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Source: *Journal of Near Eastern Studies*, Vol. 60, No. 4, (Oct., 2001), pp. 241-258

Published by: The University of Chicago Press

Stable URL: <http://www.jstor.org/stable/545936>

Accessed: 23/07/2008 11:02

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"TO GO AND MARRY ANY MAN THAT YOU PLEASE": A STUDY OF THE FORMULAIC ANTECEDENTS OF THE RABBINIC WRIT OF DIVORCE*

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THE most recent generation has witnessed growing scholarly interest in the relationship between Mesopotamian civilization and the much later world of Rabbinic Judaism.¹ Y. Muffs's work on the Elephantine papyri² amply demonstrates that this type of inquiry proves especially productive with regard to legal terminology. Rabbinic Jewish legal parlance can often be traced back to the language of Mesopotamian law. The following study examines one particular phrase, the central clause of the Rabbinic writ of divorce (*gēṭ*), in an attempt to point to its Akkadian predecessors.

I. METHODS

The study of phraseology, in general, has recently benefited from the theoretical principles put forward by C. Watkins in his study of Indo-European poetics. Watkins defines his undertaking as "a linguistic approach to the form, nature, and function of poetic language

* A grant from Harvard University's Center for Jewish Studies supported the initial research that led to this article. This is an edited version of my senior honors thesis written under the unfailing guidance of John Huehnergard. I also wish to thank Tzvi Abusch, Hanan and Esther Eshel, Bernard Septimus, Calvert Watkins, and Raymond Westbrook for their help and comments at different stages of the research. Any shortcomings are, of course, my own.

I have benefited from the scholarly work that the following translations represent, making changes as I saw fit, based on readings of the original texts: for the Mesopotamian law collections, Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta, 1997); for the lexical list *ana ittišu*, B. Landsberger, ed., *Die Serie ana ittišu*, *Materialien zum sumerischen Lexikon*, vol. 1 (Rome, 1937); for the Old Babylonian marriage documents, Raymond R. Westbrook, *Old Babylonian Marriage Law*, vol. 1 (Ann Arbor, Michigan, 1982); for the Emar texts, Daniel Arnaud, *Recherches au pays d'Aštata: Emar VI/3* (Paris, 1986); for the Neo-Babylonian documents, Martha T. Roth, *Mesopotamian Marriage Agreements 7th–3rd Centuries B.C.*, *Alter Orient und Altes Testament* 222 (Horn, Austria, 1989); for the Elephantine Documents, Bezalel Porten and Ada Yardeni, *Textbook of Aramaic Documents from Ancient Egypt*, vol. 2, *Contracts* (Jerusalem, 1989); for the

Mishna, Herbert Danby, trans., *The Mishnah* (London, 1933); for BT, I. Epstein, ed., *Hebrew-English Edition of the Babylonian Talmud* (London, 1971–); for P. Murabba'at 19, P. Benoit, O.P. et al., eds., *Les grottes de Murabba'at (texte)*, vol. 1 (Oxford, 1961); and for the midrash, A. Cohen, trans., *Midrash Rabbah Lamentations* (London, 1983). Transcriptions of Hammurapi's Laws follow the cuneiform copy found in E. Bergmann, *Codex Hammurabi, textus primigenius* (Rome, 1953). Transcriptions of the Middle Assyrian Laws follow Otto Schroeder, *Keilschrifttexte aus Assur verschiedenen Inhalts* (Leipzig, 1920), pls. 1–21. All other cuneiform texts are cited from the transcriptions in the various editions noted above.

Abbreviations of names of texts follow the *Society of Biblical Literature Membership Directory and Handbook* (Decatur, Georgia, 1991), pp. 193–210, and *The Assyrian Dictionary of the Oriental Institute of the University of Chicago*, vol. Š/1. The abbreviations of the names of the law collections follow Roth, *Law Collections*.

¹ For a survey of the literature on this subject, see the excursus "Ancient Near Eastern and Rabbinic Literature," in Yochanan Muffs, *Love and Joy: Law, Language and Religion in Ancient Israel* (New York, 1992), pp. 139–41. In addition to the articles which Muffs mentions, see the general overview of this area of inquiry in Markham J. Geller, "The Influence of Ancient Mesopotamia on Hellenistic Judaism," in Jack M. Sasson, ed., *Civilizations of the Ancient Near East* (New York, 1995), pp. 43–54.

² Yochanan Muffs, *Studies in the Aramaic Legal Papyri from Elephantine* (Leiden, 1969).

[JNES 60 no. 4 (2001)]

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0022-2968/2001/6004-0001\$02.00.

and archaic literature among a variety of ancient Indo-European peoples.”³ Watkins’s basic approach derives from the well-known comparative method of historical linguistics. He extends this method into the realm of poetics by positing that one can also study poetic similarities among languages. If one finds regular similarities in the poetic structures of several languages, the comparative method allows for the reconstruction of the poetics of the parent language.⁴ Thus, the historical linguist can study not only the development of the forms of individual sounds and words, but also the history of how these words were used in language.

Watkins himself recognizes the uses of his theories in the study of “cognate legal institutions.”⁵ Since law, arguably, occupies a unique linguistic niche, legal language merits its own analysis. Following Watkins’s model, what emerges is an exploration of another linguistic subset, called “legal poetics.”⁶ In other words, one may examine the development of the particular ways in which the legal realm makes use of language. This comparison of the legalisms of cognate languages provides insight into legal history.

In tracing the history of the release clause in the Rabbinic *gēf*, this study will follow an approach that combines the methodologies of Watkins, described above, with Muffs’s comparable work on the Semitic data.⁷ It will examine the various Akkadian and Aramaic legal materials and note those formulaic aspects that are preserved. In Watkins’s terms, it will identify the “thematic continuity”⁸ that the various release formulations exhibit. Instead of Watkins’s genetic model, however, it will adopt Muffs’s historical explanation for the transformation of Akkadian legal terminology into Aramaic.

II. THE TERMINATION OF MARRIAGE IN MESOPOTAMIAN LEGAL IDIOM

Hammurapi’s laws address several cases that involve the ending of a marriage. Within this set of cases, the present study will begin by focusing on those that make explicit statements about the woman’s ability to remarry once the marriage is over. In order to understand the character of the phrase used in such expressions, the phrase will first be examined in its most explicit context, which happens to be the last time it occurs in the law collection. Paragraphs 170 through 174 deal with the laws of inheritance in various situations and with the widow’s status.⁹ LH 172 discusses the case of the widow whose husband did not provide her with a marriage settlement (*nudunnûm*). The law states that she is to receive her dowry (*šeriktum*) and may inherit one heir’s part of her husband’s property. The sons of the late husband may not force her to give up her share of the household. If, however, she chooses to leave her husband’s household, she may:

... šum-ma MUNUS ši-i a-na wa-se-em pa-ni-ša iš-ta-ka-an nu-du-un-na-am ša mu-sà
id-di-nu-ši-im a-na DUMU.MEŠ-ša i-iz-zi-ib še-ri-ik-tam ša É a-bi-ša i-le-qé-ma mu-ut
li-ib-bi-ša i-iḫ-ḫa-as-si

³ Calvert W. Watkins, *How to Kill a Dragon: Aspects of Indo-European Poetics* (New York, 1995), p. 6.

⁴ *Ibid.*, p. 6.

⁵ *Ibid.*, p. 7.

⁶ Although this term is, I believe, my own, Watkins himself undertakes the comparison of legal phrases in “In the Interstices of Procedure: Indo-European Legal Language and Comparative Law,” in *idem, Selected Writings* (Innsbruck, 1994), pp. 718–27. In this article, he mentions that Jakob Grimm discussed “die

Poesie im Recht” and that F. W. Maitland insisted that “justice must assume a picturesque garb or she will not be seen” (p. 718).

⁷ Muffs, *Studies*, especially pp. 187 ff.

