinful ways "hardheartedly." On the other hand, He taught that divorce was not compulsory in cases of adultery, nor was marriage required. In reply to the disciples' statement, Yeshua puts forth Eunuchs as an example of those who do not marry. There are eunuchs from birth, by force and for the kingdom of heaven.

Context of Yeshua's teaching on Divorce & Remarriage in Matthew

Matt. 5:31-32 and its parallel Luke 16:18 summarize Yeshua's teaching on divorce as recorded in Mark 10 and Matthew 19, and should be read in light of the longer passages.

Matt. 5:32 is almost a word-for-word repetition of Matt. 19:9.³⁷ Both of these passages appear in the overall context of the kingdom of heaven and of a call to sexual purity.

Matthew 5:3 states, "blessed are the poor in spirit, for theirs is the kingdom of heaven" and 5:17-19 "Do not think that I came to abolish the Torah or the Prophets! I did not come to abolish, but to fulfill. ... Therefore, whoever breaks one of the least of these commandments, and teaches others the same, shall be called least in the kingdom of heaven. But whoever keeps and teaches them, this one shall be called great in the kingdom of heaven". In Matthew, Yeshua's coming to earth ushers in the new era of the kingdom of heaven. It has already begun, but it is not fully here. It is both present and future, already

³⁷ The mention of a topic twice is characteristic of Besorat Matthew (i.e., 3:2//4:17; 3:10//7:19; 3:12//25:29; and 5:29-30//18:8-9).

and not yet. His teachings do not abolish the Torah and Prophets, but rather interprets them in light of the ideal established at creation, before sin, and the expected return in the eschaton.³⁸ He reorders the priorities emphasizing the weightier measures that inform the foundational principles for this new community.

We see the concept of already/not yet in Yeshua's teaching on divorce. In the kingdom of heaven marriage is an inseparable lifetime union between one man and one woman as it was in the beginning. Although the kingdom is present, it is not fully realized, therefore the "not yet". In this period of tension humankind continues to sin. Marriage vows continue to be broken and are subsequently recognized by the legal action of divorce. Yeshua presents the ideal way marriage should be, but He also regulates the grounds and procedures for valid divorce when the marriage contract has been broken and there is no repentance on the part of the offending spouse.

I Cor. 7:10-11

Shaul's teaching on divorce in 1 Cor. 7:10-11 echoes that of the Besorot and the interpretation presented above. He upholds the ideal of inseparable marriage and advocates reconciliation instead of divorce and remarriage (1 Cor. 7:10-11). He also allows for divorce in cases of abandonment (7:15). The latter demonstrates that Shaul considered our already/not yet status, and recognized that all *halakha* must consider human nature and character. In chapter 7 Shaul admonishes people of different marital statuses—husband and wives (7:2-7), unmarried, widowers and widows (7:8-9), married people who contemplate divorce (7:10-11), others (7:12-16), and virgins or unmarried people (7:25-31). In the midst of this teaching, he points out a universal truth that there is a discrepancy

³⁸ See Resnick 2009, Kindle Edition, location 1721.

between practice and theory, i.e. between what theologians and leaders teach and what people do. Inseparable marriage or reconciliation is best, but people still break their marriage contracts and subsequently divorce (v. 11 “but if she does [divorce]”). It has been demonstrated above that during Shaul’s lifetime divorce was easy and widespread, much as it is today.

Shaul also allows for remarriage after divorce without deeming it sin. Verses 27 and 28 state, “Are you bound to a wife? Do not seek a divorce. Are you divorced from a wife? Don’t seek a wife. But if you marry, you have not sinned.” Shaul advocates neither divorce or remarriage, but if you do marry after a biblically valid divorce, it is not sin. Shaul’s concession is reminiscent of the written certificate of divorce mentioned in Deuteronomy, as well as in Besorat Mark and Besorat Matthew. Shaul refers to a valid divorce.

1 Cor. chapter 7 has been used to allow for separation but not divorce. First, this is contrary to Shaul’s teaching that the two should live together and care for each other, except for a specific time (7:3-5, 33-34). Second, it contradicts Yeshua’s statement “what God has joined together, let no man separate.” Shaul uses the passive “*chōrithēnai*” of the same Greek word Yeshua uses in the prohibition. Separation for a specific amount of time in order to correct, discipline, or restore the marriage and marriage partners agrees with v. 5. Thirdly, separation without divorce creates a new status similar to that of an *agunah*. A person who is neither married nor divorced is in a state of limbo. This brings us back to the problem in the Torah where a written certificate of divorce was given in order to clarify one’s marital status, thus allowing for remarriage. Remarriage after a valid divorce in the

Tanakh and in the Second Temple Period was the norm. In fact it was considered part of the nature of divorce.

