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***“The Jewish Ketūbbāh as a ‘Dialogue Document’. The Continuity of a Cuneiform Tradition”***

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BARUCH A. LEVINE New York

## The Jewish *Ketūbbāh* as a ‘Dialogue Document’: The Continuity of a Cuneiform Tradition

**1.1** Pursuing the theme of the continuity of Mesopotamian civilization in the area of law, it is my intention to trace certain formal features of the Jewish *ketūbbāh* “writ of marriage” of Roman times to their Mesopotamian roots. The present investigation follows upon my earlier contribution to MELAMMU III, in which I discussed the important role of Aramaic in the transmission of Mesopotamian legal institutions, examining telling terms and formulas illustrative of this process (Levine 2002). Here, I will focus on a specific component of Rabbinic law, the institution of marriage, and apply the same comparative methodology to a particular type of legal document, the Jewish *ketūbbāh*. This is a subject of extensive scope, and it will be possible to engage only a few of its aspects in the present study. And yet, I hope to reinforce, step by step, the general conclusion that the corpus of Rabbinic literature constitutes, in addition to all else, a repository of Mesopotamian civilization.

**1.2** The starting point is the differentiation of two styles, or forms employed in the composition of cuneiform contracts in the first millennium B.C.E., the objective and the subjective, or ‘dialogue’ form. The objective form records that a legal action has taken place, or will take place, by reference to one or more of the parties in the third- person. The subjective form exhibits a first-person orientation, and in most cases, a second-person

address, or reference, as well. Most significant is the fact that it reports (we could say, “quotes”) the oral declarations of at least one of the parties. Martha Roth (1989: 1-2), in the introduction to her edition of Neo-Babylonian marriage agreements, notes the increasing utilization of the subjective form in various types of cuneiform legal documents, including marriage agreements, during the first millennium, B.C.E., replacing the older objective form. In fact, all but six of the forty-five marriage agreements in Roth’s collection are of the dialogue type. Now, aside from all else, the Jewish *ketūbbāh* of Roman times is a highly developed example of the ‘dialogue document,’ since throughout, it records the verbal statements of the prospective husband who proposes marriage to a woman, and states his commitments to her, and to her children.

**1.3** It is an appropriate time to discuss the formation of the Jewish *ketūbbāh*, a document prescribed in the Mishnah, the great compendium of Rabbinic law. Recent discoveries in the Judean desert, at Murabba‘at and Naḥal Ḥever on the Dead Sea, have made available for the first time several actual documents of this type, dating from the late first to the early second centuries C.E. The best preserved of these is Papyrus Yadin 10, known as “Babatha’s *Ketūbbāh*,” dated to between 122-125 CE. In her Textbook, Ada Yardeni (2000, I: 119-124) registers

the other three as Mur 20 and 21; NŞ 11. As for the Mishnah, it was published in Palestine in the early third century, CE, but much of its essential content was extant earlier in various compilations, so that the Judean Desert evidence may be regarded as fairly contemporary with the provisions of the Mishnah. Although composed in Hebrew, the Mishnah cites key passages of the *ketübbāh* (as well as of the bill of divorce, the *gēṭ*) in the Aramaic that was most often employed for such documents. The complete text of a *ketübbāh* is not preserved in Rabbinic sources, but we know a good deal about its formulation and provisions from these very citations in the Mishnah, and from other Rabbinic sources. Several Jewish marriage contracts, written in Greek have also been discovered in the Judean desert, but none of them is of the 'dialogue' type, which may be significant.

In the present study we will not proceed beyond the Tannaitic period, that represented by the Mishnah and Tosefta, but it is important to emphasize that considerable further development of the *ketübbāh*, as a dialogue document, occurred in the ensuing centuries of the Rabbinic period, continuing into Medieval times. The reader is directed to the comprehensive study of Medieval Palestinian *ketübbôt* from the Cairo Geniza by Mordechai Friedman (1980), who edits many exemplars, as well as providing an in-depth treatment of the history and formation of the *ketübbāh*. In fact, the *ketübbāh* is still in use at the present time, and has been throughout the centuries.