⁸ Watkins, *How to Kill a Dragon*, p. 154.

⁹ For a discussion and analysis of the organization of Hammurapi’s Code into related paragraphs, see Westbrook, *Old Babylonian Marriage Law*, *Archiv für Orientforschung, Beiheft 23* (Horn, Austria, 1988), pp. 2–4.

If that woman decides to depart, she shall leave the *nudunnûm* that her husband has given for the sons, she shall take her dowry (which she received) from her father's house, and a husband of her choice shall marry her.

From the beginning of this part of the law, it is apparent that the woman's purpose is to be free from the husband's household; she has decided to depart (*wašûm*). The only part of the law that explicitly expresses the woman's ability to leave is the phrase *mut libbiša iḥḥassi*, "a husband of her choice [lit. of her heart] shall marry [lit. take] her." Being able to marry a man of her choice is the ultimate expression of the termination of the relationship established by marriage. By being allowed to remarry, the woman is released from any previous obligations to the late husband's family.

One can now turn back to the first occurrence of this clause in LH 137. This law treats the case of a man who decides to divorce a *šugitum* or a *naditum*. The woman is to receive her dowry (*šeriktum*) and a share of her husband's property and shall raise her children. When her children grow up, she receives an heir's part of the man's property.

... zi-it-tam ki-ma ap-lim iš-te-en i-na-ad-di-nu-ši-im-ma mu-ut li-ib-bi-ša i-iḥ-ḥa-as-si
... they shall give her a share equal to one heir and a husband of her choice shall marry her.

As in LH 172, the final phrase expresses the ultimate result of the initial decision (this time the man's decision to divorce the woman). In LH 172, the woman remains the focus of the law throughout; she decides to leave and the husband of her choice may marry her. In LH 137, however, the man decides to divorce the woman, and the woman becomes the focus in this last phrase. This indicates that the phrase expresses the woman's new status as a divorcée who is released from her obligations to the husband's household. Once again, the ability to remarry gives legal expression to the termination of marriage.

The phrase *mut libbiša iḥḥassi* fills a similar function in LH 156. This law states the punishments for a man who fornicates with his son's "fiancée." Here, as in LH 137, the end of the law changes the focus from the man to the woman. After requiring the man to pay his fine and restore the woman's dowry, the law states that "a husband of her choice shall marry her." Here, as before, the termination of the woman's previous engagement is expressed using this phrase. The previously established relationship is over, and the woman is free to marry a man of her choice.

The meaning of *mut libbiša iḥḥassi* becomes apparent when it is compared to other clauses in Hammurapi's Laws that describe the result of the termination of marriage.¹⁰ The case in LH 130, which is similar to that in LH 156, expresses the release of the woman using the phrase *MUNUS ši-i ú-ta-aš-šar*, "that woman shall be released." Likewise, LH 149, which deals with a woman who contracts *la³bum* disease and wishes to leave her husband, states that he must restore her dowry and "she shall depart," *it-ta-al-la-ak*. Here one finds two cases in which a marriage is ended, but a particular verb, rather than a clause, is used to express this. In LH 149, the marriage may be over, but a phrase dealing with remarriage, such as *mut libbiša iḥḥassi*, might be inappropriate in this context.

¹⁰ For this type of comparison, see the discussion in Muffs, *Studies*, p. 116. Muffs points to phrases composed of synonymous words as possible functional equivalents. Because of the nature of his sources, he cannot point to any such equivalents for *libbašu ṭāb*.

He suggests two means of identifying such synonyms, studying glosses and parallel recensions, but neither of these methods applies here. Nevertheless, the evidence in LH that will be reviewed here does suggest that *mut libbiša iḥḥassi* has synonymous parallels.

Ostensibly, the diseased woman is not in a condition to remarry. LH 130 is more difficult to explain, but one might suggest that the verb *utaššurum* serves as a functional equivalent of the release clause, as one of its variants. Thus, the verbs “to be released” and “to depart” seem to express the same notions of the ending of the marriage as the phrase “a man of her choice shall marry her.”

Although the expression *mut libbiša iḥḥassi* has been identified as the release phrase, it does not always appear in contexts in which it is expected. Specifically, in LH 138, which describes the divorce of a woman who has no children, the clause does not appear. After enumerating the details of the divorce settlement, the law concludes simply: *i-iz-zi-ib-ši*, “he will divorce (lit., leave) her.” One might have expected the release clause to be used, as it is in the laws seen above. Apparently, however, the law has no need to elucidate further the woman’s freedom.

One may now turn from Hammurapi’s Laws to a later group, the Middle Assyrian Laws. MAL A 36 discusses the case of a woman whose husband goes abroad¹¹ and does not provide for her. The woman must wait for her husband for five years before being able to remarry, and she may not remarry if she has sons or if her husband is on a royal mission. If, however, she has no sons and her husband has not provided for her, she may remarry after five years:

šum-ma DUMU.MEŠ-ša la-aš-šu 5 MU.MEŠ mu-us-sa tu-qa-²a-a 6 MU.MEŠ i-na ka-ba-a-se a-na mu-ut lib-bi-ša tu-uš-šab

If she has no sons of her own, she shall wait five years for her husband. Upon the arrival of the sixth year she shall reside with a husband of her choice.

The phrase that grants the woman permission to remarry is *ana mut libbiša tuššab*, “she shall reside with a husband of her choice.”¹² The wording of this law highlights the contrast between this woman’s free status and her legal standing in the other situations enumerated. In all the other cases that this law addresses, the woman is not allowed to remarry. This ruling is expressed by the phrase *a-na mu-te la tu-uš-šab*, “she shall not reside with a husband.” In the one instance in which, according to this law, the woman is allowed to marry, she may “reside with a husband of her choice.”

This same phrase expresses the woman’s freedom in MAL A 45. This law discusses the case of a woman whose husband has been taken captive by enemies. The woman must wait two years for her husband to return, and the law provides for her sustenance.¹³ After two years, the woman is allowed to remarry. Once again, the law states:

2 MU.MEŠ tu-ma-al-la a-na mu-ut lib-bi-ša tu-ū-uš-ša-ab

She shall allow two years to pass; she shall reside with a husband of her choice.

Here, as in MAL A 36, once the woman has waited the requisite number of years (two or five, as the case may be), and the conditions allow her to remarry, she may marry “a husband of her choice.”

In a legislative coda to this phrase, the law instructs the court to “write her tablet as if she were a widow”—*tup-pa-ša ki-i al-ma-te-ma i-šaṭ-ṭu-ru*. The significance of this in-

¹¹ Roth, *Law Collections*, p. 165, translates the Assyrian *a-na A.ŠA (eqle) i-it-ta-lak* thus.

¹² The use of the preposition *ana* with the verb *wašābum* is unexpected and difficult to explain.

¹³ The part of the law containing these details is quite broken. This synopsis follows Roth, *Law Collections*, p. 170.

struction becomes apparent in light of an earlier law, MAL A 33. The relatively unbroken section of this latter law provides for the release of a woman whose husband and father-in-law are dead and who has no sons:

*šum-ma [mu-us]-sa ù e-mu-ša me-e-tu-[ma] ù DUMU-ša la-áš-šu al-ma-at-[tu] ši-i-it a-šar ḥa-di-[ut]-ú-ni ta-al-lak*¹⁴

If her husband or father-in-law are dead and she has no sons, she is a widow. She shall go wherever she pleases.

This law contains another Middle Assyrian release clause: “she shall go wherever she pleases.” The language of this clause leaves no ambiguity as to its purpose; it makes the woman’s freedom quite explicit. In MAL A 45, the widow is used as the paradigm for releasing the woman whose husband is captured. The tablet that the war widow receives confirms her free status. Just as the widow of MAL A 33 is free to “go wherever she pleases,” so the war widow of MAL A 45 may “marry whomever she pleases.”