Section Summary

The Apostolic Writings advocate that inseparable monogamous marriage is the standard, and that divorce should not happen. Yeshua presents the ideal way marriage should be, but because we live in the already/not yet, marriage vows are broken, resulting in divorce.

Therefore, He regulates the grounds and procedures for valid divorce in response to the halakhic requirements of his day, using conventional legal idioms. He rejects Beit Hillel's "any matter" divorce, but upholds divorce for "sexual indecency." Furthermore, He does not abrogate the other halakhically acceptable biblical grounds for a valid divorce from Ex. 21:10-11. Remarriage after divorce on any grounds other than sexual immorality, or material/physical and emotional neglect/abuse results in adultery. He also requires that the erring spouse be forgiven, and the marriage restored, unless the offending spouse refuses to repent, and continues in their hardheartedness. Shaul echoes the teaching in the Besorot on divorce, but also allows for a valid divorce in cases of abandonment, as well as remarriage afterwards.

Community

The whole point of the debate over Deuteronomy 24:1-4 in the 1st century Jewish community was to establish legitimate grounds and procedures for divorce, to ensure a valid divorce and the right of remarriage without committing adultery. The responsibility of these decisions fell on the community leadership. The rabbis of the Mishnah understood that the consequences of divorce were dire for the entire community and were to be

avoided at all costs. While ADONAI forgives iniquity, transgressions and sins, the punishment for these can go on to the third and fourth generation (Ex. 34:7), affecting the entire community. The rabbis invoked *tikkun olam* in order to insure the stability of the Jewish community as a whole.

Tikkun ha'olam appears in ten different places in relation to questionable divorces in the Mishnah, most of which arose from problems with the traditional divorce laws that developed out of the debates outlined above. These rulings do not abolish the original laws. Instead they create loopholes in the procedures for issuing a *get mipnei tikkun ha'olam*, i.e. for the good of the community. In Jewish law, then and now, a divorce is actuated when a wife receives the *get* issued by a *beit din* at the request of the husband. As soon as the woman accepts the *get*, she is divorced and free to marry another man without the consequences of committing adultery. A woman cannot unilaterally divorce her husband. Problems arise when the husband will not initiate a divorce, as is evident in the problem of *agunot* so prevalent today, and when a woman has a child from another man while she still legally married to her first husband. In latter case the child is a *mamzer*, and is prohibited from marrying a Jew who is not a *mamzer*. As a result, it is vital that a woman knows for certainty that she is divorced.

Many of the cases of *tikkun ha'olam* involving questionable divorces concern indecisive husbands who initiate a *get* and then change their minds. One example is *m. Git. 4:2*, which records rulings by Gamliel the Elder *mipnei tikkun ha'olam*. The preceding mishnah sums up the procedure for canceling a *get*. Basically, a man could cancel a *get* as long as his wife had not yet received it. But what happens if a man annuls the *get* at a *beit din* in a different location, and the wife does not know that the *get* has been nullified, and

she marries another? Or if he uses a nickname for himself, the wife or the city in which they live? She might not recognize her or her husband's name, nor anyone recognize the people involved. Divorces of uncertain status could lead to adulterous marriages or to unnecessary celibacy. In order to remove any confusion about the legitimacy of a *get*, Rabban Gamliel ruled that a man may not cancel a *get* by means of a *beit din*, and that a *get* must include all the names and aliases of both the man and the woman. "In both of these cases *mipnei tikkun ha'olam* justifies forbidding a practice that, while technically legal, threatens to disrupt the system as a whole."³⁹ By evoking *tikkun olam*, the flaw that endangers the community as a whole is improved. *Mipnei tikkun ha'olam* was usually evoked to protect the vulnerable party. The invoking of *tikkun olam* communal authority to protect the vulnerable members of the community continued to develop in Judaism, and is a principle the Messianic Jewish community would be wise to consider in its view toward divorce.

In contrast, the Christian community has generally chosen to maintain a strict literal interpretation of Deuteronomy and Yeshua's teachings. The Early Church Fathers focused upon *porneia* in Matthew's exceptive clause and its parallels in Matt. 5:32. They concluded that remarriage after divorce is forbidden.⁴⁰ Some demanded divorce for adultery, while others required separation from an adulterous spouse, and reacceptance should they repent. All of the Early Church Father's, except for Ambrosiaster (late 4th century), applied their regulations for divorce to both men and women (cf. Mark 10 and 1 Cor. 7). Their strict interpretation of the divorce texts in the Apostolic Writings remained

³⁹ Jacobs 2009, Kindle Edition, location 489.

