

THE JEWISH BACKGROUND TO CHRISTIAN DIVORCE ISSUES

Within the Christian world there are several different positions taken in regard to divorce and remarriage. The positions which predominate are either those which are against divorce for any reason or those which allow it only for one or perhaps two particular reasons. For example, Roman Catholicism allows for no divorce; yet Anglicanism allows divorce to take place for adultery and for desertion, yet remarriage after the desertion is not allowed. Many other churches, including Jehovah's Witnesses, allow divorce to take place only for adultery after which remarriage may take place. All of these positions can lead to great suffering for one of the parties.

This and the following two studies will attempt to demonstrate that although the emphasis of the Holy Scriptures is against divorce, there are four basic grounds whereby a divorce may scripturally take place, after which there can be remarriage.

MISUNDERSTANDING FROM THE SECOND CENTURY

To gain a complete understanding of the various Christian Scripture statements concerning divorce and remarriage it is necessary to understand the background knowledge and assumptions of a first-century reader. Sadly this background had already been forgotten by the second century because:

1. Early Jewish Christians either were expelled from the synagogues or formed their own house churches and so later generations were unaware of relevant Jewish teaching.
2. The destruction of Jerusalem and its temple system in A.D. 70 meant that there were no Shammaite rabbis around whose teachings were similar to those of Jesus on marital matters.
3. Only the Jewish Hillelite 'for any cause' type of divorce was known to the Christians. They rejected this because they knew that it contradicted their understanding of the teachings of Jesus and Paul on divorce and remarriage.
4. The 2nd century Christian Congregation was largely comprised of Gentiles who also were unaware of Jewish issues concerning divorce.
5. The Hebrew Scriptures were essential for a correct understanding of divorce. However, there was a mindset of rejection of the Hebrew Scriptures on the part of some Christian groups — the most heretical being the Marcionites who accepted only the Sermon on the Mount; an edited version of the Gospel of Luke, with its Jewish elements removed; and the Pauline letters.

This situation meant that the Early Church Fathers misunderstood the texts of the Christian Scriptures concerning divorce and remarriage; and for this reason they taught that there could be **no scriptural divorce or remarriage for a Christian** and that it would be only with the death of their spouse that any Christian could remarry.

THE BASIS FOR BETTER UNDERSTANDING

If we read the biblical texts through the eyes of Church tradition or through the eyes of a modern reader we will come to different conclusions on this subject than if we read them **in a culturally sensitive way**. This means that Scripture should always be read through the filters of the language and culture of the people to whom these things were first said or written. Because the inspired Scriptures were mainly not dictated, one has to understand the mindset of the people of the time as much as possible if one is to grasp the meaning of what they said and wrote. In recent decades there has been

rigorous historically contextual biblical research to correct the misunderstandings of the past. However, before examining the results of this research it is necessary to look at the subject of marriage and divorce from the perspective of the ancient Near East background, the Mosaic Law, and the description of God's marital relationship with Israel/Judah according to the Prophets.

THE MONOGAMY/POLYGAMY ISSUE

Genesis holds out the ideal for marriage as being monogamous: "...and he must hold fast to his wife, and they shall become one flesh" (Gen. 2:24 *ESV*). Yet the rest of the Hebrew Scriptures make no mention of the monogamy/polygamy issue and, in fact, there is no criticism of polygamy for husbands even though the excesses are condemned. However, in time, both the Qumran community (*using Leviticus 18:18*) and Jesus (*using Genesis*) condemned polygamy.

THE PURPOSES OF MARRIAGE

1. **Companionship** and love (Gen. 2:18; 24:67; 29:31-34; Mal. 2:14; 1Cor.11:9; Eph. 5: 22-23).
2. Sexual "one flesh" union and enjoyment (Gen. 2:24; Matt. 19:4-6; 1Cor. 6:16; 7:9; Eph.5:13).
3. Procreation (Gen.1:28; 4:1; Ps. 127:3).

The traditional view of divorce generally fails to recognize that a marriage, which is a relationship, has broken down when there is no longer any companionship and love.

MARRIAGE IS A CONTRACT [COVENANT]

In all ancient Near East nations, including Israel, marriage was by definition a conditional contract that specified conditions that both parties agreed to fulfil and involved vows to that effect made by the two parties. So basically it involved **payments**, agreed **obligations**, and **penalties**.

THE BRIDE PRICE

This price, which amounted to approximately 10 month's wages, was paid by the groom to the bride's father. In the event of a divorce this price was retained by the bride's father.

THE DOWRY

This amount, paid by the father, was far in excess of the bride-price and was regarded as the bride's share of the estate. If, later, the husband was the **cause of** the divorce he had either, to pass the dowry over to his wife or return the dowry to the wife's father. If, on the other hand, the wife was the cause of the divorce then the husband could keep the dowry.