The two Middle Assyrian release clauses examined so far—*ašar ḥadiutuni tallak* and *ana mute libbiša tuššab*—appear in contexts of the loss of the husband. Termination of the marriage obligations, and the woman’s subsequent free status, are the result of either death (MAL A 33) or disappearance (MAL A 36 and 45). The Middle Assyrian Laws also include passages dealing with the dissolution of marriage by divorce. These sections, however, do not express the woman’s freedom with a release clause. MAL A 37 establishes the husband’s right to provide or withhold a monetary divorce settlement. The law concludes that if he should decide not to give his wife anything: *ra-qu-te-e-ša tu-ú-uš-ša*, “she shall leave empty-handed.” Similarly, the following law, which establishes that upon divorce the husband may reclaim any gifts given during marriage but not the dowry, concludes without any release clause. The law simply indicates that the dowry is “clear” (i.e., free from obligation) for the wife (*a-na MUNUS za-a-ku*). Even the verb *wašûm*, which in MAL A 37 serves as some indication of the woman’s legal right to leave, is absent in MAL A 38. Thus, the release clauses, characterized by expressions of the woman’s freedom to remarry, occur only in contexts outside of divorce in the Middle Assyrian Laws.

Paragraph 13 of the Neo-Babylonian Laws deals most directly with the termination of the obligations of marriage. This law discusses the case of the widow who wishes to remarry:

a-mel-tum šu-a-ti a-na É šá-ni-i e-re-bi pa-ni-šú il-ta-kan nu-dun-na šá ul-tu É AD-šú tu-ub-lu u mim-ma šá mu-ut-su iš-ru-ku-šú i-leq-qé-e-ma mu-t[i] lib-bi-šú iḥ-ḥas-[si]

That woman decides to enter another household, she shall take the dowry that she brought from her father’s house and whatever her husband gave her, and a husband of her choice shall marry her.

The structure of this part of the law bears a striking similarity to the formulation of LH 172. Both begin with the woman’s decision to leave, LH with *ana wašêm pānīša ištakan* and LNB with *ana bīti šanī erēbi pānīša iltakan*. Both end with exactly the same phrase—*muti libbišu iḥḥassi*—which expresses the woman’s release. As is true for LH 172, the final clause is the only expression of the woman’s right to leave.

¹⁴ This reconstruction follows Roth’s normalization (ibid., p. 165).

These similarities in both form and diction between LH and LNB point to an important aspect of ancient Mesopotamian law. In most general terms, the law codes formed part of a long-standing legal tradition that formed a part of the scribal curriculum. The laws of Hammurapi survived long after their promulgator's time as a text copied by scribes in training.¹⁵ Given the continuity of the legal tradition, it seems plausible that the Neo-Babylonian laws, as the product of this scholarly legacy, would reflect its particular style. Therefore, one might suggest that the LNB release phrase, *muti libbišu iḫḫassi*—which is exactly the same as the one in LH—is actually a locutionary mark of the Mesopotamian law tradition.

While the writing of legal texts formed part of the Mesopotamian scribe's education, the heart of the scribal curriculum was the copying of lexical lists. One three-line section of the series *ana ittišu* reads:

u₄ kúr.šè dam.šà.ga.a.ni ḫé.ni.fb.tuk.tuk inim.ma nu.mu.un.ši.in.gá.gá
a-na ma-ti-ma mu-ut lib-bi-šu i-ḫu-us-su ú-ul i-ra-ag-gu-um-ši
 (7.III.4–6)

In the future, let a husband of her choice marry her,¹⁶ he (the previous husband) shall not raise a claim against her.

In this segment of the series, one finds that the release phrase known from Hammurapi's Laws is also part of the lexical lists.¹⁷ These two sets of documents provide insight into the terminology of divorce as it appears in the literature of the Mesopotamian scholarly sphere. From the similarity between the content of the two genres, we may suggest that the scribal tradition had a particular way of expressing the release of the woman upon the termination of marriage.

In addition to the law codes, cuneiform marriage documents also contain important terminological evidence. Often, these marriage documents contain a set of provisions for divorce. Many of the Old Babylonian marriage documents examined by R. Westbrook provide for divorce by both the husband and the wife. Divorce by the husband in the Old Babylonian documents resulted in a financial penalty imposed on him. For the purposes of this discussion, one text published by Westbrook will serve as a sample marriage document.¹⁸ A typical divorce clause reads:

PN₁ *a-na* PN₂ *a-ša-ti-šu ú-ul a-ša-ti i-qá-bi-ma* 1/3 MA.NA KÙ.BABBAR Ì.LÁ.E

(If) PN₁ says to PN₂, his wife, "(you) are not my wife," he shall pay one-third mina of silver.

From the general point of view of the study of legal formulas, the *verba solemnia*, "you are not my wife," are of interest.¹⁹ For the specific purpose of studying the release clause,

¹⁵ Samuel Greengus, "Legal and Social Institutions of Ancient Mesopotamia," in Jack M. Sasson, ed., *Civilizations of the Ancient Near East* (New York, 1995), p. 472.

¹⁶ This translation follows the Sumerian, which uses a precativ form of the verb. The Akkadian preterite form *i-ḫu-us-su* is a scribal error. See the note to the text in Landsberger, *Materialien*, p. 99.

¹⁷ This similarity between the laws and the lexical lists suggests that an inquiry into the relationship between these two genres is not out of place. Such an inquiry, however, is beyond the scope of this article.

¹⁸ Westbrook, *Old Babylonian Marriage Law* (1982), pp. 166–68. For discussions of the variations in divorce clauses among the different documents, see Aaron Jacob Skaist, "Studies in Ancient Mesopotamian Family Law" (Ph.D. diss., University of Pennsylvania, 1963), pp. 53–57, and Westbrook, *Old Babylonian Marriage Law* (1988), pp. 78–79 and 83–85.

¹⁹ Many have pointed to the parallel between this phrase and the language of Hos. 2:4, "she is not my wife and I am not her husband." See Geller, "The Elephantine Papyri and Hosea 2,3," *Journal for the*

however, one notes that the Old Babylonian divorce stipulations focus exclusively on the husband's obligation. The clause ends with what the husband must pay and does not make any reference to the result on the part of the wife. Unlike the law codes, which often explicitly state that the woman may marry whomever she pleases, the actual documents state nothing about what the woman may do.

In addition to the clause regarding divorce initiated by the husband, many of the Old Babylonian documents contain a parallel section providing for divorce initiated by the wife. Westbrook groups these clauses into two different types, roughly corresponding to their areas of provenance.²⁰ The continuation of our sample contract, which is from Sippar, represents the first group of documents, mostly from northern Mesopotamia. It reads:

ù PN₂ a-na PN₁ ú-ul mu-ti at-ta i-qá-bi-ma iš-tu AN.ZA.QAR i-na-pa-šu-ni-iš-ši

And (if) PN₂ says to PN₁: "You are not my husband," they will cast her from a tower.²¹

In contrast with this rather harsh penalty, the penalty imposed on the wife in the documents from the southern Mesopotamia is somewhat more liberal. One such document, from Nippur, is published by Westbrook. Written in Sumerian, it states that the woman shall pay a sum of money and forfeit the dowry that she has brought into the marriage.²²

The implications of these punishments, as well as of the dichotomy between the northern and southern Mesopotamian legal texts, are beyond the scope of this study.²³ It is obvious that the "northern" documents cannot contain any release clause, since the woman is indeed not free to go wherever she pleases. Still, one might expect the "southern" type of document to include some clause expressing the woman's release once she makes her payment. Even in these more lenient texts, however, the stipulations regarding divorce initiated by the woman also do not contain any release phrase. The evidence of the Old Babylonian divorce provisions indicates that there is a distinction between the language of the written laws and the documented legal proceedings. While the laws themselves do express the release of the woman upon the termination of marriage, a release clause was not part of the Old Babylonian divorce formulary as attested by the marriage contracts.

