

Redemptive Creation

Psalm 74 as a Witness to Tradition in Transmission

Austin H. Williams

The legal traditions and precedents lying behind the documents discovered in Judean Desert do much to inform scholars about the realities surrounding how many Jews lived and conducted business on the cusp and in the midst of the Bar Kokba Revolt. The documents themselves, however, are not entirely free from controversy, especially among those who would seek to find in them a straight line of continuity between the Torah and the Talmud in what was then the still developing realm of Rabbinic Judaism. Questions arise as to the nature of the documents' owners: to what extent were they committed to a rabbinic vision of Judaism? To what extent were they even committed to Judaism as a religious and philosophical lifestyle, as opposed to a merely cultural institution? Did the *beyt dîn* wield any influence over the lives of these people, or were the Roman courts both the default and final authority?

Some of these questions are far too broad to be of use in a topical essay, but one might inquire about particulars of the cultural milieu demonstrated by the Judean Desert texts. Among these documents are land transactions, court proceedings, and records of marriage and divorce; this essay concerns itself primarily with the last of these. The documents to be examined include Babatha's *ketubba*,¹ Salome Komaise's marriage documents,² the marriage contract and *gēt* found at Wadi Murabba'at,³ the divorce/*ketubba* receipt/waiver of rights from Shelamzion b. Joseph,⁴ and the marriage contract of Shalemzion b. Yehuda⁵ and various related documents that especially shed light on these texts, and their development from both the Greco-Roman culture of their time, as well as the Ancient Near Eastern context.⁶

Much has been made of Babatha's *ketubba* as a reference point for understanding the later rabbinic marriage contracts in a time when the formal aspects of Talmudic traditions

1 P. Yadin 10

2 P. XHev/Se 65

3 P. Mur 19 and 20.

4 P. XHev/Se 13

5 P. Yadin 16.

6 Namely texts found in *DSD* 2 and 27.

were still undergoing development before codification.⁷ There are points of similarity and departure within the text of the *ketubba*, but initially it would help to examine the structure and contents of the document itself.

The initial lines of the *ketubba* are quite damaged. There is a date, [תב]אתל רדאב לע תיטפה, “[on the third] of Adar in the consulship of...” but the line breaks off. Naphtali Lewis dates the document between 122-125 CE, 125 representing the very latest date for Babatha and Yehudah’s marriage.⁸ After several broken lines⁹, the text picks up again with a declarative statement that rings familiar to students of rabbinic literature – הַשֵּׁמ וְיָדֵךְ וְהַתְּנָאֵל – “to be a wife [to me?] according to the law of Moses.” The importance of this formulation shall be discussed further below. This formulation also includes standard promises for the bridegroom (Yehudah) to bring his wife (Babatha) into his house and provide for her by her *ketubba*. The following lines explain the price of the *ketubba* and various other conditions of the marriage. There is a promise to redeem Babatha in the event that she is captured, and a statement swearing to provide for her and her children in the event of Yehudah’s death. It concludes with a statement of agreement on both parties, and the fragmentary signatures of Yehudah, Babatha, and several of the witnesses.

The *ketubba* alone, however, is insufficient to provide us with a complete understanding of what is at stake in Babatha and Yehudah’s union. From other documents in Babatha’s archive, we come to understand several other factors are at play. First, Babatha has a son, Jesus, from

7 See Hayim Lapin. “Maintenance of Wives and Children in Early Rabbinic and Documentary Texts from Roman Palestine,” in *Rabbinic Law in Its Roman and Near Eastern Context*, ed. Catherine Heszer. (Tübingen: Mohr Siebeck, 2003), 177-98, who notably concludes that “The documents from Southern Judaea and Arabia make it clear that if rabbinic marriage practices or documentary conventions as described in the Mishna were ‘standard’ among second-century Judaeans Jews, it is only in the limited sense that the Mishnah and related texts drew upon, and selected from among, existing practices.” For rejoinders to be further discussed below, see Ze’ev Safrai, “Halakhic Observance in the Judean Desert Documents,” in *Law in the Documents of the Judean Desert*, ed. Ranon Katzoff & David Schaps (Leiden: Brill, 2005), 185-205.

