

And he Writes for her a Bill of Divorcement:  
Legal Documents in the Ancient Near East as Dispositive Legal Instruments

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Deuteronomy 24:1–4 describes a rather complicated scenario in which a woman is married to and divorced by two separate husbands. The end result of this scenario is a prohibition on the first husband eventually remarrying the woman. This law has provided interpreters with enough enigmas that we need not enumerate them all here. Instead, I would prefer to focus on one particular procedural detail, namely, the legal instrument through which the actual divorce is seemingly enacted. Deuteronomy states that for both marriages, the husband must write for the woman a ספר כריתות, a divorce document. As various analyses of this law have noted, the circumstances prompting the termination of the marriage in each case are different, and yet, the procedure through which the divorce is effected is the same. Jeremiah ch. 3, which seems to allude to this passage, metaphorically describes Gd’s relationship with the Northern kingdom through the language of divorce proceedings, and here as well the production of a ספר כריתות is explicitly mentioned. Isa. 50 also mentions “sending forth” a woman by means of a ספר כריתות.

The basic question I wish to ask is here whether the ספר כריתות serves merely an evidentiary role or whether it also serves a dispositive one as well. Let us start with some definitions. By an evidentiary role, I mean that the transaction itself was effected by other means such as the utterance of *verba solemnia* in the presence of witnesses, and that the document merely serves as a record of that transaction. By a dispositive role, I mean the document itself was a legal instrument that serves as a necessary element of the transaction.

Before exploring that question, we need to consider what the legal imperative for such a document would have been. Because the document was in the possession of the woman, it was meant to protect her rights and interests. In the case of divorce, her two primary interests would have been (1) ensuring that she and her family received any financial settlements to which they were entitled and (2) ensuring that her ability to remarry is unimpeded. This still raises the issue as to why a document was necessary for this purpose. Other types of legal transactions are described in the Bible, and they do not usually mention the need for a document. These transactions would have been conducted orally before witnesses, and should any legal challenges to such a transaction arise in the future, one simply needed the witnesses to validate the transaction, not necessarily a document.

Since we have brought up the topic of other legal transactions recorded in the biblical text, let us begin with those. The Hebrew Bible describes various types of legal proceedings and transactions, and for the most part, the production of a legal document does not appear to be necessary element therein. For example, in Genesis 23, when the patriarch Abraham purchases a plot of land in Hebron to establish a family tomb, the transaction is conducted orally before witnesses. Other transactions appear to require both the utterance of *verba solemnia* and the performance of symbolic legal gestures. One example would be Ruth ch. 4, which the transaction in question involves the exchange of oral formulae as well as one party's removal of his sandal. According to Deut. 25:7–10, should a brother refuse to take on his levirate duties, the resulting procedure also includes the utterance of *verba solemnia* and the performance of a symbolic legal gesture involving the removal of one party's sandal.

In Jeremiah 32, we do seem to have a legal transaction in which a written contract is used as a dispositive legal instrument, but this may be the exception that proves the rule. In this

situation, Jeremiah’s cousin asks him to purchase some ancestral land from him located in the territory of Benjamin because the prophet possesses the right of redemption. The text describes him drafting and sealing a deed of purchase, and then having it witnessed in a public setting. This use of a sealed contract, however, may have been necessitated by the fact that Jeremiah at the time had been imprisoned in Jerusalem by Zedekiah and the fact that Jerusalem itself was under siege. In other words, normal procedures for real estate sales likely involved verbal utterances before witnesses and perhaps even symbolic gestures (a practice attested elsewhere in the ancient Near East). Because Jeremiah, however, is unable to journey to the town where the property is located, the written document may have served as a substitute for such procedures. This is not to say that the proceedings described in Jeremiah 32 were completely *ad hoc*, as the details described clearly indicate that this was a well-established procedure.

Thus, within the biblical evidence, in terms of a written document serving as a dispositive legal instrument, the divorce process appears to be an outlier. What does the broader ancient Near Eastern evidence show us with regard to the legal process surrounding divorce? Let us start with the Old Babylonian evidence. In these Mesopotamia texts, the subject of divorce arises in two types of documents: the contingency clauses of marriage contracts and in litigation records concerning divorce settlements. This example, an 18<sup>th</sup> century BCE marriage contract from Sippar, typifies the general formulary used for this type of transaction.