⁴⁰ Twenty-five of the Christian writers up to the fifth century and two early councils forbade remarriage after divorce. Ambrosiaster is an exception. He permitted remarriage for deserted Christians and for innocent husbands in cases of adultery.

the standard view of the church in the West until the 16th century when Erasmus suggested a different view, which was adopted by Protestant reformers but rejected by evangelicals. Erasmus proposed, “It should be permissible to dissolve certain marriages, not fortuitously but for very serious reasons, by the ecclesiastical authorities or recognized judges and to give the innocent party the freedom to marry again.”⁴¹ This is a grave contradiction to the Early Church’s strict system of penance and discipline for serious sinners, which included exclusion from *Seudat haAdon*, and even expulsion from the church until they did not repent. By the late fourth century there was a lengthy procedure whereby the repentant person was restored to fellowship. For fifteen years the penitent was excluded from the sacraments. The penitent was to weep for four years (outside the church), listen for five years (in the vestibule), prostrate themselves for four years (among the catechumens), and stand upright for two years (among the congregation).⁴² This drawn-out procedure is in direct contrast to that of Yeshua’s words to the adulteress recorded in Yochanan 8:2-11.

It is important to note that Erasmus was responding to the ecclesiastical system of his day that believed there was no salvation for anyone outside the Church and its sacraments. Augustine (354-430) had introduced the notion that marriage was a sacrament, a mystery of Yeshua’s unity with the ecclesia as Paul states in Eph. 5:31-32. By the Middle Ages the understanding of “sacrament” had taken on a different meaning. Aquinas (13th century) taught that marriage was a sacrament that transmits grace. This doctrine was ratified at the Council of Trent 1545-53. In a sense Erasmus was initiating changes *mipnei tikkun ha’olam*, for the good of the entire community, which he advocated be done by community authorities or judges.

⁴¹ Olsen 1971, 21.

⁴² Basil’s canon 58, *Saint Basil: The Letters*, LCL 3:248-9.

Character of ADONAI: Forgiveness and Restoration

No Messianic Jewish view of divorce would be complete without placing it in the context of the character of ADONAI. Many different attributes come into play, but the two we will focus on are forgiveness and restoration. Both of these are part of who ADONAI is, and not just what He does. ADONAI declares that He is a “compassionate and gracious God, slow to anger, and abundant in loving kindness, showing mercy for thousands of generations, forgiving iniquity and transgression and sin ...”(Ex. 34:6-7a). At the same time, He holds the guilty accountable for their sin and iniquity, “yet by no means leaving the guilty unpunished, but bringing the iniquity of the fathers upon the children...to the third and fourth generation” (Ex. 34:7b). Both attributes affect the entire community: the first for thousands of generations, and the second only for three or four generations. The benefit of mercy and forgiveness is at least a thousand times more influential than the consequences/punishment of sin. As we have seen above, it is vital for the entire community to espouse marriage as a lifetime, monogamous relationship and divorce as something that should not happen. However, when the marriage vows are broken and divorce ensues, the divorcee or divorcé must be forgiven. Yeshua bore our sin (1 Pet. 2:24; cf. Is. 53:4; Matt. 26:28), and commands us to forgive (Mk. 11:25; Lk. 6:7; Jn. 20:23, *passim*). He even teaches that we must forgive an unlimited amount of time (Matt. 18:21-22). In marriage, we are to forgive an erring partner, and welcome them back, when there is repentance, which include a change of action. A divorce should take place according to biblically valid grounds only after the erring spouse continually breaks the marriage contract, hardheartedly and without repentance. Such an understanding reconciles:

- ADONAI's ideal view of marriage;
- ADONAI's forgiveness, mercy and accountability;
- Yeshua's bearing of sin; and
- Yeshua's teaching on divorce (reviewed above).

Restoration is directly related to forgiveness. The entire canonical narrative of creation and consummation demonstrates ADONAI's forgiveness and restoration. The Torah lays out the stipulations for Bnei Israel in Deut. 28-29. Chapter 30 depicts them as both keeping and breaking the stipulations. More importantly, when they repent and obey, ADONAI restores them. The pattern of Sin-Exile-Repentance-Return is characteristic of Deuteronomy and appears throughout the rest of the Tanakh. The Apostolic Writings reinforce the Tanakh's principle of restoration. Gal. 6:1 admonishes us to restore a member of the community who has been caught in sin. Two principles about divorce and remarriage can be gleaned from this verse. First, when a marriage is breaking apart, every effort should be made to restore the marriage. The causes need to be addressed. Individuals should be held accountable and disciplined for their actions, in an attempt to restore both the marriage and the individuals to a healthy spiritual relationship with ADONAI, including obedience to Him. The goal is restoration not condemnation.