**1.4** Once the comparison has been made on a synchronic level between the Judean Desert documents and the Mishnah, we can attempt to trace certain components of the early Rabbinic *ketübbāh* – terms, formulas, and constitutive provi-

sions – to earlier Aramaic versions of this type of document, and by this route to Mesopotamian sources, as well. Comparative analysis of the several marriage contracts found among the Aramaic legal papyri from the Jewish military colony at Elephantine of the fifth century B.C.E., with Neo-Babylonian, cuneiform marriage agreements will prove instructive in this regard. The Elephantine contracts are well developed examples of the 'dialogue document', and show definite affinities with their Neo-Babylonian counterparts. Our control of the Elephantine materials has been greatly enhanced by the collated editions of B. Porten and A. Yardeni (1989; henceforth: *TAD II*). The forty-five Neo-Babylonian marriage agreements, edited by Roth, date from 635 B.C.E. to 203 B.C.E., and many of them come from the reigns of Nabonidus and Darius I. Their proximity in time to the Aramaic, Elephantine marriage contracts, as well as the features they share with them, make of the latter an important link in the transmission of Mesopotamian legal practices, and may suggest how and when Mesopotamian features were appropriated by Aramaic scribes.

**1.5** Our preference for the Neo-Babylonian marriage agreements does not in any way imply that the Aramaic formula at Elephantine did not draw upon many earlier features of cuneiform law. E.J. Brill has recently reissued Yochanan Muffs' pioneering work, *Studies in the Aramaic Legal Papyri from Elephantine*, originally published in 1969, to which I have written a Prolegomenon (Muffs 2002). That work expanded on what Muffs calls "the Assyriological approach," and makes the case for the continuity of the provincial, or peripheral legal traditions of the second millennium into the Achaemenid period, and thereafter. Muffs also points to more proximate sources of

Aramaic law in the Neo-Assyrian period. Our choice of Neo-Babylonian documents for comparison primarily reflects our present interest in the ‘dialogue document.’

1.6 In terms of the Jewish legal tradition, specifically, it is to be noted that whereas Deuteronomy 24 (vs. 1-2), explicitly ordains a writ of divorce, there is

no comparable law in the Torah requiring a written contract of marriage. This absence occasioned considerable debate in Rabbinic circles regarding the original authority of the *ketūbbāh*, as to whether it was Mosaic or Rabbinic, and has made it all the more fascinating to search for actual antecedents of the early Rabbinic *ketūbbāh*.

## Babatha’s *Ketubbah* (Papyrus Yadin 10) and the Mishnah, *Ketubbot* 4:7-12

2.1 The best way to begin is through a synchronic comparison of the Judean Desert evidence with the basic Rabbinic prescriptions; more precisely, of P. Yadin 10, with the provisions of the Mishnah, *Ketūbbôt* 4:7-12. A full edition of P. Yadin 10, with epigraphic notes and commentary, is now available in Yardeni-Levine 2002: 118-141, and is based on its initial publication by J.C. Greenfield

and A. Yardeni (1994). Some specific readings and issues of legal interpretation remain unresolved, mostly due to *lacunae*.

2.2 Following is an outline of Babatha’s *ketūbbāh*, based on preferred readings and probable restorations, with cross-referencing to other marriage contracts from the Judean Desert assemblage.

1) Date, and names of groom and bride, including the name of the town of Ein Gedi, where one, or both parties resided. This section is poorly preserved, but its content can be reliably surmised (lines 1-4). In line 3 we are able to read the pronoun אַנְתָּ “you” (second-person, feminine), which indicates that the ‘dialogue’ pattern commenced with the opening statement. We may assume that the verb אָמַר “he said” occurred in line 2 or 3. What he says is cited as the formal proposal.

2) The groom proposes to the bride, addressing her in the second-person feminine singular:

דִּי תְהוּיִן לִי/הוּי לִי לְאַנְתָּ/הָ לְאַנְתָּ כְּדִי מוֹשֶׁה וְיֵהוּ דְאִי

“That you be to me/ Be to me as a wife/ for wife-hood according to the law of Moses and the Judeans/Jews” ( line 4, and cf. Mur 20:3; NŞ 11:2).