MEISSNER, <i>BAP</i> 90 (Samsu-iluna)
<sup>1-6</sup> Rimum son of Šamḥatum has taken Maštum daughter of Belessunu <i>nadītum</i> of Šamaš daughter of Uši-piša for marriage.
<sup>7-10</sup> Belanum has received [...] shekels of silver as her <i>terḥatum</i> . Her heart is satisfied.
<sup>11-21</sup> If Maštum says to her husband Rimum, “You are not my husband,” they will bind her and cast her into the water. If Rimum says to her wife Maštum, “You are not my wife,” he shall pay 10 shekels of silver as her divorce-money.
<sup>22-23</sup> They have sworn the oath of Šamaš, Marduk, Samsu-iluna and the town of Sippar.
<sup>24-29</sup> WITNESSES; DATE

The divorce clauses seem to depict this process as being effected through *verba solemnia*.

Old Babylonian litigation records refer to another constitutive element of the divorce process besides the uttering of *verba solemnia*, namely a symbolic legal gesture in which the husband cuts the hem of the bride’s garment, as can be seen in the following two examples, Meissner, *BAP* 90 (a marriage contract) and Greengus, *Ishchali* 25 (a record of divorce litigation):

GREENGUS, ISHCHALI 25 (date unknown)	VAS 8 9-10 (Sabium)
<p><sup>1-9</sup> Sin-eribam [(father?) of Abu-tabum, and Sin-nada litigated at the Shamash-gate. The judges imposed (a payment of) 10 shekels of silver upon Sin-nada; and she paid Sin-eribam the 10 shekels of silver that the judges had imposed upon her.</p> <p><sup>10-14</sup> Sin-eribam’s heart is satisfied; he will not raise the matter again, nor shall Sin-eribam raise claims against Sin-nada for the money.</p> <p><sup>15-24</sup> Further, the hem of Sin-nada is cut (<i>sissikti</i> PN <i>batqat</i>); she shall not raise the matter again, nor shall Abu-tabum raise claims against Sin-ada in respect of her being a wife. Sin-nada shall not say to Abu-tabum “You are my husband”.</p> <p><sup>25-28</sup> They have sworn the oath of Tishpak and Naram-Sin. Whoever raises claims shall pay one mina of silver.</p>	<p><sup>1-14</sup> Before the god ... Their witnesses ... Nabium-... , Lamassi the <i>kulmašitum</i>, his sister (?), Sin-magir son of Nur-Ea and Abu-wagar son of Iddin-Akshak (gave?) their evidence that in the town of ... in their presence Ennam-Sin son of Sikkilum cut the hem of Tabni-Ishtar daughter of Iddin-Akshak (<i>sissikti</i> PN<sub>1</sub> PN<sub>2</sub> [<i>ib</i>]tuqu) and that from the year ... on, she had eaten ..., and that Ennam-Sin had not supported Tabni-Ishtar with rations of grain, wool, and oil.</p> <p><sup>15-16</sup> [(In the presence of)??] Inanna, Tabni-Ishtar (and?) her witnesses (said/took the oath?).</p> <p><sup>17-23</sup> Ennam-Sin’s claims and demands, from chaff to gold, are rejected, and Ennam-Sin son of Sikkulum has made out a no-claims tablet for Tabni-Ishtar and her children.</p> <p><sup>23-26</sup> He has sworn the oath of Shamash, Marduk, Sabium and the town of Sippar that he will not raise claims again.</p> <p><sup>27-29</sup> WITNESSES; DATE</p>

This third example, Meissner, *BAP* 91, is particularly interesting because it does not seem to be a record of litigation, but perhaps something akin to a divorce document.