8 Yigael Yadin, Jonas C. Greenfield & Ada Yardeni, “Babatha’s *Ketubba*,” *Israel Exploration Journal* 44 (1994): 77.

9 Which most likely contained the location of where the *ketubba* was written, and perhaps alternate formulations to the date. Ibid, 85.

a previous marriage, which ended with Babatha's widowhood.¹⁰ Also, we come to understand that Yehudah has also been married before, and has also sired children in that marriage by a woman named Miriam.¹¹ Furthermore, Miriam was still alive, bringing forth the possibility that either Yehudah was engaging in polygamous relations with the two women,¹² Babatha and Miriam, or that Yehudah himself had divorced Miriam, but was still responsible for providing for the children he had fathered by her.¹³

It is evident from documents that follow in this series that Babatha held separate property from Yehudah, both as inheritance from her parents and her previous husband, who was also named Jesus. That Babatha retains her own property and receives enough income from it to even make loans to Yehudah implies that at least among Jews living in the southern end of the Dead Sea, marriage did not immediately mean that a woman's rights and property were fully subsumed by her husband.¹⁴ This, of course, would lead to tremendous complications in the aftermath of Yehudah's death, where Babatha and Miriam both had to assert their respective rights and claims to inheritance. The dispute that erupted with regards to several date-palm orchards in Ein-Gedi takes up a large bulk of the Babatha archive.

Understanding this much about Babatha's circumstances before undergoing the marriage contract, the wording of the contract itself now deserves closer attention. In particular, the phrase "אד[ו]היו השמ נ[י]דכ [ו]ה[ו]תנאל" echoes of the later formulation, השמ תדכ found in marriage contracts, as well as divorce contracts. The inclusion of "the Jews" along with Moses in this formulation is recorded in the Palestinian Talmud, the Mishnah, Palestinian *ketubbot* and also in Palestinian divorce documents in the Cairo geniza.¹⁵ Furthermore, Babatha's

10 P. Yadin 12.

11 P. Yadin 23, 24, 25.

12 Naphtali Lewis, "Introduction" in *The Documents from the Bar-Kokhba Period in the Cave of Letters: Greek Papyri*, eds. Lewis, Greenfield & Yardeni (Jerusalem: Israel Exploration Society/Hebrew University of Jerusalem/Shrine of the Book, 1989), 22-24.

13 Katzoff, "Polygamy in P. Yadin?" *Zeitschrift für Papyrologie und Epigraphik* 109 (1995): 128-32.

14 See discussion in Z. Safrai, "Halakhic Observance", 226-30.

15 "Babatha's *Ketubba*", 86.

ketubba contains clauses that would later come to be standardized in Mishnaic instructions for constructing *ketubbot*. These instructions are also paralleled in P. Mur 20 and 21, as well as two of the Greek marriage contracts, P. Mur 115 and 116.¹⁶

More should be explained concerning the Mishnaic *ketubba* clauses, and their relationship to the marriage contracts found in the Judean desert. There are six requirements that a *ketubba* must guarantee according to what is recorded in Mishnah 4:7-12: the *ketubba* itself, i.e. the “mandatory amount due to the wife in the event of divorce of the husband’s death”¹⁷; that whatever the husband has as property is surety for the *ketubba*; that the husband will redeem his wife if she is taken ransom or, in the case of Levites, that he will restore her to her parents’ family; that the male children will inherit the *ketubba* money if the wife should die before the husband; that female children will be able to dwell in their father’s household until they are married; and finally that if the husband should die first, that the wife will be able to dwell in his house afterward. Yadin, Yardeni and Greenfield note that of these six clauses, Babtha’s *ketubba* only contains the first, third and fourth in their entirety, but all of the clauses may be inferred from reconstruction, paralleling examples found in the Cairo Genizah.

The Greek marriage texts also reveal parallels with the Aramaic *ketubba* traditions. While initially appearing far more Greek than Hebrew, there are important observations to make about the form and stipulations contained within the contract.

Salome Komaise’s marriage contract has come under particular scrutiny as it relates to the development and existence of pan-Judaic marital stipulations in Southern Judea. Cotton,¹⁸ among others,¹⁹ notes that while there are echoes of Mishnaic marriage clauses recorded in

16 Ibid, 92-97.

17 Ibid, 92.

18 H.M. Cotton, “65. XHev/Se papMarriage Contract gr”. *DJD* 27 (1997): 227.

19 Cf. A. Wasserstein, “A Marriage Contract from the Province of Arabia Nova: Notes on Papyrus Yadin 18,” *JQR* 80 (1989): 121.

Salome's contract, "the marriage contract concluded between them... cannot be described as a Jewish *katubbah*... the groom undertakes to follow Greek law and custom in providing for the wife and for the children to come."²⁰ Cotton concludes that P. XHev 65 shows evidence of a *αγραφος γαμος*, "unwritten marriage," among the Jews in the south at the time, and declares it "another instance of the remarkable degree of assimilation of this society to its environment," i.e. the Greco-Roman world, which held sway over the lesser, particularistic, Jewish one.²¹ However, there are still to be found guarantees that square with the Mishnaic demands of the marriage contract, and other explanations as well for why Salome Komaisë's marriage contract turned out as it did.