3) The groom pledges support: in the form of food, clothing and domicile for his wife, while referring to the *ketūbbāh* as a binding contract:

וְזָאנִי לְךָ וְ[מַכְסִּי] וְבִכְתְּבֵךְ אֶעֱלֶךְ

“And I will feed you and clothe you, and pursuant to your *ketūbbāh*, I will bring you into my house.” ( line 5)

4) The groom acknowledges his wife’s claim on him for the sum of 400 denarii, the amount of the dowry (Greek *pherné*), on which she may draw at any time, in addition to her

basic support (lines 5-9, cf. Mur 20:4-6 [broken], NŞ 11:3[?]). Further on, first in lines 11 and following, where the text is broken, and then again in lines 17-18, the groom affirms that all that he owns is pledged to the payment of this claim:

וכל נכס[ין] די איתי לי ודי אקנא אחראיו וערבין לכתבתך

“And all properties that I possess and that I will acquire are guaranteed and pledged to (the payment) of your *ketübbāh*” (cf. Mur 20:11-12; apparently repeated, or resumed in lines 17-18).

5) The groom pledges to ransom his wife if she is captured:

ואם תשבתיי (=תשתביי) אפרקנך מן ביתי מן נכסי [ואתי]בנך לי לאנתה

“And if you are taken captive, I will redeem you from my “house” and properties, and I will restore you as a wife” (lines 10-11, cf. Mur 20:6).

6) The groom guarantees the inheritance rights of male children, and support for female children born out of the marriage. The statement regarding male children is missing in the lacuna of lines 12-13, but should be restored there (cf. Mur 20:8-9, 21:12-14). The statement governing female children is reasonably well preserved:

בנ[ן] נק[ב]ן [ת]הוא יתבא ומתזנן מן ביתי [ומן בכסי עד] זמן די ית[נסב] לבעלין

“Female children shall reside and continue to be provided for from my “house,” and from my properties until such time as they are married to husbands” (lines 13-14, cf. Mur 20:7-9 [broken]; Mur 21:10-12).

7) The groom pledges to provide domicile and support for his wife after his death, pending payment of the *ketübbāh* claim by his heirs:

תהוין יתבא ומתזנן מן ביתי מן נכסי עד זמן די יצבון ירתי למנתן לך כסף כתבתך

“You will reside, and (continue to be) provided for from my “house” and from my properties until such time as my heirs will agree to pay you the ‘silver’ of your *ketübbāh*.” (lines 15-16, cf. Mur 20:9-11; Mur 21:12-14).

8) The groom pledges, addressing his wife in the second person, that he will replace the relevant document on demand (lines 16-17, cf. Mur 20:13-14, 21:19).

9) A resumptive declaration by the groom, in the first-person, that he is bound by the above, stated terms of the agreement (line 18, cf. Mur 21:17 [broken]):

10) Endorsement (line 19). The legible part of the line states:

לבבתה [ב]רת שמעון על יהודה בר אלעזר

“[ ](due) to Babatha, (*vacat*) daughter of Shim‘on, (incumbent) upon Yehudah, son of El‘azar.”

This endorsement served as a docket, visible on the fold of the document. It identified the principals, and confirmed the debt that the groom owed the bride.

11) Seal, and signatures of the groom and bride, and of three witnesses (lines 20-26). There is also a partially legible fragment whose function is unclear. In line 23, the entry [ה]ממר “by [her] verbal order” has been reliably restored. In context, this reflects the fact that Babatha was illiterate, and had instructed someone to sign on her behalf. That person’s name is illegible.

## Comparative Analysis

**2.3** Before proceeding, a word of explanation is in order about the term *ketübbāh*, itself. In the Aramaic of Papyrus Yadin 10, lines 5, 11, 16, the marriage document is repeatedly called כתבתך “your writ of marriage,” written defectively without a *waw*, and the same spelling is evident in Mur 21:10, 13 where we find כתבתך. This defective spelling is also attested in the Aramaic passages from the *ketübbāh* cited in M. Ket. 4:7-12 (see below). When taken as a Hebrew term, it is spelled both *plene* and *defectiva*, depending on manuscript traditions. On the spelling and pointing of the Hebrew term in Jewish literary sources, see Ben-Yehudah, *Thesaurus*, 2552-2553, s.v. כתבה, note 1, by N.H. Tur-Sinai, who explains that in many manuscript traditions this term is consistently written *plene* with a *waw*, even though the *beth* is pointed with a *dagesh*. Its sense is clear: “writ, a written document.” It may represent a feminine realization of כתב (= *ketāb*) “writ,” which, as an Aramaic term, is well attested in the Official Aramaic of Elephantine (*DNWSI* 546-547, s.v. *ktb*<sub>2</sub>).