MEISSNER, BAP 91 (Sin-muballit 19)
<p><sup>1-2</sup> Šamaš-rabi has divorced his wife Naramtum.</p> <p><sup>3-4</sup> She has ... her ... (<i>si-ik-ša ba-at?-at</i>), she has received her divorce money.</p> <p><sup>5-7</sup> (If) another marries her, Šamaš-rabi will not raise claims.</p> <p><sup>8-10</sup> They have sworn the oath of Šamaš, Aya, Marduk and Sin-muballit.</p> <p><sup>11-21</sup> WITNESSES; DATE</p>

Line 3 seems rather garbled, but it is usually understood as a description of the legal gesture effecting the divorce. If so, we should see that gesture (and perhaps any unrecorded *verba solemnia*) as effecting the divorce, and assume this document to be a quitclaim that (1) acknowledges the woman’s receipt of the dowry, (2) affirms her new status, and (3) records the

witnesses to this transaction. Thus, these documents should not be seen as constituent parts of the divorce process, but rather as records of litigation regarding the financial terms of the divorce.

Moving a few centuries later and geographically to the north, we see a similar process at Nuzi.

Gadd 33
<sup>1-12</sup> Thus spoke Hut-Tešub, son of Šehal-Tešub: “Umea, daughter of Ipša-halu, the son of Hamanna, I took as wife, and now Umea my wife from this day I have divorced and her veil I tore off. Against Umea I will raise no claims, and I will give 5 sheep to Ipša-halu.”
<sup>12-23</sup> Thus says Ipša-halu, “Now the tablet concerning the silver which I have written to Hut-Tešub now this day that tablet is broken, and as touching the silver, against Hut-Tešub I will make no claim. 5 sheep from Hut-Tešub I will take and the rest of the silver (standing) against (the account of) Hut-Tešub I have relinquished.”
<sup>24-26</sup> Whoever breaks the contract and brings a lawsuit shall pay [x minas] of silver.
<sup>27-35</sup> WITNESSES

In this document, Gadd 33, which also appears to be a divorce quitclaim, the husband, Hut-Tešub, describes divorcing his wife, Umea, through another symbolic gesture involving her clothing, this time the removal of her veil. Another notable feature of this document is that it records, or at least presents itself as recording, a declaration or direct speech in its operative section, unlike the Old Babylonian marriage contract, where direct speech is used only in the contingency clauses. This use of direct speech is rather common among documents from Nuzi, though not all of them are formulated as declarations, and there does not appear to be any discernable pattern as to when this formulation is used.

With that in mind, let us move further west and a century or two later and consider the legal materials from Emar. Like the Nuzi materials, many legal documents from Emar are also formulated as declarations, and here we can discern a pattern of usage. At Emar, documents related to family law, such as adoptions and testaments, are consistently formulated as declarations whereas other types of legal documents, such as deeds of sale and other property

conveyances, tend not to be. Let us consider TBR 28, as it is the only text from Emar that explicitly records a divorce.

TBR 28
<p><sup>1-8</sup> Ba'la-kimi thus said: "Now, Iakmu-dagan, son of Kamma, was in debt for fifty shekels of silver, and Abi-li'mu, son of Abi-li'mu, paid the fifty shekels money, his debts; he took both houses; and in future days, whoever would claim the two houses, will have to deliver the equivalent money, and the two houses he may take."</p> <p><sup>9-17</sup> "Now, Gani, my mother, I have taken as father and mother of my house. Now, [to?] my three sons and Ribi-Dagan, my son, Gani [is?] their father and mother. As they will honor her, after she has been brought to her fate, my house, all my property with Ribi-Dagan, my son, will remain; and, moreover, may Ribi-Dagan honor Gani and Ba'la-kimi his two mothers."</p> <p><sup>18-23</sup> Ba'la-kimi thus said: "Now, I have delivered a garment, a pot of bronze, weighing 300 (shekels), ten shekels of silver, a bronze hammer, a bronze <i>agurinnu</i>, these possessions to Milki-Dagan, my husband. He may take the hand of Ba'al-malik, his &lt;son&gt;, and go wherever he wants. He will not have a claimant."</p>

I am not quite sure what would be the best rubric for this text, and so I will simply refer to it as a *homologia*. Here, we have a series of three declarations from Ba'la-Kimi, a woman of means, and in the last of these declarations, she divorces her husband through a declaration. We should be wary about drawing broader conclusions from this text, as it is rather unusual for a number of reasons, not least of which is the fact that the wife appears to be the one initiating the divorce.