For this specific text, there are guarantees that 1) a dowry that is to be returned to Salome, 2) Jesus (her husband, as indicated in P. XHev 65) is to provide for her 3) and her children 4) "on peril of all his possessions." Mordecai Friedman notes –

While P. Yadin 18 and 37 (=XHev/Se 65) appear *prima facie* to be essentially Greek documents in form and content, the three other Greek-language marriage contracts, P. Mur 115 and 116 and XHev/Se 69, also contain versions of important elements of the *ketubba*, viz., the 'court stipulations' listed in mKet 4:10-12. Whatever their ultimate origin may have been, these clauses are known primarily from Jewish sources.²²

Instead of being evidence of continued and gradual assimilation of Jews in the southern end of the Dead Sea and in Provincia Arabia, the Greek marriage documents hint towards an

20 "XHev/Se 65," 227.

21 Ibid, 229.

22 M. Friedman, "Contracts: Rabbinic Literature and Ancient Jewish Documents" in *The Literature of the Sages*. eds. Shmuel Safrai et al. (Assen: Royal Van Gorcum, 2006), 446.

affinity to at least some Mishnaic principles.²³

Despite these affinities, however, the Greek documents found in the Judean Desert also have undeniably Hellenistic origins in much of their wording and organization. Yet even in these Greek formulae, there is indication of the unique relationship that Jews in southern Judea had with the Greco-Roman institutions in those instances that they had to work together.

An example of such formulation can be seen in the so-called “*ekdosis*” clauses, which are directly attested to in P. Yadin 18 and P. XHev/Se 69, plausibly reconstructed in XHev/Se 65, and adjusted “to the peculiar situation” in lines 4-5 of P. Mur II 115.²⁴ *Ekdosis* literally refers to the “giving forth” of a bride from her father or another male guardian over to her husband, who takes up the role as her guardian from then on. The document itself finds parallels throughout the Near East, particularly in Syrian and Egyptian marriage documents. The Egyptian formulations commonly dispense with some of the language found in the classical Greek sources, e.g. the childbearing language was eliminated, women were allowed to give away the bride in certain circumstances, a male and a female relative could both give away the bride, and auto-*ekdosis* was permissible if the bride was not a *παρθενος* and both parents were dead, etc.²⁵ While the *ekdosis* clause was standard in most Greek ceremonies and wedding contracts in the Ptolemaic and early Roman period, the phrase seems to come into

23 On at least the case of P. Yadin 18, Z. Safrai, “Halakhic Observance” notes that “At any rate, the writers of the contract acted to great degree in accordance with the demands of the halakhah and did not deviate from it, although it would be difficult to prove if they did so out of an awareness of the halakhah or because this was the accepted practice in their society.” In a response to Wasserstein’s criticism of finding uniquely Jewish content in P. Yadin 18, Katzoff, “Papyrus Yadin 18 Again: A Rejoinder”, *JQR* 82 (1991): 172, asserts “if we had no information on the nationality of the persons in the document, it would indeed be unjustified to identify elements as particularly Jewish... However, the parties in P. Yadin are in fact Jewish, living, or having recently lived, in Judea. It seems, then, unreasonable to insist on explaining their behavior on the basis of hypothetical or barely evidenced Gentile ‘oriental’ practices in such instances where explanations in terms of Jewish law and tradition lie at hand.”

24 Uri Yiftach-Firanko, “Judaean Desert Marriage Documents and *Exdosis* in the Greek Law of the Roman Period” in Katzoff & Schapps, 80-81.

25 Ibid, 68-69.

less and less common use throughout the centuries leading up to the marriage documents found in the Judean Desert.²⁶