Functionally, the term כת(ו)בה often connotes “dowry claim.” More precisely, it will refer to the amount in silver, and/or the total value of property written into the *ketübbāh*, for which the husband incurred financial accountability at the time of marriage, in other words, to the dowry claim against the husband as stated in the *ketübbāh*, not merely to the document, itself. Thus, in P. Yadin 10, line 11 [ו]כתב[ת]ך means the same as: כסף כתבתך “the silver of your writ (of marriage),” in line 16.

**2.4** Attention should be paid to what is not provided for in Babatha’s *ketübbāh*. As an example, divorce is not explicitly projected as the cause for the eventual dissolution of the marriage, only the husband’s demise. Many other contingencies that are frequently anticipated in ancient Near Eastern and Jewish marriage contracts are likewise not addressed explicitly – childlessness, the taking of a second wife, the prior death of the wife, and more. This is actually characteristic of ancient marriage agreements, generally; they vary greatly in their scope and coverage. Notwithstanding, we can establish a considerable number of precise correlations between Babatha’s *ketubbah* and the Mishnah. Methodologically, it is of great value to be able to correlate scholastic, or canonical texts with actual legal documents of the same period and provenance.

**2.5** Five of the provisions from Babatha’s *ketübbāh*, outlined above, are set forth in Mishnah, *Ketübbôt* 4:7-12, in almost the exact terms, and in the ‘dialogue’ form; they are likewise addressed to the intended bride in the second-person feminine. The Mishnah, as a corpus of law, states these provisions conditionally and negatively. Thus: לא כתב לה “If he (= the groom) did not write for her (= the bride).” That is to say: If the *ketübbāh* document failed to specify any of the several requisite provisions, the court would automatically enforce them. This is because they represent entitlements; in the language of the Mishnah: תנאי בית דין “A condition (imposed) by the court.” We may thus reconstruct the main statements of the Rabbinic *ketübbāh* from the Mishnah’s requirements, while conceding that these five provisions do not comprise the entire *ketübbāh*, only what was considered to be *sine qua non*.

## 2.6 The Mishnaic provisions are stated as follows:

- a) The pledging of all of the groom’s assets to the *ketūbbāh* claim: כל נכסין דאית לי אחראים לכתבתיך “All properties that I possess are guaranteed to (the payment) of your *ketūbbāh*.”
- b) Guarantee of ransom and restoration if the wife is captured: אם תשתבאי אפרקניך ואותבניך ולי לאנתו. “If you are captured I will redeem you and restore you to me in the role of wife.”
- c) Guarantee of inheritance rights for male children (cf. no. 6, above, almost certainly to be restored in Papyrus Yadin 10, lines 12-13): בנין דכרין דיהוון ליכי מנאי אנון ירתון כסף כתבתיך: “(As for ) male children whom you will have by me, they shall inherit the sum of your *ketūbbāh*, in addition to their share that is (due them) together with their brothers.
- d) Guarantee of support for female children: בנן נקבן דיהוין ליכי מנאי יהוין יתבן בביתי ומתזנן “Female children whom you will have from me shall be residing in my house and be given sustenance from my properties until they are married to husbands.”
- e) Guarantee of widow’s right to domicile after the death of her husband: את תהא יתבא “You shall continue to reside in my house, and be provided for from my properties all the duration of your widowhood, in my house.”

In M. Ket. 4:12 we read that, in the matter of a widow’s right to reside in her late husband’s house, the Judeans added the following proviso to the *ketūbbāh*: “Until (such time as) the heirs will agree to pay you (the sum of) your *ketūbbāh*.” This statement qualifies as a fairly literal Hebrew translation of the Aramaic of P. Yadin 10, line 16, cited in 2.3, 7), above.