Another feature that the Emar materials share with Nuzi is a curious metaphor that emphasizes the materiality of the tablet as a legal instrument. Consider this example, RE 1, in which a father grants some real estate to two of his sons.

RE 1
<p>Ameu son of Kitta, spoke as follows: "I have given my vineyard in the rupestrian meadow opposite<sup>7</sup> the city over to the cultivation<sup>9</sup> of my two sons Ya'suru and Itti-Da." Their brothers shall not make a complaint against Ya'suru and Itti-Da concerning this vineyard. This tablet will defeat whoever makes a complaint (<i>ša iraggum tuppū annū ile' 'ēšu</i>).</p>

Setting aside the fact that we have a conveyance that is also formulated as a declaration, let us focus on the contingency clauses which include a clause stating that should any challenges to this transaction arise, this tablet will overpower or defeat that challenge. This metaphorical concept of a tablet metonymically standing in for the transaction is not entirely an innovation at Emar, as we have somewhat similar usages in Old Babylonian records. Some common examples of this

would be when a loan gets repaid or if an agreement is invalidated, the courts may order a tablet to be broken. We also see that here in the aforementioned Nuzi text. In those cases, however, the tablet is a passive object acted on by other legal agents, whereas here the tablet is spoken of as the active legal agent itself. Among legal documents from Nuzi, we also have similar references where the tablet itself breaks an agreement.

To summarize to this point, I would not say that these peripheral (or upstream) traditions from Emar and Nuzi are using legal documents dispositively, but they are conspicuous vis-à-vis the Old Babylonian traditions in a number of features: namely, their greater tendency to be formulated as direct speech declarations, their greater tendency to include descriptions of symbolic legal gestures, and their references—at least metaphorically—to tablets as active legal agents.

Let us now move to the first millennium BCE and the Aramaic papyri from Elephantine in Egypt. Here, I will focus on the two deeds of sale that were discovered in the Ananiah archive. TAD B3.4, which dates to the year 437 BCE, records the sale of a house.

<i>TAD B3.4</i>
<p><sup>1-5</sup> On the 7<sup>th</sup> of Elul, that is the 9<sup>th</sup> day of the month of Payni, year 28 of King Artaxerxes, Bagazušta son of Bazu, a Caspian of the detachment of Namasava, and lady <i>Wbl</i> daughter of Šatibara, a Caspian of Syene of the detachment of Namasava, all (told) 1 man, 1 lady, said to Ananiah son of Azariah, a servitor to YHW the god, saying: “We sold and gave you the house of <i>'pwly</i> son of Misdaya which is in Elephantine the fortress, whose walls are standing but (who)se courtyard is (barren) land and not built; and windows are in it but it does not contain beams.</p> <p><sup>5-7</sup> We sold it to you and you gave us its payment (in) silver, 1 karš, 4 shekels, by the stone(-weight)s of the king, silver zuz to 1 karš, and our heart was satisfied with the payment that you gave us.</p> <p><sup>7-10</sup> And behold these are the boundaries of that house which we sold you: above it is the house of Šatibara; below it is the town/way of Khnum the god and the street of the king is between them; east of it the treasury of the king adjoins it; to the west of it is the Temple of YHW and the street of the king is between them.</p> <p><sup>10-11</sup> I, Bagazušta and <i>'wbl</i>, all (told) 2, we sold and gave (it) to you and withdrew from it from this day and forever.</p> <p><sup>11-12</sup> You, Ananiah son of Azariah, are empowered with regard to this house and (so are) your sons after you, and (anyone) to whomever you desire to give (it).</p> <p><sup>12-16</sup> We shall not be able to initiate against you suit or process regarding this house that we sold and gave you from which we withdrew. And we shall not be able to initiate suit against your son or daughter or anyone to whom you desire to give (it). If we initiate against you suit or process or initiate suit against your son or daughter or anyone to whom you desire to give (it), we shall give you silver, 20 karš, silver zuz to the ten, and the house is moreover yours and your children’s after you and (his) to whom you desire to give it.</p>

<sup>16-19</sup> And son or daughter of ours shall not be able to institute against you suit or process in the name of this house whose boundaries are written above. If they institute (suit) against you or institute suit against son or daughter of yours, they shall give you silver 20 karš, silver zuz to the 10, and the house is moreover yours and your children's after you.