Second, when the above steps fail and a broken marriage ends in divorce, all the injured parties need to be restored. Divorce is a tragedy that causes tremendous pain. Lubavitch Rabbi Aron Moss, captures the pain and consequences of divorce. "Divorce," he states, "like an amputation, is a tragedy, but sometimes it's the right thing to do."⁴³ Like an amputation, divorce is never desired. It is a drastic action with terrible repercussions including tremendous pain. The consequences of divorce cause pain to spouses, the

⁴³ http://www.chabad.org/library/article_cdo/aid/387647/jewish/Jewish-View-of-Divorce.htm. Last accessed March 16, 2015.

immediate and extended family, and the community. Each of these needs to be restored to healthy spiritual, mental, emotional and physical relationships. We act irresponsibly when we allow remarriage after divorce, when repentance and restoration have not taken place (*tochecha* Lev. 19:17, “You must surely reprove your neighbor so that you do not incur guilt on account of him.”). We allow for the perpetration and multiplication of the same sins that caused the breakup of the marriage in the first place.

This is not to say that remarriage after a biblically valid divorce is forbidden. In Judaism a second marriage is like the second Temple. It is a second chance. Is the destruction of the first Temple and the rebuilding of the second what ADONAI intended? No! But it is part of His character to forgive and restore, i.e. to give a second chance. We, as part of the ecclesia, live in the ‘already/not yet’. ADONAI desired man and woman to become one through a mystical/spiritual union in a marriage *berith*. That is the goal. The reality is that people sin, marriage contracts are broken, and divorce occurs. The Scripture, both Tanakh and the Apostolic Writings, respond pragmatically to the reality of the ‘not yet’ by providing specific boundaries for valid divorce—unfaithfulness, sexual immorality, physical and emotional neglect/abuse. When this happens forgiveness, must be extended, first to the erring partner in order to restore the marriage and second to those affected by the divorce. They are to be held accountable for their actions, to be corrected, and to be disciplined for the purpose of complete restoration.

Conclusion

Any Messianic Jewish view of divorce must draw from the Tanakh and Apostolic Writings, as well as assess the communal traditions and practices of both Judaism and Christianity. I have tried to make this task less daunting by breaking it up into manageable

sections. While many of the main issues are touched on above, by no means are they all covered. In light of the above research, I propose twelve points that can serve as a platform from which we can begin discussing a Messianic view of divorce.

1. Marriage is intended to be a lifelong *berith* between a man and a woman, but sin derailed this ideal.
2. The marriage *berith* contains the aspect of two becoming one in a mystical/spiritual union enacted by ADONAI, while the legal aspect of a marriage contract contains the stipulations and vows of the marriage.
3. The breakup of a marriage *berith* is always sin, but the Torah deals pragmatically with this sin through the legal process of issuing a written divorce certificate (*get*).
4. The purpose of divorce is the legal, communal, recognition of a broken marriage contract, thereby enabling remarriage without committing adultery.
5. The grounds for valid divorce in the Tanakh, 2nd Temple Period, and in Judaism today are unfaithfulness, material neglect, and emotional neglect. Yeshua did not repeal these grounds.
6. Yeshua advocates that inseparable monogamous marriage is the standard, and that divorce should not happen.
7. Yeshua rejected Beit Hillel's "any matter/cause" divorce as valid, accepting only Beit Shammai's interpretation of Deut. 24:1 as "except for sexual indecency," meaning all forms of sexual immorality.
8. Forgiveness and restoration of a marriage after the marriage vows have been broken is always the first goal. Only after the erring partner continues

hardheartedly in the sin that breaks the marriage contract should the wronged partner initiate divorce.

9. Remarriage after a biblically **valid** divorce is permissible. Remarriage after an invalid divorce is adultery, whose consequences are communal.
10. The goal of all correction or discipline in relation to divorce is to restore, spiritually, mentally, physically, and emotionally, those involved in the divorce, so that the sin that caused the divorce is not perpetuated.
11. The MJ community needs a communal leadership for deciding issues of *mipnei tikkun ha'olam*, and to which leaders can turn for advice on how to handle situations in their community.
12. The principles laid out above apply equally to both men and women.