2.7 It may be relevant to mention that in an Aramaic deed of gift from Naḥal Ḥever (P. Yadin 7), dated 120 C.E., a similar residence restriction is imposed on a widow. That document is also a prime example of the ‘dialogue’ form, since the father of the family speaks in the first person, and addresses his wife in the second person throughout. In that deed, which has the character of a living trust, Babatha’s father, Shim’on, bestows all of his worldly possessions, present and future, upon his wife, Miryam, such gift to take effect at the time of his death. The gift is granted on condition that so long as Shim’on lives, he shall continue to own and derive all benefits accruing from them. An ancillary provision affects the couple’s daughter, Babatha, who is referred to as: בבתא ברתנא. “Babatha, our daughter.” In the event she is widowed in the course of time she may reside in a

designated building on the premises, with customary rights of entry and egress. This applies, however, only so long as she remains a widow: ולא רשיה ולא שליטה “But, she shall not have the rightful authority to bring a husband into that house” (P. Yadin 7, line 26, Yardeni-Levine 2002: 85).

2.8 A fascinating subject for study is the groom’s proposal, reliably restored in P. Yadin 10, line 4, and better preserved in Mur 20, and NŞ 11. The formula [את] תהוא לי לאנתה “You will be to me as a wife to me” is preserved in Mur 20:3, [accepting the restoration by Milik, in *DJD* II, 120], and in NS 11:2 we can read: די תהוין לי לאנתה “That you be to me as a wife.” The reading of the term for “wife” (or: “wifehood”) in P. Yadin 10, line 4 is unclear. Both the noun אנתה “wife,” in its various realizations, and the abstract form אנתו “wife-hood, marriage,” are possible.

This proposal is not a subject of concern in M. Ket. 4:7-12, but was undoubtedly part of the early Rabbinic *ketūbbāh*. Such proposals have a long tradition in the ancient Near East, and are typical of the subjective, or ‘dialogue type’ of legal documents. They became standard in the later versions of the *ketūbbāh*, and are probably anticipated at Elephantine. (See

below, under 3.5).

**2.9** The phrase כדת משה ויהודאי "according to the law of Moses and the Judeans," in Babatha's *ketūbbāh*, developed into the more familiar phrase כדת משה וישראל "according to the law of Moses and Israel," which became standard in the traditional *ketūbbāh*. And yet, reference to "Judean" law was current in the early Rabbinic period. It is expressed in the Mishnah by the clause: העוברת על דת משה ויהודית "One who transgresses (fem.) against the law of Moses and Jewish (law)," in M. Ket. 7:1. A wife who transgresses in this manner forfeits her *ketūbbāh* settlement, because she has failed to uphold the terms of her marriage.

**2.10** There are further comparisons with Rabbinic practice that could be cited, such as the formalities of dating and witnessing. Suffice it to say that Pa-

pyrus Yadin 10 and the Mishnah sources correspond with each other to a remarkable degree, both in substance and formulation. This should put to rest any doubts concerning the realism of the Mishnah's *ketūbbāh* provisions; we can now demonstrate that they largely reflect contemporary Jewish practice. We can also attest to the composition of the early Rabbinic *ketūbbāh* as a 'dialogue document'.

**2.11** Actually, most of the legal documents discovered in the Judean Desert are of the 'dialogue' type. Restricting ourselves to the Yadin Collection from Naḥal Ḥever, we note that two of the three Hebrew legal texts (P. Yadin 45 and 46) are of the 'dialogue' type, as are all of the Nabatean-Aramaic legal texts (P. Yadin 1, 2, 3, 4, 6, 9), and all but one of the Aramaic legal texts (P. Yadin 7, 8, 42, 47- 'dialogue'; P. Yadin 43- objective).

## Marriage Agreements of the 'Dialogue' Type at Elephantine (Aramaic) and in Neo-Babylonian Cuneiform

**3.1** Before taking up the Elephantine marriage contracts, we would do well to explain how we see them as fitting into the ongoing development of later Jewish law. The community whose life is reflected in the Elephantine legal papyri was a Jewish community, to be sure, but an enigmatic one, in some respects. Our approach has been informed by the pioneering study of Jacob N. Epstein, *Notizen zu den jüdisch-aramäischen Papyri von Assuan* (1908). Epstein was one of the great masters of modern Talmud scholarship, and at the same time, a consummate Aramaist, who was one of the first to attempt analysis of the Elephantine legal papyri. His methodology was very uncomplicated: He simply allowed the evidence to speak for itself!