<sup>19-23</sup> And if another person institute (suit) against you or institute (suit) against son or daughter of yours, we shall stand up and cleanse (it) and give (it) to you within 30 days. And if we do not cleanse (it), we or our children shall give you a house in the likeness of your house and its measurements, unless a child, male or female, of 'pwl'y or a daughter of his should come and we not be able to cleanse (it). Then) we shall give you your silver, 1 karš, 4 shekels and (the value of) the building (improvements) which you will have built in it and all the fittings that will have gone into that house.

<sup>23-24</sup> SCRIBE AND WITNESSES

Towards the end of the contract, in lines 19–23, it includes a clause known either as the defense clause or the warranty clause, according to which the seller agrees to defend the buyer against any adverse claims to having acquired good title. This clause would become standard in all later Aramaic deeds of sale, and was perhaps standard here. I only say “perhaps” in light of the evidence from the only other deed of sale preserved at Elephantine, TAD B3.12, to which we now turn.

*TAD B3.12*

<sup>10-12</sup> On the 12th of Thoth, year 4 of King Artaxerxes, then said Anani son of Azariah, a servitor of YHW the God, I (and) lady Tapemet his wife, CHIEF OF THE BELOVED of Meshullam son of Zaccur, all (told) 2 as one mouth to Anani son of Haggai son of Busasa, saying:

<sup>12-16</sup> We sold and gave you our house which we bought from Bagazushta son of Friyana/Palliya the Caspian – a lower house, renovated, containing beams, windows and 2 doors; renovated is (the) lower house, that is the large room of mine – and you gave us its price (in) silver, one karsh, 3 shekels - Ionian silver in the amount of 6 staters, 1 shekel - and our heart was satisfied with the price which you gave us. This is the measurements of the house which we sold and gave you: from east to west, length, 16 cubits, 2 h(ands) by the measuring rod; and from above to below, width, 5 cubits, 2 h(ands); IN AREA, 151 cubits 1 h(and).

<sup>16-21</sup> [BOUNDARY DESCRIPTIONS]

<sup>21-24</sup> This house whose measurements and whose boundaries is written in this document – you, Anani, have right to it from this day and forever and your children have right after you and (so does) anyone whom you give it to lovingly or whom you sell it to for silver.

<sup>24-27</sup> I, Anani, and Tapemet my wife, who was THE INNER ONE of Meshullam son of Zaccur and he gave her to me for wifehood – we shall not be able to bring against you suit or process in the name of this house which we sold and gave you and (for which) you gave us its price (in) silver and our heart was satisfied herein. Moreover, we shall not be able to bring (suit) against your sons or your daughters or (anyone) whom you give it to for silver or lovingly. Moreover, son of ours or daughter, brother or sister of ours, partner-in-chattel or partner-in-land or guarantor of ours shall not be able (to sue).

<sup>27-30</sup> Whoever shall bring against you suit or bring (suit) against your sons or against a man whom you give (it) to or whoever shall complain against you to prefect or lord or judge in the name of this house who(se) measurements is written above or whoever shall take out against you a new or old document in the name of this house which we sold and gave you shall be obligated and shall give you or your children a penalty of silver, karsh by the stone(-weight)s of the king, pure silver, and the house is (likewise) yours or your children's or his whom you give (it) to lovingly.

<sup>31-32</sup> Moreover, we gave you the old document which Bagazushta wrote for us, the document of purchase/sale (of the house) which he sold us and (for which) we gave him its payment (in) silver.

<sup>32-33</sup> Wrote Haggai son of Shemaiah this document in Elephantine the fortress at the instruction of Anani, the servitor of YHW the God, (and) Tapememet daughter of Patou, his wife, all (told) 2 as one mouth.

<sup>34</sup> WITNESSES

This deed of sale, which dates to 402 BCE, records the sale of an apartment. If we jump to the end where we would expect the warranty clause, we instead find these two clauses in lines 27–32. The first assesses a penalty on anyone who would challenge the validity of this transaction, but it does not specifically obligate the seller to appear in court to defend the buyer against these adverse claims. In the second clause, the seller notes that he has given the buyer physical documentation of the chain of ownership through which he himself acquired good title and through which he will now convey good title. In other words, possession of the previous deed of sale obviates the need for the warranty clause because it serves as evidence of good title. This practice of retaining previous deeds of sale to document the chain of ownership is well-attested in contemporaneous Demotic texts from Egypt as well.