THE MARRIAGE CONTRACT ACCORDING TO THE MOSAIC LAW EXODUS 21:10-11

The marriage contract was generally like every other business or diplomatic covenant. If one of the parties to the contract broke it, the wronged party could take action. In the case of a marriage contract this could result in divorce. So clearly a complete break in the marriage contract was lawful in Israel and such law was based mainly on the statements in Exodus 21:10-11 and Deuteronomy 24:1-4.

THE HUSBAND'S OBLIGATIONS

At first glance Exodus 21:10-11 does not seem to have much to do with marriage and divorce. It is a law about how someone should treat a slave wife when he marries a second, free wife. However, a deeper study of this passage reveals that it is a vital passage regarding the subject of marriage and divorce and its connection with the other main text on divorce i.e. Deuteronomy 24:1-4.

TRANSLATION ISSUE FOR JWs Re. Exodus 21:7-11 NWT:

“And in case a man should sell his daughter as a slave girl ...

- if she is displeasing in the eyes of her master so that he does **not** designate her as a **concubine** but causes her to be redeemed, he will not be entitled to sell her to a foreign people in his treacherously dealing with her.
- And if it be to his son that he **designates her**, he is to do to her according to the due right of daughters...
- If he should take **another wife** for himself, her **sustenance**, her **clothing** and her **marriage due** are not to be diminished. If he will not render these three things to her, then she must go out for nothing, without money.”

NOTE: The first ‘**not**’ is not in the best copies of the Hebrew manuscripts. Its inclusion in the text of the NWT confuses what is being spoken about here in comparison with all other translations and the Hebrew Interlinear. Also note that Judges 20:4 shows that a man was regarded as a concubine’s husband.

ESV renders Exodus 21:7-11 more accurately: “When a man sells his daughter as a slave ...

- If she does not please her master, who has *designated her for himself*, then he shall let her be redeemed. He shall have no right to sell her to a foreign people, since he has broken faith with her.
- If he designates her for his son, he shall deal with her as a daughter.
- If he takes **another wife** to himself, he shall not diminish her **food**, her **clothing** and her **marital rights**. And if he does not do *these three things* for her, she shall go out for nothing, without payment of money.”

The NLT gives greater clarity: “When a man sells his daughter as a slave ...

If she does not satisfy her owner (“to be his wife” CEV), he must allow her to be bought back again. But he is not allowed to sell her to foreigners, since he is the one who broke the contract with her. But if the slave’s owner arranges for her **to marry** his son, he may no longer treat her as a slave but as a daughter. If a man who has **married a slave wife** takes **another wife** for himself, he must not neglect the rights of *the first wife* to **food, clothing and sexual intimacy**. If he fails in any of these three obligations, she may leave as a free woman without making any payment.”

The teachers in Israel, in studying the law, realized that if *a slave wife* has these rights, then surely a *free wife* would have, at least, the equivalent rights. So this passage became the basis for understanding the obligations of a husband in the marriage contract and that persistent failure to meet these obligations became the basis for divorce. So this section of the Scriptures became the standard in the marriage contract of the obligations/stipulations that the husband was to provide his wife namely: **sustenance, clothing** and her **marriage due (marital rights/sexual intimacy)** and also one of the bases for divorce, the other being that of “some indecency” (Heb. *erwat dabar*) in Deuteronomy 24:1-4. We will discuss the meaning of this phrase later in the study.

THE WIFE’S OBLIGATIONS

In the marriage contract the wife would agree to use the materials that the husband provided for the benefit of the family. This would mean the preparation of the meals, the turning of materials into garments and the general housekeeping. It would also mean she would lovingly engage in their sexual intimacy in response to her husband’s advances. If she significantly and persistently failed in any of these areas she would be breaking her part of the marriage contract and giving cause for her husband to divorce her. The Mishnah. Ketub.5.5 lists the woman’s material obligations as “grinding flour, baking bread, laundry, preparing meals, feeding the baby, making the bed, working in wool.”

DIVORCE ACCORDING TO THE MOSAIC LAW

Deuteronomy 24:1-4 ESV:

“When a man takes a wife and marries her, if then she finds no favour in his eyes because he has found **some indecency** (Heb. *erwat dabar*) in her, and he writes her **a certificate of divorce** (Heb. *k'rithuth*) and puts it in her hand and sends her out of his house, and she departs out of his house, and if she goes and **become another man's wife** and the latter man **hates her** and writes her **a certificate of divorce** and puts it in her hand and sends her out (Heb. *shalach*) of his house, or if the latter man dies, who took her to be his wife, then **her former husband**, who sent her away, may not *take her again to be his wife*, after she has been defiled, for that is an abomination before the LORD. And you shall not bring sin upon the land that the LORD your God is giving you for an inheritance.”

Coupled with the statements in Exodus 21:10-11 concerning “**food**, her **clothing** and her **marital rights**” as part of the conditional marriage contract or covenant involving vows, the further factor here of “**some indecency in her**” served as the basis for divorce.