The verdict was eminently clear: The terminology and formulary of the Elephantine Aramaic texts are, in fact, replete with analogues to Talmudic law, which, for its part, drew not only on Israelite-Jewish antecedents, but, as it became possible to show, on the Aramaic common law.

**3.2** A corollary question pertains to the reception of cuneiform law in first-millennium Israel, during the formative period of biblical law; and in due course, the reception of Aramaic law, as well. In some instances, we may be dealing with cuneiform elements already appropriated into biblical law, so that their presence in the Elephantine papyri was not the result of direct transfer from cuneiform law. It is uncertain as to how much of what we



know as biblical law and practice was also known to the Jews of Elephantine. This question certainly applies to our understanding of the Judean Desert contracts and the laws of the Mishnah, which explicitly resonate with Torah law. It is because of such considerations that precise, formal comparisons are so important. It is not merely a matter of the substance of the law, but of the formulation of legal documents, and their composition.

**3.3** For Elephantine, we take as our text of reference *TAD* II, B3.8, dated October, 420 B.C.E., while noting that its essential provisions are similar to the other two complete exemplars, B2:6, dated 445 B.C.E., and B3:3, dated 449 B.C.E. Four additional fragments of Aramaic marriage contracts are registered in *TAD* II as B6.1-4. These are all elaborate contracts, containing many derivative and distinctive provisions. Given the extent of the Neo-Babylonian evidence, edited by Martha Roth, it will not be necessary to select a single exemplar for analysis.

PN A-šú PN a-na <<sup>f</sup>>tab-lu-<tu> DUMU.SAL-su šá PN (ki-a-am) iq-bi-im-ma al-[k]i-im lu DAM.[at]-ti

“PN son of PN to Tablutu spoke (as follows): ‘Come to me! May you be a wife!’” (lines 1-3).

The assent of the bride is then recorded:

(ár-ki) <<sup>f</sup>>tab-lu-tu a-na PN taš-me-e a-n[a áš-šu-ti ](?) it-ti PN tu-uš-bu

“Thereupon, Tablutu to PN consented. She will reside together with PN as wife” (lines 4-5).

In Roth, no. 2, the direct proposal reads in part:

lu-ú áš-šá-tum <sup>1</sup>at-[ti] “May you be a wife” (line 6).

**3.5** We must realize that we are dealing with a syntactic difference between Akkadian, on the one hand, and Aramaic (and Hebrew, as well), on the other. The latter normally (though not always) employ the verb *h-y-h* / *h-w-h* “to be” in

## I. The Formal Proposal of Marriage and Related Declarations

**3.4** The complexity of this component in ‘dialogue documents’ has already been commented upon above (Comparative Analysis). One variable in its formulation pertains to the orientation of the proposal. P. Yadin 10 and the Tannaitic sources express a direct proposal; the groom speaks to the bride, herself, in the second person. It happens that all of the Elephantine contracts that we possess express an indirect proposal, generating third person address. The groom, or one speaking for him, such as his father, addresses one who is legally responsible for the intended bride, her father, mother, brother, or the like. That this was traditional is indicated by the fact that all but two (Roth, nos. 2 and 25) of the dialogue agreements in Roth’s collection express an indirect proposal. For purposes of comparison, Roth, no. 25 (Borsippa, 486 B.C.E.), containing one of the exceptional direct proposals, is particularly instructive:

formulas connoting assumption of marital status, whereas Akkadian consistently does not. In the Judean desert formula, a woman “becomes” a wife (*h-w-h l-*), and further, she belongs to someone, so that we often have “to become a wife to X.” A

variation on the Aramaic formula can be inferred from the divorce provisions of the Elephantine marriage contracts. Although none of the known Elephantine marriage contracts contains direct address by the groom to the bride, we may infer from the negative statements of the husband and wife in their respective initiations of divorce how a direct proposal of marriage would read. In the negative mode, the husband declares: לא תהוה לי אנתה "She shall not be to me a wife." For her part, the wife declares: לא אהוה לך אנתה "I shall not be to you a wife" (*TAD* II, B3.8:22, 25). A direct proposal from groom to bride, in the positive mode, if we had it, would undoubtedly read: הוי לי אנתה "Be to me a wife." Taking account of the aforementioned syntactic difference, the Neo-Babylonian and the Ara-

maic formulas are very close to each other.