A different picture emerges when one turns from the Mesopotamian heartland, which is the origin of the documents collected by Westbrook, to the periphery, represented by the texts discovered at Emar. Among these documents is one unique marriage contract in which a priestess, Eza, takes Tatu as a husband.²⁴ As is the case with the marriage contracts examined above, this document also contains stipulations for divorce initiated by both the husband and the wife. They read:

ur₅-ram še-ra-am šum-ma 'E-za DUMU.<MÍ> Ĥa-ia a-[n]a mTa-ti a-kán-na i-qáb-bi ma-a ú-ul LÚ mu-ti-ia at-ta-mi 60 GÍN KÙ.BABBAR.MEŠ a-na mTa-a-ti li-din-mi a-šar lib-bi-šu lil-lik ù šum-ma mTa-tu₄ a-na 'E-za i-qáb-bi ma-a ú-ul DAM-ia at-ti-mi 60 GÍN KÙ.BABBAR.MEŠ a-na 'E-za li-din-mi a-šar lib-bi-ši lil-lik

Study of Judaism in the Persian, Hellenistic and Roman Periods 8 (1977): 139–48.

²⁰ Westbrook, *Old Babylonian Marriage Law* (1988), p. 83.

²¹ The verb *nadûm* is usually used in this context instead of *napāšum*. See Westbrook, *Old Babylonian Marriage Law* (1982), p. 168. Also, a variant punishment, "throwing into the river," sometimes replaces

"casting from the tower" in northern documents (Westbrook, *Old Babylonian Marriage Law* [1988], p. 83).

²² Westbrook, *Old Babylonian Marriage Law* (1982), pp. 83–84.

²³ See idem, *Old Babylonian Marriage Law* (1988), pp. 79–83, on whether divorce by the wife was a theoretical or practical impossibility in the north.

²⁴ Arnaud, *Recherches*, no. 124.

In the future, if Eza, daughter of Haia, says thus to Tatu: "You are not my husband," she shall pay 60 shekels of silver to Tatu, and he may go wherever he pleases. If Tatu says to Eza: "You are not my wife," he shall pay 60 shekels of silver to Eza, and she may go wherever she pleases.

With an eye toward the terminological aspects of these stipulations, one notices that they resemble their Old Babylonian equivalents. Divorce, initiated by either the husband or the wife, is described as the result of pronouncing the appropriate *verba solemnia*. One also notices, however, that the description of both divorces in the Emar text concludes with the release clause *ašar libbišu/libbiši lillik*. This phrase is reminiscent of the formulation in the MAL and in the Neo-Babylonian marriage documents (examined below), all of which do not mention remarriage and simply allow the woman to go wherever she pleases. Most importantly, the parallel application of the clause to both the husband and the wife provides insight into its release function. The phrase expresses the termination of both parties' obligations, the husband's as well as the wife's, which is the result of the dissolution of the marriage. Once the divorcing party makes the appropriate payment, the divorced party is permitted to go wherever she, or he, pleases.

If one examines the use of the phrase *ašar libbišu lillik* in contexts outside of divorce stipulations, one gains further insight into its function as a release clause. In the Emar texts, one finds this phrase in two other settings, namely, adoption documents and wills. In the former, if either the adopter or adoptee repudiates the other party (using a phrase strikingly similar to the divorce pronouncement), the result is that the adoptee may go wherever he pleases.²⁵ Similarly, in wills, if the heirs in some way fail to live up to the expectations of the deceased, they may go wherever they please.²⁶ Exactly the same phrase is used in all these documents, and in all cases it expresses the termination of some previously existing relationship. Once the relationship is ended—either by divorce, repudiation, or misconduct—the obligations that resulted from the relationship are terminated as well. The beneficiary of the previously existing relationship, who is now released, may go wherever he or she pleases.

When one turns to the much later marriage agreements from the Neo-Babylonian period, one finds that, like their older counterparts, these documents continue to regulate divorce. Out of the forty-five texts edited by M. Roth, fifteen contain legible divorce clauses.²⁷ The phrasing of this clause is different from its Old Babylonian counterpart. A typical one reads:

*i-na u₄-mu PN₁ PN₂ un-da-áš-ši-ru-ma šá-ni-tam-ma i-taḥ-zu 6 MA.NA KÙ.BABBAR
i-da-áš-šum-ma a-šar še-ba-a-tú ta-al-la-ak*²⁸

Should PN₁ divorce PN₂ and take a second (wife), he will pay her 6 minas of silver, and she may go wherever she pleases.

The first difference between the Old Babylonian and the Neo-Babylonian divorce stipulation is the way in which the divorce is expressed. The Old Babylonian formula is a direct

²⁵ For one typical example among many adoption texts from Emar, see Arnaud, "La Syrie du moyen-Euphrate sous le protectorat hittite: Contrats de droit privé," *Aula Orientalis* 5 (1987): no. 14.

²⁶ For a typical will, see Akio Tsukimoto, "Tablets in the Hirayama Collection (II)," *Acta Sumerologica* 13 (1991): no. 23. See also Gary Beckman, *Texts from*

the Vicinity of Emar in the Collection of Jonathan Rosen (Padua, 1996), RE 8. This text presents an interesting case in which the wife of the will's author is to be disinherited if she "goes after a strange man." This text, then, is between a will and a divorce.

²⁷ Roth, *Mesopotamian Marriage Agreements*, p. 12.

²⁸ *Ibid.*, no. 6.

quote of the *verba solemnia* pronounced to effect divorce, while the Neo-Babylonian documents use the verb *utaššurum* to describe the action.²⁹ More directly related to this inquiry, unlike the Old Babylonian documents, the Neo-Babylonian divorce provisions do include a release clause, *ašar šebātu tallak*, “she may go wherever she pleases.” The clause phrased in this way occurs in four of the divorce documents collected by Roth.

The structure of this divorce clause brings to mind the composition of LH 137. It will be recalled that initially this law is formulated from the perspective of people other than the woman, namely, those who give the share of the property to her. The release clause, joined to the preceding injunction by the coordinating *-ma*, marks the shift in emphasis from those paying the woman to the woman herself. The Neo-Babylonian divorce stipulation follows a similar structure. Initially, it relates to the husband, who initiates the divorce and pays the woman the divorce penalty.³⁰ Following this part of the agreement, the final clause changes the focus from the husband to the wife. As is the case with the laws, the last clause in the divorce stipulations expresses the woman’s release from the obligations of the previous marriage.

The phrase *ašar šebātu tallak* is not the only phrase used to express the result of the divorce. Three of the documents state that the woman may return to her paternal home. Documents No. 26 and 30 use the phrase *a-na É AD-šú tal-lak*, “she shall go to her father’s home.” Although document No. 5 also allows for the woman to return to her father’s home, several differences of formulation stand out. This text documents the marriage of a woman to a manumitted slave, and so it contains two separate provisions, one in case of divorce and one in the case of re-enslavement of the husband. The result in the case of divorce is that instead of the woman leaving on her own (which would be indicated by the verb *alākum*), the slave’s master sends (*šapārum*) the wife back to her father’s household: *a-na É AD-šú i-šap-par-šú*.³¹ In the case of re-enslavement, the woman receives a settlement and then returns to her father’s house. Overall, then, there are two types of result clauses in the Neo-Babylonian marriage documents.³² One type allows the divorcée to “go where she pleases,” and another has her return to her father’s house.