THE PURPOSE OF A CERTIFICATE OF DIVORCE

The provision of a certificate of divorce enabled a woman to remarry; and the man was required by law to write her this certificate. Once in her hand the certificate showed that the marriage was completely ended and that the woman divorcee had a **full right to remarry** and so justice for women was safeguarded. This provision put the law for Israel head and shoulders above the marriage laws of the surrounding nations.

However, a mere “dismissal” or “sending/putting away” of a wife where no certificate was ever provided did not constitute actual divorce. This situation was comparable to a husband's abandoning of his wife, likely leaving her destitute and so leading to her need to remarry quickly. However, if the husband neglected to or refused to provide her with a certificate of divorce she would have no proof of her freedom from any marital obligations to the husband who had dismissed her. Yet without it she was left as either destitute from not being able to remarry or if she did remarry she could be charged as an adulteress. Additionally, her ex-husband could reclaim her at a later date at his whim.

For a man the situation was different because he could be polygamous under Israelite law. Therefore, he would not need a certificate of divorce from his divorcing wife before marrying another woman. Nevertheless, he had to have kept to his marital contract vows if he were to justify divorce on the grounds of “**some indecency**” by his wife.

The ‘some indecency clause’ gave valid grounds for a man to divorce his wife. The woman therefore lost her right to her dowry which he was able to keep. The second marriage ended with an invalid divorce (*the term “hates her” is a technical term for a groundless divorce*) so that she, as the innocent party, would have been awarded the equivalent of a dowry from this second marriage, even if she had not brought a dowry into this second marriage. If then the first man was allowed to remarry her he would have unfairly gained access to this second dowry. So the law was put in place to keep any man from getting such an unjust financial benefit.

HOW WAS ‘SOME INDECENCY’ ORIGINALLY INTERPRETED?

In Deuteronomy 24:1-4 the Hebrew phrase translated “*some indecency*” (“uncleanness” in the KJV) is *erwat dabar* (Lit. “the nakedness of a thing”).

“ERWAT DABAR” DID NOT REFER TO ADULTERY

It is evidently *unlikely that this term originally referred to actual adultery* because for a woman

committing adultery, rather than being given a certificate of divorce, the penalty was death. This also applied to an adulterous man according to the law which stated that:

- ❖ “If a man who commits adultery with the wife of his neighbour...both the adulterer and **the adulteress** shall surely be **put to death**” (*Lev. 20:10 ESV*).

Nevertheless, for a man in Israel, adultery meant sexual intercourse with a married woman; whereas a man who seduced a single girl had to offer to marry her, pay the bride price, and was never allowed to divorce her (Ex 22:16, 17; Deut 22:28, 29). However, it appears that the death penalty for adultery was rarely carried out because of the requirement for 2 or 3 witnesses to adultery – a situation that was virtually impossible. So Leviticus 20:10 had its prime effect upon Israelites by communicating to them just how seriously they were to take this sin. Nevertheless, a woman could be divorced for **engaging in illicit sexual activity** (not actual adultery for which the penalty was death) and even for **encouraging adultery** with her by revealing too much of her beauty. According to *m. Ketub 7.6* and *t. Ketub 7.6* rabbinic teaching saw this as being done if the woman were to:

1. Do spinning in the street; thereby showing her bare arms to men.
2. Having her garments slit on both sides and so being provocative.
3. Speaking with any man and particularly joking with young men.
4. Bathing in a public bath with any man.

The Hebrew word *erwat* in Leviticus 20:18f refers to ‘**indecentcy**.’ Furthermore, it is ‘excrement’ that is described as *erwat* (‘*anything indecent*’) in Deuteronomy 23:13, 14 and the term is also used in other forms for “**nakedness**” in Exodus 28:42 and numerous other scriptures including at times implying “**shame**.” So it would appear that for the early Jewish interpreters the *erwat dabar* had an original meaning of **unlawful sexual behaviours** whereby a woman, although not actually committing adultery, was engaged purposely in practices that could lead to adultery. Because of this “*she should find no favour in his [her husband’s] eyes...he must also write her a certificate of divorce.*” However, in the progression of time there seems to have been a shift in the interpretation by the rabbis of the term *erwat dabar* so that it referred only to actual adultery.

THE PENALTY FOR ADULTERY IN LATER TIMES

- In the following centuries, in cases of adultery, some of the rabbis may have applied the quality of mercy in imitation of God’s example in Hosea. The records show that in the early first century the Shammaite and Hillelite rabbis viewed divorce, rather than the death penalty, as being the consequence of committing adultery. This however, does not preclude that the death penalty for adultery may rarely have been carried out officially, at least, until the beginning of the first century when the Romans took over administration of Palestine and possibly even up to 30 C.E (T.B. Sanhedrin 41a).
- If John 8:1-11 is part of the inspired record, then this event was staged by the teachers of the Law to trap Jesus. Rather than actually stoning the woman caught in adultery, which they were not allowed to do by Roman law, they brought her to Jesus. However, we must ask where the adulterous man was in the account, because the law of Leviticus 20:10 (restated in Deut. 22:22) required that both the man and the woman be executed. The trap for Jesus was that if he had said that she should be executed then he would have run into trouble with the Romans. If, on the other hand, he had said that she should not be executed he would have been accused of failing to support the law stated in Leviticus 20:11. Nevertheless, this event shows **that Jesus was not insistent upon the death penalty** for an adulteress because no potential executioner was free from sin, but rather the woman was to “sin no more.”