**3.6** In Tannaitic sources, the Mishnah and Tosefta, we find, in place of proposals, a series of oral declarations, which are not part of the written *ketūbbāh*, *per se*. They state the fact of marriage as *fait accompli*: One of several such declarations states: הרי את לי לאיחא "Behold, you are to me as a wife" (Tosefta, *Qid-dūshîn*, 1:1, ed. S. Lieberman (1973: 276). Lieberman notes the manuscript variant: ונתנאל. "for wife-hood, in marriage." This is not a proposal of marriage, but a declaration confirming the acceptance of such a proposal. We learn this from documents expressing the indirect proposal. Let us compare the syntax of the indirect marriage proposal at Elephantine with that of most of the Neo-Babylonian marriage agreements:

(a) *TAD* II, B3.8- Elephantine:

אנה אתית עליך בביתך ושאלת מנך לנשן יהוישמע שמה אחתך לאנתו ויהבתה לי הי אנתתי ואנה בעל[ה] מן יומא זנה עד עלם

I came to you, in your house, and I asked from you Ms. Yehoyishma, by name, your sister, for wife-hood, and you gave her to me. She is my wife, and I am her husband from this day and forever (lines 3-4, cf.).

(b) Roth, no.11- Nabonidus (535-539 B.C.E):

PN, A-šú šá PN, a-na IGI PN, A-šú šá PN il-lik-ma ka-am-mu iq-bi um-ma: <sup>f</sup>ba-zi-ti NIN-ka nu-maš-ti bi in-nam-ma lu-ú DAM ši-i PN iš-me-šú-ma. <sup>f</sup>ba-zi-ti NIN-su nu-maš-ti a-na DAM-ú-tu id-da-áš-šú <sup>f</sup>ba-zi-ti DAM PN ši-i.

PN, son of PN, came before PN, son of PN, and spoke as follows: "Baziti, your sister, the lass, please give to me. Let her be a wife!" PN consented to him, and gave him Baziti, his sister, the lass, for wife-hood. Baziti, she is the wife of PN (lines 1-9).

**3.7** Note that in the Aramaic of Elephantine, marriage is declared to exist without recourse to the verb *h-w-h*; the woman in question does not "become" a wife, but is rather declared to be a wife after her hand was sought from her brother. Cf. the negation of this status in

Hosea 2:4: כי היא לא אשתי ואנכי לא בעלה "For she is not my wife, and I am not her husband."

**3.8** It is interesting to find in one of the Neo-Babylonian marriage agreements a personal elaboration on the usual 'dialogue' statements. Thus, Roth, no. 3:

DUMU-ú-a ia-a-nu DUMU ú-ba-<sup>v</sup> <sup>f</sup>ku<sup>l</sup>-la-a DUMU.SAL-ka bi-nam-ma lu-ú DAM-a ši-i

“I have no sons. I seek a son. Please give me Kulla, your daughter. Let her be a wife” (lines 4-7).

**3.9** As for the status of marriage, itself, it is termed *aššūtu* in Akkadian, and אנתו (*ʾintū-* feminine, absolute) in Aramaic. Thus, on the VERSO (line 45) of B3.8 from Elephantine we read: “The document of wife-hood (ספר אנתו) which ‘Ananiah, son of Meshullam wrote for Yehoyishma’.” In the declaration just cited above, from B3.8, the groom states that he is asking for the bride לאנתו “for wife-hood, marriage.” Aramaic אנתו has long been recognized as a calque of Akkadian *aššūtu*. In fact, an Aramaic docket of the Neo-Assyrian period from Nineveh, probably to be dated to the early seventh century B.C.E., already attests the Old Aramaic, abstract form ʾšt (=ʾaššūt, ʾiššūt) “marriage, wife-hood” (Fales 1986: 203). Later on, we find the Hebrew term אישות “wife-hood, marriage” in the Mishnah (*Nedārīm* 8:1) and

elsewhere in Tannaitic literature.