That gives us a nice segue to our next topic, contemporaneous Egyptian Demotic texts. Among Demotic texts from the Saite and Ptolemaic periods, twelve divorce documents have been discovered, with the oldest dating to 542 BCE and the latest to c. 100 BCE. To see what a Demotic divorce document entails, let us start with P. BM 10449, which dates to 490 BCE.

P. BM 10449

<sup>1-4</sup> Regnal year 31, first month of inundation of Pharaoh Darius (= 490 BCE). Said the Choachyte of the Valley *P<sup>3</sup>-ti-[ ] hwy*, the son of *Ns-Imn-htp* whose mother is *Ir.t.w-r-r.w* to the woman *T<sup>3</sup>-htb* (?) the daughter of *nh-p<sup>3</sup>-hrt* whose mother is *T<sup>3</sup>-ti-Imn-hnm-w<sup>3</sup>s.t*.

<sup>4-8</sup> “I have divorced you as wife today. I am far from you. There does not belong to me any claim of the world against you. I am not able to hinder you in any house in which you shall go. I am the one who shall say: ‘Take for yourself a husband from them’ from today forever.”

<sup>8</sup> Written by *Hr-wd<sup>3</sup>*, the son of *Ns-Hr-p<sup>3</sup>-hrt*.

The operative section of this brief eight-line document is formulated as a declaration by the husband to his former wife. There is no mention of financial terms, only an affirmation of the woman’s rights to remarry with whomever she pleases. The other divorce documents follow a

similar formulary, focusing on the woman's right of remarriage and formulated as a declaration by the husband. The wife may have had a right to initiate divorce but we do not have any surviving records of such a transaction. One caveat to keep in mind with these documents is that the distribution of their findspots are rather limited both geographically and chronologically. That is to say, they appear to have been clustered in the archives of a small number of families, and so we need to be careful about extrapolating this evidence to all of Egypt. Furthermore, Egyptologists do not believe that these divorce documents served as a dispositive legal instrument, but rather assume the divorce process to have already been completed by other means when the document was drafted. Instead, they assume this text was intended to document and affirm the woman's right to remarry.

To summarize, we see a number of different ways in which the textual realm, or perhaps better to say, the notarial realm interacts with the legal realm. In the Old Babylonian model, the transaction occurs entirely outside the realm of the text, and the text itself merely records in an objective formulation that the transaction occurred. In the other traditions we considered, more of the details of the transaction are brought into the textual realm by recording the declarations that were uttered and describing the gestures that were performed. Eventually, these realms began to overlap to the point that the documents served roles previously handled by living witnesses.

How does this all clarify what is going in Deuteronomy 24? Clearly, a divorce document serves an important evidentiary role in that it protects and guarantees certain rights for the woman. But, of course, this is true for any legal document, whether it be a deed of sale that protects the ownership rights for the buyer or loan quitclaim that documents that a debtor has satisfied his obligations to a creditor. So why require the divorce process to generate a

document? I suspect that much of this may be connected to a culture's epigraphic habit. What sorts of things were considered necessary, or at least, important to preserve in writing? The epigraphic record from 1<sup>st</sup> millennium Egypt is much richer than from earlier centuries, and while some of this can be attributed to the accidents of preservation, I do not believe that all of it can. When recording transactions became commonplace, they started to become part of the transaction itself until the textual realm began to overlap with the legal realm. At a certain point, this overlap made it possible for the production of the text itself to be a constituent part of the transaction, as we see in Jeremiah 32. But, once again, that circumstance likely represented a special exigency, whereas Deut. 24 seems to imply that drafting and giving the divorced woman a ספר כריתות was standard practice. Or perhaps not. Perhaps the very fact that the law requires the man to give his wife the bill of divorcement marks it as an unusual transaction. This would not be the only detail in this law that does so, but here we can only speculate and would end up trying to clarify one enigma with another.