THE PERSISTENT BREAKING OF ANY MARRIAGE VOW FORMS THE BASIS FOR DIVORCE

The Pentateuch does not speak against divorce and a number of divorces are described including Abraham's divorcing of Hagar with God's approval (Gen.21:12). As seen in God's dealings with Israel and Judah, there is no condemnation of the person who is seeking a divorce or who initiates a divorce. The fault lies with the one who significantly and persistently **breaks a stipulation** of the marriage contract. Whoever was the innocent party was to keep the dowry. Therefore, if a wife became an adulteress or failed in her other wifely duties she could be divorced. If, on the other hand, a husband failed to provide his wife with **food, clothing and sexual intimacy** (Exodus 21:10, 11) she would have valid grounds for a divorce, but it would be the husband who had *caused the divorce*, and so he would suffer the various penalties. Because of the acceptance of *polygamy* in ancient times a husband could not be accused of committing **adultery** against his wife. Yet as we shall see later, Jesus reinstated *monogamy* as God's standard. This meant that now a husband as well as a wife could be guilty of adultery and other sexual misconduct.

THE CASES WHERE NO DIVORCE WAS ALLOWED

1. "If a man takes a wife and, after lying with her, dislikes her and slanders her and gives her a bad name, saying, 'I married this woman, but when I approached her, I did not find proof of her virginity,' then the girl's father and mother shall bring proof that she was a virgin to the town elders at the gate. The girl's father will say to the elders, 'I gave my daughter in marriage to this man, but he dislikes her. Now *he has slandered her and said, 'I did not find your daughter to be a virgin.*' But here is the **proof of my daughter's virginity.**' Then her parents shall display the cloth before the elders of the town, and the elders shall take the man and punish him. They shall fine him a hundred shekels of silver and give them to the girl's father, because this man has given an Israelite virgin a bad name. She shall continue to be his wife; he **must not divorce** [lit. dismiss] **her as long as he lives.**" (*Deut. 22:13-19*).
2. "If a man happens to meet a virgin who is not pledged to be married and *rapes her* and they are discovered, he shall pay the girl's father fifty shekels of silver. *He must marry the girl*, for he has violated her. **He can never divorce** [lit. dismiss] **her as long as he lives.**" (*Deut. 22:28, 29*).

These two cases clearly imply that divorce was not forbidden under the law in Israel in normal circumstances and it follows that such persons may remarry.

GOD'S EXAMPLE IN MARRIAGE TO AND DIVORCE OF UNFAITHFUL ISRAEL

God metaphorically married Israel when the Law covenant was agreed to by the Israelites at Mount Sinai. Israel, as the bride, agreed to obey God's laws (Ex. 19:4-8); and God agreed to give them the Kingdom and the marital blessings which included respect, protective care, maintenance, and children. Yet it is the prophet Hosea who was the first to present the details of God's marriage to Israel and its later breakdown precipitating divorce proceedings. The drama in Hosea (*c.740 B.C.E*) pictures how God has been wronged by the unfaithfulness of Israel—she commits **spiritual adultery** (*idolatry*), thereby violating the marriage contract. God is seen as putting Israel on trial *for this adultery*. This situation is portrayed by Hosea's divorcing of his wife for her many cases of literal adultery. In neither case is the wife threatened with *the death penalty* as would be the case if the Law of Leviticus 20:10 had been strictly applied. There is, in fact, no actual case in the Hebrew Scriptures of a putting to death of an adulteress. The case in Hosea is of a trial for adultery where the plaintiff, the husband, **shows mercy** and is desirous of having a chastened wife rather than seeking divorce. This drama shows that it

was Israel's **spiritual adultery** that was the cause of the eventual divorce. Although not putting her to death, God, as her husband, would have to withdraw his obligatory support from her:

GOD THREATENS TO WITHDRAW ALL THAT WAS HIS LEGAL RESPONSIBILITY TO PROVIDE

- ❖ “And she did not know that it was I who gave her the **grain** and the **wine** and the **oil**, and who lavished on her **silver** and **gold**, which they used for Baal...I will take back my grain in its time, and my wine in its season, and I will take away my **wool** and my **flax** which were to cover her nakedness..” (*Hos. 2:8, 9 ESV*).

This indicates that the Exodus 21:10, 11 passage is the basis in the marriage contract for what is expected of a husband to provide for his wife. God sets the example. This further shows that divorce is not sinful because it was something that even God was prepared to do.