Finally, two of the marriage documents end the divorce provisions with the phrase *ašar maḥri tallak*.³³ In both cases, Roth translates “she may go wherever she pleases.” This translation equates *maḥri* with the relatively more common *šebātu*. Roth makes no comment in support of this translation. Besides the weight of the parallels, one might suggest that Roth relies on the meaning “to please” or “to be acceptable” for the verb *maḥāru*.³⁴ In support of Roth’s reading, one may understand the phrase *ašar maḥri* as a shortened form of the well-attested idiom *ašar pāniša maḥri*, meaning “wherever she pleases.”³⁵

²⁹ Ten of the documents use the verb, while the rest simply refer to a second marriage as a cause for divorce. One Neo-Babylonian document, in Roth, *ibid.*, no. 5, does harken back to the Old Babylonian formulary, with the important difference that the declaration is phrased in the third person (“she is not my wife”) instead of as a direct statement to the wife (*ibid.*, pp. 12–13).

³⁰ Only one Neo-Babylonian document, in Roth, *ibid.*, no. 34, allows for the initiation of divorce by the woman. It does not contain a release clause.

³¹ Roth does not mention this difference in her analysis of the result clauses. Instead, she groups this

instance together with the other, less ambiguous cases (*ibid.*, p. 14, n. 58).

³² *Ibid.*, p. 14.

³³ *Ibid.*, nos. 4 and 15. Both cases require some reconstruction. No. 15 is only partially preserved.

³⁴ CAD, s.v. *maḥāru* 4a; AHw., s.v. *maḥāru* 5c.

³⁵ CAD, s.v. *maḥāru* 4b 2’, AHw., s.v. *maḥāru* 5b. Neo-Babylonian final short vowels are often omitted. Thus, for the expected *maḥru*, a Neo-Babylonian speaker would produce the form */maḥ(a)ri/*, which might be written *maḥ-ru*, *maḥ-ri*, or *maḥ-ra*. This explains the unexpected form *maḥ-ri*.

* * *

So far, this study has examined the release clause in the Mesopotamian legal formulary in three different genres of texts: law collections, lexical series, and legal documents. Now one can compare the various phrases cited. Most obviously, the phrases from different times and places differ from each other. The only phrase that lasts intact beyond its original use is *mut libbiša ihhassi*, which appears in the Laws of Hammurapi, the lexical series *ana ittišu*, and in the surviving Neo-Babylonian law collection. In addition, the noun phrase *mut libbiša* is used in both the Babylonian and Assyrian laws. Besides these direct correspondences, however, there is considerable variation among the texts from different periods, as one might well expect.

Paying attention to the differences among the Mesopotamian documents presented thus far, one may divide the release clauses they contain into two groups: those in the law collections and those in the actual documents. The first group is represented by LH 172, 137, and 156; the Neo-Babylonian law; the lexical series *ana ittišu*; and MAL A 36 and A 45. All of these texts make specific reference to the woman's freedom and right to remarry. All express the termination of marriage, whether by divorce or under other circumstances, by allowing the woman to marry a husband of her choice. This group of texts contrasts with the group comprised of the actual marriage documents from Emar and the Neo-Babylonian period, as well as MAL A 33. In this second set of release clauses, there is no specific reference to remarriage. Instead, the end of the marriage is indicated by the more general volitional phrase that allows the woman to go wherever she pleases. Unlike the clauses from the first group, this type of clause is not marriage-specific. In fact, as the Emar evidence indicates, it appears in contexts in which a reference to remarriage is inappropriate. While the first group of documents expresses the end of marriage in terms of the woman's very specific "next step," the second group presents her new status as part of a more general termination of obligations.

Despite this apparent difference between the law collections and the legal documents, there is something of a common trend in both sets. When it is expressed, the release of the woman from marriage is presented in terms that allow her to do what she pleases. Despite changes in formulation, this remains the central idea of the release clause. In LH, the expression centers on the woman marrying a man of her choice. Of course, according to the rules of ancient marriage, the man marries the woman (*ihhassi*, "shall take her"), but he must be a man of her choice (*mut libbiša*). The phrasings of the Emar documents, the MAL, and the Neo-Babylonian marriage documents make this notion even more explicit: the woman is the subject of the verb, instead of the man, and she goes wherever she pleases. In the Emar and Neo-Babylonian cases, this is especially apparent, since no mention of any other husband is made.

The most telling evidence in support of this proposal comes from the MAL. Here, as seen above, phrases representing both groups fulfill the same function. On the one hand, MAL A 36 and A 45 express the woman's freedom using the very specific *ana mut libbiša tuššab*. On the other hand, however, when discussing the case of the widow, MAL A 33 expresses the woman's new status with the more general *ašar ḥadi[ut]uni tallak*. Thus, although these two phrases convey very different literal meanings, the legal idea they express is the same. Fundamentally, the function of both is to make the woman's new status explicit.

Watkins's theories about Indo-European formulaics are useful in attempting to understand these observations about Mesopotamian divorce terminology. Central to Watkins's

study of poetic phrases is the detection of “thematic continuity” or “the preservation of an ‘essential idea.’”³⁶ Based on this observation, he posits that the survival of a formula is not necessarily dependent upon the survival of specific words. A formula’s semantic range may be preserved “under partial or even total lexical replacement.”³⁷ Put simply, one may find an expression that uses completely different words but that is nonetheless related to other expressions within this sphere because it preserves a common “essential idea.” Perhaps this is how one ought to make sense of the diversity of release formulas that focus on the woman’s doing whatever she pleases. Although one cannot muster nearly as much evidence as Watkins does for Indo-European, it seems that *mut libbiša iḫḫassi, ana mut libbiša tuššab*, and *ašar šebātu tallak* all stem from an “essential idea” within the linguistic matrix of divorce and the termination of marriage.

Of course, one may argue that the common features that have been identified in the release clauses are simply the result of circumstance. That is, it may be that the different Akkadian phrases share a central idea because that idea is universal to release clauses. One may note, however, several factors that may suggest that something more than universality is at play in these phrases. First, the evidence of Hammurapi’s Laws suggests that there are other ways of expressing the woman’s release without mentioning her ability to do what she pleases. Thus, when one finds that the semantic range of a particular expression appears in different texts, one may be observing actual survival. Furthermore, as has been shown, the phrases being studied appear in a diversity of genres that a Mesopotamian scribe would know. The repetitive nature of scribal education and of writing legal documents makes it quite likely that a specific idea would survive in a particular legal context.

III. THE ARAMAIC LEGAL TRADITION AT ELEPHANTINE

Having analyzed Akkadian expressions of the woman’s release from marriage, one can now turn to the evidence available from Aramaic sources. The purpose of this section and the one following is to demonstrate that the means of expressing release from marriage survives in the Aramaic legal formulary as well. It will be demonstrated that the terminological association between divorce and the woman’s “going wherever she pleases”/“marrying whomever she pleases” continues to be a crucial component of texts originating from this later cultural milieu.

The collection of legal documents from Elephantine contains three marriage contracts. As is the case with their Babylonian analogues, these three surviving contracts from Elephantine contain clauses governing divorce. The earliest of the three documents that can be dated with certainty (Porten and Yardeni B3.3) is dated to 449 B.C.E. After detailing the dowry the groom receives from the bride’s family, the document makes provisions for the divorce, including allowing the wife to take her dowry with her and imposing a separate divorce payment (*ksp šnʾ*, “silver of hatred”). If she initiates the divorce, then she must make the divorce payment, but she is still entitled to take her dowry with her. In terms of this study’s concern with the release clause, however, this text provides no information, since neither set of divorce stipulations makes reference to the woman’s leaving. The only indication that the woman may leave her husband’s household is the use of

³⁶ Watkins, *How to Kill a Dragon*, p. 154.

³⁷ Ibid.

the verb form *thnpq*, “she shall take out,” when referring to the dowry that the woman may take with her.