Bibliography

Amram, David

- 1975 *The Jewish Law of Divorce According to Bible and Talmud: Some References to its Development in Post-Talmudic Times*. Reprint. New York: Hermon Press.

Bockmuehl, Markus

- 2000 "Matthew's Divorce Texts in Light of Pre-Rabbinic Jewish Law." *Jewish Law in Gentile Churches: Halakha and the Beginning of Christian Public Ethics*. Edinburgh: T&T Clark, 17-21.

Collins, Raymond

- 1992 *Divorce in the New Testament*. GNS 38. Collegeville: Liturgical Press, 1992.

Fitzmyer, Joseph

- 1976 "The Matthean Divorce Texts and Some New Palestinian Evidence." *Theological Studies*, 197-226.

Fraade, Steven

- 2004 "Moses and the Commandments: Can Hermeneutics, History, and Rhetoric Be Disentangled?" *The Idea of Biblical Interpretation: Essays in Honor of James Kugel*. JSJSup 83. Leiden: Brill, 399-422.

Haut, Irwin

- 1983 *Divorce in Jewish Law and Life*. Studies in Jewish Jurisprudence, vol. 5. New York: Sepher-Hermon Press.

Heth, William A. and Gordon J. Wenham

- 1984 *Jesus and Divorce: The Problem With the Evangelical Consensus*. London: Hodder and Stoughton.

Ilan, Tal

- 1996 "Notes and observations on a newly Published Divorce Bill." *Harvard Theological Review* 89, 195-202.

Instone-Brewer

- 1992 *Techniques and Assumptions in Jewish Exegesis before 70 CE*. Texte und Studien zum Antiken Judentum 30. Tübingen: Mohr Siebeck.
- 2002 *Divorce and Remarriage in the Bible: The Social and Literary Context*. Grand Rapids, Cambridge, UK: Eerdmans.
- 2003 *Divorce and Remarriage in the Church: Biblical Solutions for Pastoral Realities*. Downers Grove: IVP, 2003.

Jackson, Bernard

- 2008 *Essays on Halakhah in the New Testament*. Jewish and Christian Perspectives Series 16. Leiden: Brill.

Jacobs, Jill

- 2009 *There Shall be no Needy: Pursuing Social Justice Through Jewish Law and Tradition*. Woodstock, VT: Jewish Lights.

Kazen, Thomas

- 2013 *Scripture, Interpretation, or Authority: Motives and Arguments in Jesus' Halakhic Conflict*. WUZNT 320. Tübingen: Mohr Siebeck.

Landau, Melanie

- 2012 *Tradition and Equality in Jewish Marriage: Beyond Sanctification of Subordination*, New York.

Olsen, V. Norskov

- 1971 *New Testament Logia on Divorce: Study of their Interpretation from Erasmus to Milton*. Beiträge zur Geschichte der biblischen Exegese 10. Tübingen: Mohr (Siebeck).

Pope, Leslie W

- 1997 "Marriage: A Study of the Covenant Relationship as Found in the Old Testament." M.A. thesis, Providence Theological Seminary, 1995 (Ann Arbor: UMI Dissertation Services).

Resnick, Russ

- 2009 *Divine Reversal: The Transforming Ethics of Jesus*. Clarksville, MD: Lederer.

Schereschewsky, B.Z.

- 1972 "Bigamy and Polygamy." *Encyclopedia Judaica*, Jerusalem: Keter Publishing, 4:985-990.

Riskin, Shlomo

- 1989 *Women and Jewish Divorce: The Rebellious Wife, the Agunah and the Right of Women to Initiate Divorce in Jewish Law, a Halakhic Solution*. Hoboken, NJ: Ktav.

Weinfeld, M.

- 1974 "Berith." *Theological Dictionary of the Old Testament*. Johannes Botterweck, et. al. Grand Rapids: Eerdmans, 2:253-265.

Wenham, Gordon

- 1979 "The Restoration of Marriage Reconsidered." *JJS* 30, 36-40.

Westbrook, Raymond

- 2009 "The Prohibition of Marriage in Deuteronomy 24:1-4. *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*. Volume 2: *Cuneiform and Biblical Sources*. B. Wells and F.R. Magdalene, eds. Reprint. Winona Lake, IN: Eisenbrauns.

Yardeni, Ada

- 1995 *Nahal Se'elim Documents*. Jerusalem: Israel Exploration Society and the Ben Gurion University in the Negev, 1995.

Zekhov, Y. K

- 2009 *Defining the New Testament Logia on Divorce and Remarriage in a Pluralistic Context*. Eugene, OR: Pickwick (Wipf and Stock).