GOD DIVORCES ISRAEL – GIVING HER A CERTIFICATE OF DIVORCE

- ❖ “Plead with your mother [Israel], plead – for she is not my wife, and I am not her husband – that she put away her whoring.”
- ❖ ““The LORD said to me in the days of King Josiah: “Have you seen what she did, that faithless one, Israel, how she went up on every high hill and under every green tree, and there played the whore? ⁷And I thought, ‘After she has done all this she will return to me,’ but she did not return, and her treacherous sister Judah saw it. She saw that for all the adulteries of that faithless one, Israel, **I had sent her away with a decree of divorce**. Yet her treacherous sister Judah did not fear, but she too went and played the whore’ ” (*Jer. 3:6-8*).

In accordance with the law in Deuteronomy 24 God only sent Israel away after giving her a written certificate of divorce.

GOD’S EXAMPLE IN MARRIAGE TO AND DIVORCE OF
UNFAITHFUL JUDAH

This is really one and the same marriage as to Israel at Mount Sinai. God has not really married two wives because:

- ❖ ““...you were at the age for **love**...and I entered into *a covenant* with you,’ declares the Lord GOD, ‘and **you became mine**...And I *clothed* you...and *shod* you...And I wrapped you in fine linen...And I adorned you with *ornaments* and put bracelets on your wrists...and a beautiful crown on your head...You ate *fine flour and honey and oil*”” (*Ezek. 16:8-13 ESV*).

Not only is God fulfilling this marriage covenant according to the law in Exodus 21:10, 11 but He goes far beyond this by lavishing upon Judah the most beautiful of things. Here God gives the ultimate example of the love and care that a husband should give his wife including the demonstration of **love**. Yet for a husband to fail to provide the best that he can for his wife in these areas would show his failure to fulfil his marriage contract. By such persistent failure he can become the one causing divorce. Yet in this instance it is Judah as a wife who becomes the one who provides grounds for divorce (verses 15-26) because she fails to use her husband’s generous provisions for the marriage, but instead misuses those things to engage in her spiritual adultery:

- ❖ “You took some of your **garments** and made for yourself colourful shrines, and on them played the whore...You also took your **beautiful jewels** of my gold and of my silver, *which I had given you* and made for yourself images of men and with them played the whore...Also my bread *that I gave you* – I fed you with **fine flour and oil and honey**– you set before them for a pleasing aroma ... And you took your sons and your daughters, whom you had borne to me, and these you sacrificed to them [*the idols*] to be devoured...as an offering by fire...” (*Ezek. 16:16, 19, 20 ESV*).

Here Judah has broken her marriage covenant by giving three grounds for divorce: 1) and 2) The misuse of the food and clothing provisions and 3) Adultery. A further breach of the marriage covenant was the slaughter of the husband's own children. Deliberate childlessness was a breach of the Mosaic Law and yet actually to slaughter them is almost inconceivable. Any one of these breaches of the marriage contract serves as a basis for divorce. And so, God, as the innocent party, is again forced to divorce her:

- ❖ “Behold, therefore, I stretched out my hand against you and diminished your **allotted portion** ... And I will judge you as women who commit adultery ... ‘I will deal with you as you have done, **you who have despised the oath in breaking the covenant.**’” (*Ezek. 16:27, 38, 59 ESV*).

These descriptions once again show that the concept of divorce is not wrong in itself, otherwise it would not have been an action that God Himself took. However, it would be very wrong in the case of someone who uses divorce with a wicked ulterior motive.

GOD'S INTENTION TO REMARRY ISRAEL

- ❖ “And in that day, declares the LORD, you **will call me ‘My Husband,’** and no longer will you call me ‘My Baal.’ ...¹⁹And I **will betroth you** to me forever. I will betroth you to me in righteousness and in justice, in steadfast love and in mercy. I will betroth you to me in faithfulness. And you shall know the LORD” (*Hosea 2:16, 19-20*).

All of the above factors show that none of these issues were merely a matter of estrangement but were a complete “cutting off” i.e. divorce which fully cancelled the marriage contract.

THE DISTINCTION BETWEEN DIVORCE AND DISMISSAL

FOR DIVORCE

The Hebrew noun used for “divorce” is *k'rithuth* derived from the verb *karath* meaning “to cut off.” This term of “cutting off” is used in the Scriptures for any break down in a relationship or of the breaking of a connection between things. However, *k'rithuth* occurs only 4 times in the Old Testament, and each time it is part of the phrase “certificate of divorce” (Deut. 24:1, 3; Isa. 50:1; Jer. 3:8). The nearest Greek word used to describe *k'rithuth* is *apostasion* which the lexicons show to involve: relinquishment, abandonment and giving up of one's claim i.e. a notice of divorce, commonly called a certificate of divorce.