The *ekdosis* clauses in these contracts are certainly indicative of the dominant Greek matrix for the Greek, Judean Desert marriage documents, but the extent to which Greek customs and manners dictated the ritual and practice of marital unions in this place and time is still highly subject to debate. As noted, *ekdosis* language became rarer and rarer in the Roman era in documents from the Near East. This led many commentators to speculate about a possible end to *ekdosis* practices in Hellenized Egypt and elsewhere, though there are other strong indicators that the practice of *ekdosis* continued on even after *ekdosis* clauses disappeared from Greek marriage documents in Egypt and Syria.²⁷ In fact, despite the paucity of such written evidence in dowry receipts and marriage contracts, the “lack of reference to any other act of marriage among more than 300 Egyptian marriage documents relating directly or indirectly to marriage customs suggests that the act of *ekdosis* was the only form of marriage the Greek population of Egypt was ever acquainted with.”²⁸ Thus the receipt of a dowry would suffice as evidence that an *ekdosis* had occurred. So what can be inferred from the inclusion of such language in the extant Greek marriage documents from the Judean Desert? Yiftach-Firanko concludes that “the same Greek dowry was woven into an essentially non-Greek financial arrangement to such an extent that from the acknowledgement of receipt of such a dowry the performance of the *ekdosis* could no more be presumed, and had therefore to be attested explicitly.”²⁹ In other words, the Jewish nature of the transaction recorded in these Greek language marriage receipts called for the use of specific terminology, since the dowry receipt could not itself attest to the “giving forth” of the bride in question. Further to these, P. Yadin 18 also attests to a husband guaranteeing 300

26 Ibid, 71ff.

27 Ibid, 72-74.

28 Ibid, 74.

29 Ibid, 84.

drachmas to the bride for her dowry of 200, possibly bearing witness to a tradition from the Mishna (Ketubbot 6:3) requiring that husbands provide a guarantee to the bride that is 150% the dowry price.³⁰

Whereas P. Yadin 18 records on Shelamzion daughter of Yehuda's Greek marriage contract, XHev 13 draws attention to Shelamzion daughter of Joseph, and the very end of her marriage. Initially, J.T. Milik suspected this to be a record of divorce, a *gēt*, delivered by a wife to her husband.³¹ Jonas Greenfield and Ada Yardeni disagreed with Milik's description of the document as a bill of divorce, instead attributing to it the status of a receipt for a *ketubba*.³² In the *DJD* publication of the document, Yardeni, now working with Hannah Cotton, is more hesitant to declare authoritatively that the document is not a divorce bill.³³ Tal Ilan published an article claiming definitively that P. XHev/Se 13 is a *gēt*, comparing it side-by-side with P. Mur 19, a document to be looked into later, of which there is no doubt as to its function.³⁴

Ilan's article elicited a sharply critical response from Adiel Schremer, who takes most Ilan to task for improper readings of Greenfield and Yardeni's original Hebrew publication³⁵ and for not creating a strong enough argument to establish that her reading, i.e. that the bill is being submitted in first person and there for should be read as being a deed of divorce, is the most likely reading.³⁶ Schremer emphasizes that the most likely purpose of the document is to serve as a waiver of claims that constitutes a receipt for a *ketubba* payment, much

30 Ibid, 81; Friedman, 448; Lewis, Katzoff & Greenfield, "P. Yadin 18", 242.

31 Tal Ilan, "On a Newly Published Divorce Bill from the Judean Desert", *Harvard Theological Review* 89 (1996): 197.

32 Ibid, 197-8.

33 Hannah Cotton & Ada Yardeni, "13. XHev/Se papWaiver of Claims? ar (134 or 135 CE)", *DJD* 27 (1997): 65-70.

34 "Divorce Bill", 198.

35 A. Schremer, "Divorce in Papyrus Şeelim 13 Once Again: A Reply to Tal Ilan", *Harvard Theological Review* 91 (1998): 195.

36 Ibid, 199. It is worth noting that Schremer goes to lengths to illustrate how both readings are subject to criticism, and open more questions about the document. His conclusion is for the translation itself to be reconstructed as quoting the original *gēt* that Shelamzion received already – 201-202.

like Yardeni and Greenfield originally proposed.³⁷ Nonetheless, Yardeni and Cotton still assert later the possibility of the document being a *gēt*, citing the difficulty in determining whether the איה in line seven is a past-tense or present-tense conjugation,³⁸ a difficulty which Schremer notes.³⁹

What is perhaps most convincing in demonstrating that P XHev/Se 13 is not a *gēt* is the assertion that it not only fails to follow the form of a contemporary *gēt* originating at Masada,⁴⁰ but also that it fails to conform to the type that would later be recorded in rabbinic literature, and that had been established thousands of years earlier in the Ancient Near East.⁴¹

The only unequivocal attestation to Jewish divorce papers from the inter-revolt period is P. Mur 19, which Ilan dates to 72 CE,⁴² but Benoit, Milik and De Veaux hesitantly date to 111 in their own edition.⁴³ The P. Mur 19 *gēt* displays great continuity with other Aramaic divorce codes, going back to Akkadian writings in Babylon and Assyria, particularly the phrase איה אישר יכשפנב אישר, “You are free unto yourself to go and marry any Jewish man that you please.”⁴⁴ The language speaking of the woman’s freedom to choose another man appears in Hammurabi’s laws, Middle Assyrian laws and the Elephantine papyri.⁴⁵ Just as importantly, this language makes its way into the Talmud and later standard *gēt* formulas.⁴⁶

Divorce, as an issue in Judaism, was nothing new. Though the Torah allows for divorce to be granted, the specifics of divorce documents and procedures were left remarkably

37 Ibid, 201.

38 “XHev/Se 13”, 65.