The second marriage contract (Porten and Yardeni B2.6) dates to 458³⁸ or 445 B.C.E. The stipulations governing divorce initiated by the wife appear first in this document.³⁹ They read:

*mhr*³ [w] ywm ḥrn tqwm mpḥyḥ b^cdh wt³mr šn³t l³šḥwr b^cly ksp šn³h br³šh ttb ʿl mwzn³ wttql l³šḥwr ksp šqln 7 r 2 wkl zy hn^clt bydh thnpq mn ḥm ʿd ḥwt wthk lh ʿn zy šbyt wl³ ydyn wl³ dbb

Tomorrow o[r] the next day, should Miptahiah stand up in an assembly and say: “I hated Eshor my husband,” silver of hatred is on her head. She shall place upon the balance-scale and weigh out to Eshor 7 shekels, 2 q(uarters) of silver, and all that she brought in her hand she shall take out, from straw to string, and go away wherever she pleases, without suit and without process.

In the same document, we find a parallel formulation in the stipulations governing the divorce initiated by the husband, with slightly different consequences:

*mhr*³ ʿw ywm ḥrn yqwm ḥšḥwr b^cdh wy³mr šn³t [l³n]tty mpḥyḥ mhrh [y]³bd wkl zy hn^clt bydh thnpq mn ḥm ʿd ḥwt bywm ḥd bkp ḥdh wthk lh ʿn zy šbyt wl³ dyn wl³ dbb

Tomorrow or the next day, should Eshor stand up in an assembly and say: “I hated my [wif]e Miptahiah,” her *mohar* [will be] lost and all that she brought in her hand she shall take out, from straw to string, on one day in one stroke, and she shall go away wherever she pleases, without suit and without process.

Divorce, in both these stipulations, is described as the result of a public declaration made by the party initiating the divorce, either the husband or the wife. For the purposes of this study, the most important feature of these lines is the penultimate clause: *wthk lh ʿn zy šbyt*, “she shall go away wherever she pleases.” The same phrase probably appeared in the latest document (Porten and Yardeni B3.8), dating to 420 B.C.E. Here, at the end of the stipulations governing the divorce initiated by the husband, the editors reconstruct the phrase [w]thk [lh mnḥ] ʿn [zy šby]t, “[and] she shall go [away from him] wher[ever] she [pleases].”

This phrase, as it appears or is restored in both documents, is practically a word-for-word, Akkadian-to-Aramaic translation of the Neo-Babylonian release clause, *ašar šebātu tallak*.⁴⁰ Not only is the “essential idea” alike in these clauses, the choice of words is similar too. In both the Neo-Babylonian and Aramaic phrases, the word used to indicate

³⁸ Thus, this document may actually predate the contract discussed in the previous paragraph.

³⁹ The order of the stipulations does not seem to be of any particular significance. See Reuven Yaron, *The Law of the Elephantine Documents* (Jerusalem, 1961), p. 67 (Hebrew). The Old Babylonian documents collected in Westbrook, *Old Babylonian Marriage Law* (1982) show that both orders were possible.

⁴⁰ In three of the Neo-Babylonian documents published in Roth, *Mesopotamian Marriage Agreements* (Nos. 6, 19, and 20), this phrase concludes stipulations described by the verb *utaššurum*. This fact suggests that, in these documents, the concluding phrase

belongs to the specific realm of divorce. In the Aramaic parallel to the Neo-Babylonian clauses, the ambiguous verb *š-n-3* describes the action. Some have questioned assigning the technical meaning “divorce” to this verb and thus take a different view of all these clauses. See Bezalel Porten and Henry Zvi Szubin, “The Status of the Handmaiden Tamet: A New Interpretation of Kraeling 2 (TAD B3.3),” *Israel Law Review* 29 (1995): 55–56. The use of the apparently divorce-specific phrase to conclude the stipulations, however, suggests that these are actually divorce clauses.

“pleasing” is the reflex of the same Proto-Semitic root, *šby. It seems, then, that the release clauses in these divorce stipulations are evidence for a development that parallels the development of the phrase *tyb lbby*, which is Muffs’s subject.⁴¹ Like *tyb lbby*, the phrase *wthk lh ʾn zy šbyt* can be traced back to the Akkadian legal tradition and followed as it becomes part of the emergent Aramaic one. As has been seen, the release clauses in the texts from Mesopotamia preserve a central concept that suggests that they are part of a thematic continuum. In the Elephantine texts, one sees this shared feature of the Akkadian tradition—the release of the woman expressed by allowing her, in one way or another, to do whatever she pleases—preserved in an Aramaic formulary.

IV. THE JUDEAN DESERT DOCUMENTS AND THE RABBINIC TRADITION

On the basis of the reference in Deut. 24:1–4, divorce in Rabbinic Judaism is effected by a written document, known as a *gēt*.⁴² The Mishna records two conflicting opinions as to “the essential formula” of this writ of divorce:

*gūpō šellaggēt hʾrē ʾatt mutteret lakol ʾadām rabbī yəhūdā ʾōmēr wādēn dəyihwē likī minna(ʾ)y sēper tērūkīn wəʾiggeret šibbūqīn wəgēt piṭṭūrīn limhāk ləhitnasābā(ʾ) lakol gābar dātiṣbayin*⁴³

The essential formula in the bill of divorce is, “You are hereby permitted to (marry) anyone.” Rabbi Judah says: “Let this be to you from me a writ of divorce and letter of dismissal and deed of liberation, that you may go and marry any man you please.”

One critical difference between the two positions presented here is in the language of the “essential formula.” The anonymous position is formulated in Hebrew, while Rabbi Judah’s opinion is presented, uncharacteristically, in Aramaic. The background of Rabbi Judah’s Aramaic formulation is provided by an actual *gēt* discovered in the Judean Desert.⁴⁴ This document was originally written at Masada and reflects the legal practice in the period during which the Mishna came into being.⁴⁵ Following the indication of the date, the text reads:⁴⁶

⁴¹ Muffs, *Studies*, pp. 179 ff.

⁴² This word can be traced back to Akkadian *giṭṭum*, meaning “tablet” or “document” (*CAD*, vol. G, pp. 112–13). Ultimately, the Akkadian word derives from the Sumerian *ĜÍD* (DA), meaning “long (tablet).” In Rabbinic Hebrew and Aramaic, the word also has the general sense of “document” (as in *m. B. Bat.* 10:1 *gēt pāšūt*, “an open document,” or *gēt maqūššār*, “a folded document”). When the word is used alone, however, it has the specific meaning of “divorce writ.”

⁴³ *m. Git.* 9:3.

⁴⁴ Papyrus Murabbaʿat 19 in Benoit et al., eds., *Les grottes de Murabbaʿat*, pp. 104–9. Marriage documents show a similar parallel between laws and actual legal practice. The stipulations enumerated in *m. Ketub.* 4:7–11 also appear in marriage documents from the period. See Yigael Yadin, Jonas Greenfield, and Ada Yardeni, “Babatha’s *Ketubba*,” in *Israel Exploration Journal (IEJ)* 44 (1994): 92–95 and Mor-

dechai A. Friedman, “Babatha’s *Ketubba*: Some Preliminary Observations,” in *IEJ* 46 (1996): 71–74. For an intriguing Idumean parallel, yet another bit of evidence showing the wide range of influence of the Aramaic legal tradition, see Esther Eshel and Amos Kloner, “An Aramaic Ostrakon of an Edomite Marriage Contract from Maresha, Dated 176 B.C.E.,” *IEJ* 46 (1996): 13.

⁴⁵ The actual date of the document is somewhat obscure. Tal Ilan, “Notes and Observations on a Newly Published Divorce Bill from the Judean Desert,” *Harvard Theological Review (HTR)* 89 (1996): 196, offers the tentative date of 72 C.E. The editors themselves hesitantly suggest 111 C.E. (Benoit et al., eds., *Les grottes de Murabbaʿat*, p. 104 and note to line 1, p. 106).

⁴⁶ This reading follows the second copy of the text, which is better preserved.