FOR DISMISSAL

The Hebrew noun used for “dismissal” is *shalach*, which has the basic meaning of “to put away” and is rendered so in the LXX, the KJV, the ASV and Young's Literal. The corresponding word in Greek is *apoluō* which has the basic meaning of “to send away, or dismiss.” Such “dismissal” could refer to legitimate divorce but it could also refer to unjust divorce and so be invalid as divorce in God's eyes. Although, unlikely, it is even possible for a man to break the law by unjustly dismissing his wife without giving her a certificate of divorce. Such an unjust dismissal would really be an enforced separation and so leaving neither party legitimately free to remarry. So the two terms “divorce” and “dismissal” are only near synonyms, but most translations miss this fine distinction.

TREACHEROUS DISMISSAL OF A WIFE WITHOUT VALID GROUNDS

Contrary to popular opinion, the following scripture does not give a basis to believe that God hates all divorce or that divorce is a sin. This is shown by an examination of the context:

- ❖ “And you ask, ‘Why?’ Because Yahweh stands as a witness between you and the wife of your youth, with whom you **have broken faith**, even though she was your partner and your wife *by covenant*. Did he not create a single being (‘made them one’ NIV), having flesh and the breath of

life? And what does this single being seek? God-given offspring! Have respect for your own life then, and **do not break faith with the wife** of your youth. For I hate divorce (Heb. *shalach* “dismissal” also “I hate sending away” *Young’s Literal*), says Yahweh, God of Israel, and people concealing their cruelty under a cloak, says Yahweh Sabaoth. Have respect for your own life then, and do not break faith (“*Do not be unfaithful to your wife*” NLT).” (*Mal. 2:14-16 NJB*).

These men had **broken faith** with their wives by taking another wife and treacherously dismissing their first wife without a scriptural cause. Clearly these wives had not failed in their duties to prepare the material things for the family, nor had they failed to respond to their husbands’ need for sexual intimacy.

ALTERNATIVE RENDERING IN the HEBREW, the LXX, the REB, the ESV and the HCSB

Rather than the phrase “For **I** hate divorce says Yahweh” in verse 16, the Hebrew Interlinear has “he” and the Hebrew word for “dismiss.” And so the LXX renders it as:

❖ “But if **thou** shouldst hate thy wife and **put her away**, saith the Lord God...”

Up-to-date scholarship also agrees that this concerned the action of the husband rather than an expression of God’s feelings because it is rendered as:

❖ “For the man who **hates and divorces** (Heb. *shalach* “dismisses”)...says the God of Israel, covers his garment with **violence...**” (*ESV*).

❖ “‘If he **hates and divorces** [his wife],’ says the LORD God of Israel, ‘he covers his garment with injustice,’ says the LORD of Hosts. Therefore, watch yourselves carefully, and do not act treacherously” (*HCSB*).

Unfortunately, these versions do not render the Hebrew word *shalach* as “dismisses/puts away” as is shown in the Hebrew, the LXX, the KJV, the ASV and *Young’s Literal*. Of the modern versions the REB comes closer to it with its dual rendering:

❖ “If a man **divorces** or **puts away** his wife, says the LORD God of Israel, he overwhelms her with **cruelty...**” (*REB*).

So taking into account all these factors a more accurate rendering would be:

❖ “‘If **he** hates and **dismisses** [his wife],’ says Yahweh the God of Israel, ‘he overwhelms her with injustice,’ says Yahweh of Armies. Therefore, watch yourselves carefully, and do not act treacherously.”

Evidently it is the husband who hates his wife. So he cruelly, treacherously, and unfaithfully dismisses her without adequate scriptural grounds, and so making it not a valid divorce.

So clearly this text does not say that God hates all divorce, as is presented by earlier translations of the text, because God is not the subject here. Furthermore, God actually directed Abraham to dismiss Hagar, as well as His own divorcing of Israel, again showing that He could not possibly hate all divorce.

MARITAL ISSUES DURING THE INTERTESTAMENTAL PERIOD

THE QUMRAN COMMUNITY

In the Dead Sea Scrolls of the Qumran community there are three references to divorce two of which are shown below. These references neither condemn divorce nor make any mention of restrictions to remarriage. However, some words are missing from the following documents and so making it difficult for the experts to decipher them:

Temple Scroll 54.4-5:

But any vow of a widow or of a **divorced woman**, anything by which she has bound herself shall stand against her, according to all that proceeded from her mouth.

The Damascus Document CD 13:15-17

Let no man do anything involving buying or selling without informing the examiner in the camp. He shall do it ... and not ... and so for **one divorcing** and he ... humility and with loving mercy.

The marital subject of greater concern to the Qumran community was that of monogamy and the prohibition of polygamy. Because they understood the word 'sister' in Leviticus 18:18 to mean a *fellow female Israelite* they viewed Leviticus 18:18 as a proof text against polygamy:

- ❖ “And you shall not take (“marry” *NAB and others*) a woman as a rival wife to **her sister**, uncovering her nakedness, while her sister is still alive.” (*Lev.18:18 ESV*).