39 Schremer, 199.

40 Ibid, 200. Ilan also notes this difficulty, which is why she attempts to recast P. Mur 19 as paralleling P. XHev/Se 13 – “Divorce Bill”, 198-200.

41 Shalom E. Holtz, “‘To Go and Marry Any Man That You Please’: A Study of the Formulaic Antecedents of the Rabbinic Writ of Divorce”. *JNES* 60 (2001): 241-258.

42 “Divorce Bill”, 196.

43 Benoit et al, “19. Acte de répudiation, en araméen (111 ap. J.-C.?)” in *DJD* 2 (1961): 104.

44 Holtz, 253ff.

45 Ibid, 242-252.

46 Ibid, 253-255.

open ended, especially in light of contemporary divorce legislation in other ANE cultures.⁴⁷ Divorce is decried in most circumstances in which it is found, including when King David forces Abigail to leave her husband,⁴⁸ and in the preaching of the prophets Hosea⁴⁹ and Malachi.⁵⁰ Various Jewish sects in later time formed strong views, certainly more stringent than what is simply implied by the Torah. The Dead Sea Sect absolutely forbade divorce,⁵¹ though there is also controversy over whether they in fact had a systematic approach to the issue of marriage, too.⁵² Jesus seems to forbid marriage save in the case of extramarital relations,⁵³ with the Apostle Paul following suit, even going so far as to advise that wives stay with unhappy marriages in the hopes that they might win their spouse over.⁵⁴

Divorce was also one of the great of disagreement between the schools of Hillel and Shammai:

Beth Shammai say: a man should not divorce his wife unless he has found her guilty of unseemly conduct. As it says, because he hath found some unseemly thing in her. Beth Hillel, however, say [that he may divorce her] even if she has merely spoilt his food.⁵⁵

While divorce was certainly an unfortunate outcome for something that even in pagan

47 Cf. Deuteronomy 24:1. There is no extensive description of what a “bill of divorce” (תְּחִיבָה רְפָס) is supposed to be like, there are no stipulations for payment or custody, etc. Compared to much of the Middle Assyrian and Neo Babylonian evidence demonstrated by Holtz (242-251), the Torah’s stipulations on divorce are threadbare, indeed.

48 II Samuel 3:14-16

49 Hosea 3

50 Malachi 2:10-16

51 CD 4:20-5:6

52 Cf. Vered Noam, “Divorce in Qumran in Light of Early Halakhah,” *Journal of Jewish Studies* 2 (2005): 206-23.

53 Matthew 5:31-32, 19:1-9; Mark 10:2-12; Luke 16:18.

54 I Corinthians 7:12.

55 Tractate Gittin 90a.

documents was intended to be “for life,”⁵⁶ it was not necessarily counter to the teachings of the rabbis for divorce to be granted. Furthermore, it seems that many of the stipulations of rabbinic ordinances in relation to both divorce and marriage were already in development at the time of Jesus and the Qumran sect.

Most of the supposed discrepancies occurring between rabbinic dictate and Judean-Desert reality seem to be easily understood and reconciled based on evidence within the Talmud itself. Particularly, there seem to be issues with the claim that these people didn’t go to rabbinic courts when they were available. Z’ev Safrai demonstrates that in all likelihood, even by Talmudic records, there were no rabbinic courts in the area of Southern Judea for its Jewish inhabitants to turn to!⁵⁷ Much of the supposed assimilation demonstrated by these documents is actually no more or less substantial than what the Talmud would have us anticipate. Further to this, the ways in which a lack of assimilation is evident stands out to a significant extent.⁵⁸

As can be seen through the lens of marriage, the Judean Desert documents do not offer a uniform window onto early-second and late-first century Palestinian Jewish life and practice, but it corroborates much about the testimony of later witnesses in the Talmudic sources. They demonstrate continuity, assimilation and innovation that helped bridge the gap between leading faithful lives, and lives that nonetheless has to contend with the difficulties of the everyday world.

56 Cf. “the Alexandrian *synchoreisis*-documents from the Augustan period.” Yiftach-Firanko, 74.

57 Z. Safrai, 224-6.

58 Ibid, 235-6.