*šbq wmrk ʔ[n]h mn rʿty ywmʔ dnh yhwsp br n[qsu] lky ʔnty mrym <brt> yhwntn [m]n
[h]nblʔ ytbʔ bmsdʔ dy h[wy]t ʔntty mn qdmt dnʔ dy ʔty ršyʔ bnpšky lm[h]k lmhy ʔntʔ lkwl
gbr yhwdy dy tšbyn bdyn lhy lky mny s[p]r trkyn wgt šbq[yn k]dyn [mšh] wyhwdʔ y⁴⁷*

I dismiss and divorce of my own free will, today, I Yosef son of Naqsan, you, Miriam <daughter of> Yehonatan [fr]om [Ha]nablata, living at Masada, who was my wife previously. You are free unto yourself to go and marry any Jewish man that you please. Let this be to you from me a writ of divorce and letter of dismissal, in accordance with the laws of [Moses] and the Jews.

Comparison between the Mishna and this text shows that Rabbi Judah's opinion closely resembles what was a contemporary *gēṭ*. The Masada text uses the verbal construction *lmhy ʔntʔ* (literally "to be a wife") in the release formula, instead of the verb *lhtnsbʔ* ("to marry"), but the essence of the formula is constant. This similarity suggests that Rabbi Judah's position is in Aramaic because it is a more-or-less direct quotation from documents known at the time. In formulating the essential text of the *gēṭ*, Rabbi Judah draws on the living document tradition that was, no doubt, familiar to him.

Another critical difference between the two positions in the Mishna relates to the content of the "essential formula." The anonymous formulation simply grants the wife "permission" to be married. Thus, this position sees divorce as a lifting of the bans and prohibitions that marriage creates.⁴⁸ Rabbi Judah, on the other hand, speaks in terms of the woman's "going" and "marrying whomever she pleases." His phrase is composed of elements that echo the much earlier formulations in Akkadian. The essence of the *gēṭ*, according to Rabbi Judah, brings together what were, in the Akkadian material examined, two separate formulaic components. In expressing the divorced woman's freedom, the Aramaic formulation preserves the "going" component, attested in the Neo-Babylonian and Emar contracts, along with the more specific "remarriage" component, which appears in the Akkadian law collections.

The text of the divorce writ as it appears in the Masada *gēṭ* bears overwhelming resemblance to the formulation of *giṭṭin* throughout subsequent history.⁴⁹ For an example of the traditional Rabbinic Jewish divorce document, one may cite a model *gēṭ* that appears in a collection of documents from the tenth century by Hai Gaon.⁵⁰ After an indication of the date and place, and a specification of the husband and the wife, the concluding lines of the *gēṭ* read:

*wkdw pīryt wšbqyt wtrwkyt ytyky lyky dy thwyyn ršʔh wšlʔh bnpšky lmhk lhtnsbʔ lkl
gbr dy tyšbyyyn wʔnš lʔ ymhʔ bydyky mn šmy mn ywmʔ dnn wlʿlm, whry ʔt mwtrt lkl
ʔdm. wdn dy yhwy lyky mny spr trwkyt wgt ptwryn wʔgrt šbwqyn kdt mšh wyšʔl*

And I hereby free, dismiss, and divorce you to yourself that you may be free and sovereign unto yourself, that you may go and marry any man that you please, and no man shall raise any claims against you on my behalf from this day forth. You are hereby

⁴⁷ The reading *k]dyn [mšh] wyhwdʔy* follows the suggestion in Yadin, Greenfield, and Yardeni, "Bathatha's *Ketubba*," p. 86.

⁴⁸ The difference between this concept of divorce and the one reflected in the Aramaic position may explain the inclusion of both formulas in many later *giṭṭin*. The two positions were thus understood as reflecting two different aspects of the divorce process,

both of which had to be expressed. I am grateful to Bernard Septimus for this observation, as well as for all his extensive comments on the Mishna.

⁴⁹ Benoit et al., eds., *Les grottes de Murabbaʿat*, p. 104.

⁵⁰ This is document no. 68 in Asher Gulak, *Otsar Ha-sheʿarot Ha-nehugim Beyisrael* (Jerusalem, 1926). Nos. 67–77 in this collection are comparable texts.

permitted to (marry) any man. Let this be to you from me a writ of divorce and letter of dismissal and deed of liberation in accordance with the law of Moses and Israel.

As is apparent from comparison of the three different versions of the *gēt* formula—the Mishna, the Masada *gēt*, and the later standardized text represented by Hai Gaon's *gēt*—the basic formulaic components of all three remain fairly constant. One can conclude that the amplifications and modifications to which the formulation of the *gēt* has been subject have not affected its basic content.

One difference between the opinion of Rabbi Judah in the Mishna and the actual legal documents is that in the *giṭtîn*, the release clause follows an indication that the divorce has taken place and that the woman is now “free unto [herself]” (״*ty ršy*״ *bnpšk*). By including this introduction, the Rabbinic divorce document both preserves and elaborates upon a much more ancient formulation. The phrase *limhāk ləhitnāsābā*(״) *ləkol gəbar dətišbayin* is a feature of the Aramaic legal tradition that can be traced back to the central idea of Akkadian release terminology. Thus, as is the case with the Elephantine marriage contracts, the Rabbinic *gēt* reconfirms Muffs's model of the transformation of Akkadian legal idiom into Aramaic.⁵¹ The Rabbinic reflex of the ancient phrase also expands it—with the phrase that precedes the release clause—and so makes the woman's freedom most explicit.

The Rabbinic elaboration of the release clause affords further insight into the interpretation of the much older terminological association between the termination of marriage and the woman's ability to go wherever she pleases.⁵² The act of divorce, as it is described by the writ, allows the woman freedom unto herself. She is no longer under any obligation to her husband. The ultimate expression of the woman's newly gained freedom is her ability to marry whomever she pleases. While she was married, the woman had to remain faithful to her husband; “going” to any other man would be considered adultery. By granting the woman freedom to go and marry whomever she pleases, the husband forfeits his exclusive claims to the wife's allegiance. Thus, the unique bond between the wife and her husband, which had been established through marriage, is effectively terminated.

This discussion of the documents from the Judean Desert allows one to address the enigmas of Papyrus Şe'elim 13, a document that has recently aroused rather heated debate. Without delving too deeply into the philological quagmire and the various reconstructions, what follows summarizes the three basic understandings of this document published to date, each of which has its own difficulties. A. Yardeni,⁵³ the original editor, and A. Schremer⁵⁴ both argue that the text is a receipt written for the man after the woman had received her divorce payment. T. Ilan has suggested the “provocative approach” that the document is actually a bill of divorce written on behalf of the woman divorcing her husband.⁵⁵ H. M. Cotton and E. Qimron read the text as a wife's renunciation of claims

⁵¹ It is important to note that the Elephantine papyri and the Rabbinic *gēt* represent two parallel, but independent, developments. See Mordechai Akiva Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study*, vol. 1, *The Ketubba Traditions* (New York, 1980), p. 319.

⁵² In pursuing this inquiry, we follow Muffs's attempt to probe the “psychological *Sitz im Leben*” of a phrase (Muffs, *Studies*, p. 110). This is related to what he calls the “root metaphor” of a particular phrase

(*ibid.*, p. 173 and in his discussion, *passim*).

⁵³ Ada Yardeni, *Naḥal Şe'elim Documents* (Jerusalem, 1995), pp. 55–60 (Hebrew).

⁵⁴ Adiel Schremer, “Divorce in Papyrus Şe'elim 13 Once Again: A Reply to Tal Ilan,” *HTR* 91 (1998): 193–202.

⁵⁵ Ilan, “Notes and Observations” and “The Provocative Approach Once Again: A Response to Adiel Schremer,” *HTR* 91 (1998): 203–4.

after having divorced her husband.⁵⁶ Needless to say, the interpretation of *Šeʿelim* 13 has important ramifications for the understanding of Jewish divorce in the first century C.E., specifically whether or not women could initiate it. As part of his analysis, Schremer notes that the essential divorce formula does not appear in this document, which leads him to the conclusion that it is not an actual *gēt*.⁵⁷ In light of the demonstration of the centrality of the release clause to the text of the *gēt*, and to divorce in general, this assessment seems correct. As far as can be seen, *Seʿelim* 13 cannot be a *gēt*, since it does not contain that phrase that is the divorce writ's essence.