The Damascus document severely criticized **the Pharisees for their practice of polygamy**. Later it will be seen that Jesus took the same position as the Qumran community on this issue in one of his debates with the Pharisees.

Note: All the situations described in Leviticus 18:6-18 are cases of illicit marriage and may be the basis for James' statement in Acts 15 concerning the requirements for Gentile Christians.

THE JEWS AT ELEPHANTINE, EGYPT

The large body of papyri discovered at Elephantine includes Jewish marriage contracts and documents relating to divorce in the 5th century B.C.E. These all indicate an almost total equality of men and women so that women had the right to divorce.

THE MISHNAH

This work for interpretation of the Scriptures shows that **all the rabbis** based their understanding of the grounds for divorce on the threefold obligation to feed, clothe and love as set down in Exodus 21:10-11.

m. Ketub. 5.8

He...may not provide for her less than two *qabs* of wheat or four *qabs* of barley [per week]. And one pays over to her a half-*qab* of pulse, a half-*log* of oil, and a *qab* of dried figs or a *maneh* of fig cake. And if he does not have it, he provides instead fruit of some other type. And he gives her a bed, a cover and a mat. And he gives her a cap for her head, and a girdle for her loins, and shoes from one festival season to the next, and clothing worth fifty zuz from one year to the next.

Only the husband could enact a divorce by writing out a divorce certificate and handing it to the wife (Deut. 24:1-4). However, the wife could obtain a divorce when the court of the rabbis would persuade (*by words, fines or beating*) the husband that he must enact this valid divorce because he had failed in his marital obligations. There is evidence in the Mishnah and in a recently discovered divorce document that women did, indeed, bring petitions for divorce in the first century.

THE HILLELITE/SHAMMAITE RABBINIC DEBATE

THE KEY TEXT OF THE DEBATE

- ❖ “When a man takes a wife and marries her, if then **she finds no favour in his eyes** because he has found **some indecency** (Heb. *erwat dabar*) in her, and he writes her a certificate of divorce...”

By the first century there were two different opinions held by the rabbis concerning the interpretation of **Deuteronomy 24:1** as to what constituted proper grounds for divorce. One view followed Rabbi Shamma, whilst the other followed Rabbi Hillel:

THE SCHOOL OF THE HILLELITES

The Hillelites took the phrase “*she finds no favour in his eyes*” as something separate to the “*something indecent in her*” as if his simply disliking her would be reason enough to divorce her. Their mistake was in not recognizing that the “*something indecent in her*” was the reason why she found “*no favour in his eyes.*” So simply disliking a wife was never a biblical reason for divorce.

The key issue was over the meaning and application of the Hebrew term *erwat dabar*, “some indecency” which literally meant “nakedness of a thing” i.e. exposure of ones sexual organs, and so having sexual connotations.

Sifré Deut. 269 says:

The School of Shammai says: A man should not divorce his wife except if he found indecency in her, since it says: *For he found in her an indecent matter.*

And the School of Hillel said: Even if she spoiled his dish, since it says: *[Any] matter.*

Nevertheless, to avoid accusations of illegitimacy of offspring, both schools took a pragmatic view and had a policy of mutual recognition of each others rulings.

The Hillelites also split the phrase “*something indecent in her*” into two to make an additional grounds for divorce namely: Anything (any matter) = **any cause** in the ESV of their confrontation with Jesus.

THE SCHOOL OF THE SHAMMAITES

This traditional school of rabbis understood the phrase *something indecent* to mean one thing, namely: **adultery**.

After the close of the Hebrew Scripture canon, the interpretation of the Scriptures by these rabbis gave **4 grounds (technically 5) for divorce**:

Childlessness (infertility) **Material neglect** (food and clothing)
Emotional neglect **Indecency** (meaning adultery in Shammaite teaching)

MODERN COMMENTARY ON THE DEBATE

Since the mid-1800s scholars and commentators have become aware of the Hillelite-Shammaite debate of the first century. Henry Alford writes in his *The Greek Testament*:

This was a question of dispute between the rival Rabbinical schools of Hillel and Shammai; the former asserting the right of arbitrary divorce, from Deut. 24:1, the other denying it except in cases of adultery.”
 And he notes the use of the phrase “any matter.”

So when we look at the encounter in Matthew 19:9 Jesus is giving his opinion only concerning the Hillelite “any matter” interpretation.

Also many Bible dictionaries and encyclopaedias recognize this debate as the one that Jesus was drawn into by the Pharisees.

BOTH THE SHAMMAITE AND THE HILLELITE INTERPRETATION OF
ERWAT DABAR WERE INCORRECT

Shammai’s interpretation of *erwat dabar* is incorrect because divorce was not the scriptural punishment for adultery. Officially the death of the adulterer was the punishment (Lev. 20:10; Deut 20:22-24).

Also Hillel’s very loose interpretation is incorrect because the Hebrew word *erwat* (generally translated, “indecency”) is often referred to shameful exposure of the human body (Gen 9:22, 23; Ex 20:26; Lam. 1:8; Ezek 16:36, 37), rather than for such minor things such as if the wife spoiled the husband’s meal.