## II. Other elements of dialogue

**3.10** In none of the Neo-Babylonian marriage agreements does the ‘dialogue’ form extend beyond the proposal of marriage, itself, and related declarations. In the Elephantine Aramaic marriage contracts, however, recourse to the dialogue form extends to other provisions. We have already referred to statements initiating divorce so as to clarify their manner of expressing the status of marriage (see above, 4.3). But there is more to such statements. If the husband should rise up in the assembly (עדה) to declare his intention to divorce his wife, he would say:

שניח לאנתתי יהוישמע לא תהיה לי אנתת:

“I ‘hate’ my wife, Yehoyishma; she shall not be a wife to me” (B3.8, lines 21-22).

In parallel fashion, if the wife should initiate divorce, she would declare:

שניתך לא אהוה לך אנתת

“I ‘hate’ you; I will not be a wife to you!” (B3.8, line 25).

The contrast between the objective form and the ‘dialogue document’ can be shown by citing an actual third-person formulation of the very same statements in a neo-Assyrian marriage conveyance, which, like the Elephantine marriage con-

tracts, provides for mutual divorce. After recording that a certain man has given his daughter in marriage to a man, the document conditionally projects the initiation of divorce:

šum-ma <sup>mi</sup>šū-bi-t[ú a-n]a (?) PN ta-ze-e-ra  
“If Ms. Šubītu should hate PN-”

šum-ma PN ʾMÍ-šu<sup>1</sup> e-zi-ra  
“If PN should hate his wife-” (Postgate 1976: 105, no. 14, lines 47-50).

**3.11** In the Elephantine marriage contracts we also find first person, dialogue statements affirming that the *mōhar* has

been paid. This usually follows directly upon the marriage proposal and the declaration of marital status. Thus, B3:8,

lines 4-5:

ויהבת לך מהר אחתך יהוישמע כסף... על עליך [וטי]ב [לבב]ך בגו

“I have paid you the *mōhar* of Yehoyishma‘, your sister, silver in X-amount; it has come into you (=you have received it) and your heart is satisfied with it.”

**3.12** There are further elements of ‘dialogue’ at Elephantine. Should the wife’s brother, who had initially provided her dowry, ever seek to reclaim it, he would not to be allowed to do so; he remains obligated. The projected statement of the brother to his sister, the wife, reads as follows:

נכס[י]א אלה ברחמן יהבת ליהוישמע כען צבית אהנצל המו

“These properties I gave to Yehoyishma‘ as a gift of affection; Now, I desire to retrieve them!” (B3.8, lines 41-42).

In another instance, the orientation of the document actually shifts to the first person in stating specific provisions, and even contains internal quotations. Thus B2.6, lines 31-35:

ולא אכל אמר: “איתי לי אנתה אחרה להן מפטח<ח>יה ובנן אחרנן להו בנן זי תלד לי מפטחיה”. הן אמר: “איתי לי ב[נ]ו ואנתה אחרן להן מפטחיה ובניה” אנתן למפטחיה כסף... ולא אכל [אהנ]תר נכסי וקניני מן מפטחיה. והן העדת המו מנה לקבל ספרא [זנה] אנתן למפטחיה [כס]ף... באבני מלכא

And I will be unable to say: “I have another wife besides Miphtaḥiah, and other sons besides the sons Miphtaḥiah may bear me.” If I say: “I have a wife and sons other than Miphtaḥiah and her sons,” I must pay Miphtaḥiah silver in X-amount, according to the royal standard. And I will be unable to release my properties and possessions from Miphtaḥiah. And should I expropriate them from her in contravention of this document, I must further pay Miphtaḥiah silver in X-amount, according to the royal standard. (Cf. B3.3:13-14).

It would seem, therefore, that the ‘dialogue document,’ the form that dominates in the Neo-Babylonian cuneiform repertory, underwent significant development in the Elephantine Aramaic marriage contracts. Such development is evident not only in marriage contracts but in other types of Aramaic legal documents, as well. It represents an overall trend, one that has persisted throughout the centuries, and which fully impacted the Jewish *ketūbbāh*.

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