Besides the legislative and documentary evidence for the release formula, the midrashic corpus also attests to the expression of the woman's release from marriage in terms that allow her to marry whomever she pleases.⁵⁸ The rabbis, in their interpretation of Scripture, draw on this aspect of the legal tradition. One instance occurs in a discussion of the story of the daughters of Zelophehad. The exegetical problem addressed is an inherent contradiction between the two halves of Moses' commandment to the women (Num. 36:6). According to the first half of the instructions, the daughters may marry whomever they please, but the second half limits their choice of husband to the Manassite tribe. This contradiction prompts the following reading:

Rab Judah said in the name of Samuel: the daughters of Zelophehad were given permission to be married to all the tribes, for it is said, "they shall marry whoever pleases them" (Num. 36:6). How, then, may one explain (the text, which states), "but they must marry within the families of their father's tribe"? Scripture gave them good advice (not an instruction), that they should be married only to such as are worthy of them."⁵⁹

This understanding of the story emphasizes that part of the verse that allows the women to marry whomever they please. Based on this, it writes off the rest of the verse as "good advice," rather than taking it as having legislative force.⁶⁰ The first half of the verse seems to recall the central idea of other expressions of the woman's release in both Akkadian and Aramaic: allowing the women to marry whomever they please. The midrash, by reading the biblical text as it does, takes the words in question in precisely this manner. The daughters of Zelophehad, like other released women, are granted complete freedom to marry whomever they please. According to this midrash, the function of Moses' initial statement matches the function of other such release statements, and the rest of his words are interpreted accordingly.

The drawback to such an understanding of this midrash as an occurrence of release terminology is that the situation that the midrash addresses is unlike any other instances examined in which women are released from marriage. The daughters of Zelophehad have not married before, so when they are told that they may marry whomever they please, there is no previous marriage being terminated by the phrase. Moses' words, according to the midrash, are simply an indication of what the women are allowed to do. The argument, in this case, rests on the similarity between the form and content of the biblical phrase, as

⁵⁶ Hannah M. Cotton and Elisha Qimron, "XḤev/Še ar 13 of 134 or 135 C.E.: A Wife's Renunciation of Claims," *Journal of Jewish Studies* 49 (1998): 108–18.

⁵⁷ Schremer, "Divorce in Papyrus *Šeʿelim* 13," p. 200.

⁵⁸ This part of our discussion follows the approach pursued in Muffs, *Love and Joy*, pp. 121–87.

⁵⁹ BT *B. Bat.* 120a.

⁶⁰ Thus, the Rabbinic interpretation creates a contradiction to verse 8 below, which specifically commands any Israelite woman inheriting land to marry within her tribe. See the comments by the twelfth-century exegete Rashbam on the Talmudic passage s.v. *hūtārā*.

the midrash interprets it, and the parallel release phrases. One also notes that the midrash uses the verb *hūttārū*, "they were granted permission," which at least suggests that the daughters' questionable status was one from which they had to be granted release.

A much less ambiguous example of the exegetical use of the central concept of divorce occurs in the entirely nonlegislative context of an aggadic midrash. The midrash deals with the relationship between God and Israel after the destruction of the Temple. It revolves around the interpretation of one verse, Lam. 1:1, which states that Jerusalem is "like a widow." The Rabbis interpret the use of simile by means of the following parable:

It may be likened to a king who was angry with his wife and wrote out her writ of divorce and snatched it away from her. Whenever she wished to be married to another man, he said, "Where is your bill of divorce?" Whenever she demanded her alimony, he said to her, "But have I not divorced you?" Similarly, whenever Israel wished to practice idolatry, the Holy One, blessed be He, said to them, "Where is the bill of divorce of your mother?" (Isa. 50:1). And whenever they wished Him to do miracles for them as of old, the Holy One, blessed be He, said to them, "I have already divorced you." That is what is written, "I cast her off and handed her a bill of divorce." (Jer. 3:8)⁶¹

This midrash depends on the concept of divorce as the procedure that grants the woman the freedom to marry any other man. When the king's wife wishes to remarry, he demands to see her bill of divorce, and when the unfaithful Israel seeks to worship idols, God makes the same demand. Since neither the woman nor Israel can produce a *gēt*, neither is allowed to leave the first husband for another man—real or metaphoric. In this midrash, one finds a nonterminological reflex of the central idea of the termination of marriage. Without quoting a divorce writ, the midrash alludes to the "essential idea" of the *gēt*.

V. CONCLUSION

The previous section has continued the examination of the expressions of the woman's release upon the termination of marriage and has extended the area of inquiry from Mesopotamian documents to the evidence presented in the Aramaic documents. Specifically, it has pointed to the similarities between the Mesopotamian release phrases and the Aramaic phrases in the Elephantine marriage contracts and the Rabbinic *gēt*. In the case of the Rabbinic tradition, one finds instances in which the concepts of release from marriage also find expression in exegetical, rather than strictly legal, contexts. Like their Mesopotamian analogues, all the Aramaic formulations focus on the woman's doing whatever she pleases, whether it be specifically remarriage to "a man of her choice" or more generally "going wherever she pleases." In Watkins's terms, one observes "thematic continuity" or "the preservation of an 'essential idea'" in all these documents.⁶² Applying Watkins's theory, one can argue that despite the lexical differences, the features the Aramaic and Akkadian formulas share attest to the survival of the release formula in both sets of documents.

Before interpreting this continuity, one must, once again, raise the question of whether what is being observed is indeed the preservation of an idea over time or simply the result of circumstance. One might claim that the Aramaic and Akkadian phrases are similar only because they express ideas that would have been part of these expressions in any situation. As Muffs notes, however, in his excursus on Semitic volition idioms, "the specific use of

⁶¹ *Midr. Lam. Rab.* 1:3.

⁶² Watkins, *How to Kill a Dragon*, p. 154.

these idioms as actual legal terms in similarly structured documents is hardly a matter of coincidence, but must be interpreted as a sign of mutual interdependence.”⁶³ Like Muffs, one notices a particular set of legal locutions expressing the very specific idea of the termination of marriage. Given this similarity of context and function, one can argue much more confidently that the phrases are indeed historically related to each other.

In order to account for the survival of the essential idea, one can adopt Muffs’s historical model. The Mesopotamian scribal tradition preserved the basic content of the Akkadian release terminology, known from the law collections, the lexical series *ana ittišu*, and legal documents themselves. When Aramaic replaced Akkadian as the legal language of the Near East, the formulaic conventions were retained in the new *lingua franca*. Thus, the “theme” of allowing the woman to go wherever she pleases, which was preserved in Mesopotamia, was incorporated into Aramaic legal terminology.

The two bodies of evidence for Aramaic legal phraseology examined here, namely, the Elephantine and Rabbinic documents, preserve two different aspects of Akkadian release terminology. In the Elephantine texts, the phrase preserved makes no mention of future remarriage. It bears an overwhelming resemblance to the phrase in the Neo-Babylonian marriage contracts. The Rabbinic phraseology, on the other hand, includes the element of “going” but also makes specific mention of marrying another husband of the woman’s choice. Yet, as has been seen, both these components are part of the essential idea expressing the woman’s release in the Mesopotamian documents. One may suggest, then, that the essential idea of divorce expressions was borrowed from Akkadian and incorporated into Aramaic and is reflected differently in the two groups of documents. Just as the idea finds different expressions in different Akkadian documents, so it is reflected differently in the two Aramaic traditions.

⁶³ Muffs, *Love and Joy*, p. 149.