In Deuteronomy 23:13-14, the word is used to describe the failure to cover human excrement and so indicating that the Deuteronomy 24:1, allowance for divorce was for some kind of shameful act. So by returning to the literal meaning of *erwat dabar* as “the nakedness of a thing” we can see the connection with the prohibitions in Leviticus 18:6-18 which uses the phrase “*uncover the nakedness of*” various close relatives and so indicating that these people had formed illicit relationships or marriages.

FIRST CENTURY GROUNDS FOR DIVORCE

1. **Childlessness** i.e. infertility.
2. **Material neglect** (food and clothing) based on **Exodus 21:10-11**.
3. **Emotional neglect** also based on **Exodus 21:10-11**.
4. **Adultery** if from the School of the Shammaites and based on **Deuteronomy 24:1** but adultery and ‘**Any Matter**’ if from the School of Hillel.

Because of the popularity of the new Hillelite interpretation of Deuteronomy 24:1 the Shammaites were, by the first century, in the minority and had fewer husbands/wives approach their courts for seeking a divorce. However, both schools held firmly to *Exodus 21:10, 11* to show what were the marriage contract obligations and the breaking of which formed the grounds for divorce. These three grounds for divorce based on Exodus 21:10 were classified in rabbinic sources under just the two headings of: **Material neglect** and **Emotional neglect**. This “any matter” Hillelite type of divorce is very similar to the modern-day ‘no fault’ divorce. Of course, the “any matter” clause encompassed all of the other grounds and therefore required no public trial and so no evidence brought by any witnesses.

REMARRIAGE IN ANCIENT ISRAEL

As shown earlier **the certificate of divorce once given to a woman entitled her to remarry** because this certificate made a clean cut so that her previous husband now had no hold on her. One caveat is that although the document might say “that you may be married to any man you wish” it was understood that this would be any Jewish man. There were also categories of men that she could never marry namely, a former husband (Deut 24:4) or a priest (Lev.21:7). This assumption moves on in Christianity to become in Paul’s words: “*she is free to be married to whom she wishes, only in the Lord*” (1 Cor. 7:39).

LATER TRADITIONAL JUDAISM

By the time of the Talmuds the wording of marriage contracts had become fairly fixed and can be seen in examples of the **Geniza contracts**:

I desire of my own will to marry...that I might bring her into my house so that she will be [my wife on condition that I hon]our her, feed her, sustain her, esteem [her] as all [...in the man] ner of dece [ent Jewish] men [who honour, feed, sustain and esteem their wives fa] ithfully.
And she undertook to honour, esteem, attend and [serve him...in the manner of dece[nt women, the daughters of Israel, who attend and serve their husbands in purity and sanctity...]

Kairite Judaism, known as the back-to-Scripture movement and whose literature runs from the 9th to the 13th centuries A.D., preserves the biblical basis for rabbinic thinking. They discuss the obligations in marriage of food and clothing as based on Exodus 21:10-11. Their 9th century treatise on marriage reads:

He who says, "I refuse to feed and support my wife," must be compelled to divorce her and pay her the full amount of the marriage contract, as it is written: He shall not diminish her food, raiment and cohabitation. And if he do not fulfil these three for her, she shall go free [Exod. 21:10-11].

SUMMARY OF THE FOUR SCRIPTURALLY VALID GROUNDS FOR DIVORCE

The first three grounds are based on Exodus 21:10-11 which, as the cultural norm, Jesus did not revoke and which the apostle Paul affirmed (Ephesians 5:25-31). The last ground was one which Jesus did affirm and was based on Deuteronomy 24:1-2.

A. Abandonment. This includes the persistent and unrepentant failure to carry out one's obligations according to one's marriage vows. These include the reasonable provision of:

1. **Food**
2. **Clothing**
3. **Love** (both *companionship* and *the marriage due*).

This obviously would include physical and emotional abuse as extreme failures of emotional support.

B. 4. **Engaging in illicit sexual activity**, even for encouraging adultery by being provocative i.e. **sexual misconduct**.

1, 2 and 3 can be summarized in the manner of the rabbis as: **Material neglect** and **Emotional neglect** (including humiliation and abuse). Of course *adultery* automatically ended the marriage with the imposition of the death sentence by stoning.

Unlike the Pharisees and other rabbis of the first and later centuries Christians would not take a legalistic approach to these matters but deal with them according to the spirit of the Law. Clearly Jesus treated divorce very seriously; so these grounds are only to be invoked as a last resort and every effort should be made by the innocent partner to avoid divorce and to bring about reconciliation. This means that the Christian spirit of forgiveness plays a major role in these matters.

By Raymond C. Faircloth
www.biblicaltruthseekers.co.uk

SUGGESTED READING

Divorce and Remarriage in the Bible by David Instone-Brewer

§