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Project TABS

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When Is a Man Allowed to Divorce his Wife?

Deuteronomy’s description of the circumstances of divorce is ambiguous. Thus, the Mishnah (m. *Gittin*9:10) records three different opinions on when a man is allowed to divorce his wife. What can we infer from the biblical text?

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*Le Get (*The Divorce) by Moshe Rynecki  circa 1930

Descriptions of Divorce in Deuteronomy 24:1–4

Most of what we know about divorce in biblical Israel comes from Deuteronomy 24:1–4, which prohibits a man from remarrying his ex-wife after she has been married to another man.[1] Although this passage does not legislate how divorce is to be enacted, the descriptions of divorce embedded in it shed light on the norms in Israel at the time when it was written:

דברים כד:אכִּי יִקַּח אִישׁ אִשָּׁה וּבְעָלָהּ וְהָיָה אִם לֹא תִמְצָא חֵן בְּעֵינָיו כִּי מָצָא בָהּ עֶרְוַת דָּבָר וְכָתַב לָהּ סֵפֶר כְּרִיתֻת וְנָתַן בְּיָדָהּ וְשִׁלְּחָהּ מִבֵּיתוֹ. כד:‎בוְיָצְאָה מִבֵּיתוֹ וְהָלְכָה וְהָיְתָה לְאִישׁ אַחֵר.כד:גוּשְׂנֵאָהּ הָאִישׁ הָאַחֲרוֹן וְכָתַב לָהּ סֵפֶר כְּרִיתֻת וְנָתַן בְּיָדָהּ וְשִׁלְּחָהּ מִבֵּיתוֹ…[2]

Deut 24:1If a man takes a wife and possesses her, and she fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house;  2 she leaves his household and becomes the wife of another man;  3 then this latter man rejects her, writes her a bill of divorcement, hands it to her, and sends her away from his house…

Several features of divorce stand out from this passage:

1. The divorce is initiated by the man; the woman is not depicted as having a say in the matter. (This seems to have been the norm throughout the ancient Near East.)[3]
2. The man enacts the divorce by giving the woman a “bill of divorcement”[4] (סֵפֶר כְּרִיתֻת).
3. The law also informs us of the motivations for the two divorces, which are described in two different ways:
	* The first man divorces his wife because “she fails to please him because he finds something obnoxious (עֶרְוַת דָּבָר, literally “the nakedness of something” or “a matter of nakedness”[5]) about her.”
	* The second man divorces her because he “rejects” or “dislikes” her (וּשְׂנֵאָהּ).

In describing the motivations for the divorces, the text offers some insight into the circumstances under which a man could divorce his wife. But the descriptions are not entirely clear and have been subject to different interpretations.

Philo and Josephus: Divorce for Any Reason

Philo of Alexandria (25 BCE–60 CE) and Josephus (37–100 CE) summarize this law in their writings, both suggesting that a man could divorce his wife for any reason.

Philo’s summary begins: “If … a woman having been divorced from her husband under any pretense whatever…” ([*Special Laws*](http://www.earlychristianwritings.com/yonge/book29.html)3.30–31, Yonge trans.). Similarly, Josephus writes: “He that desires to be divorced from his wife, for any cause whatsoever; and many such causes happen among men…” ([*Antiquities of the Jews*](http://penelope.uchicago.edu/josephus/ant-4.html), Whiston trans. 4.253).

The New Testament: Restricting the Grounds for Divorce

The Sermon on the Mount (Matt 5:31–32) refers to the law in Deuteronomy.  Jesus says:

It was also said, “Whoever divorces his wife, let him give her a certificate of divorce.” But I say to you that anyone who divorces his wife, except on the ground of unchastity, causes her to commit adultery; and whoever marries a divorced woman commits adultery.” (NRSV translation)

As elsewhere in this portion of the Sermon on the Mount, Jesus cites a law from the Torah and then offers a more stringent teaching,[6] namely that a man may divorce his wife only on the ground of unchastity. Implicitly, Jesus seems to understand the verse in Deuteronomy much as Philo and Josephus understand it: as allowing for divorce on any grounds. It is only Jesus’s new teaching that restricts divorce to this specific circumstance.

The Mishnah: Debating the Grounds for Divorce

While these earlier sources all understand Deuteronomy 24 as allowing a man to divorce his wife for any reason, the Mishnah (m. *Gittin* 9:10) records a dispute on this point, based on the motivation given in verse 1: אִם־לֹא תִמְצָא־חֵן בְּעֵינָיו כִּי־מָצָא בָהּ עֶרְוַת דָּבָר, “She fails to please him because he finds something obnoxious (*ervat davar*) about her.”

Beit Shammai (ערוה)

Beit Shammai suggest that a man may divorce his wife only if she has committed a sexual transgression, apparently adultery:

בֵּית שַׁמַּאי אוֹמְרִים: לֹא יְגָרֵשׁ אָדָם אֶת אִשְׁתּוֹ אֶלָּא אִם כֵּן מָצָא בָהּ דְּבַר עֶרְוָה, שֶׁנֶּאֱמַר, כִּי מָצָא בָהּ עֶרְוַת דָּבָר.

Beit Shammai say: A man must not divorce his wife unless he finds that she has done a matter of *ervah*, as it says: “Because he finds *ervat davar*about her.”[7]

Shammai focuses on the term *ervah*, which literally means “nakedness.” In rabbinic parlance, *ervah* refers to a forbidden sexual relationship, a usage that derives from the biblical expression ‏לְגַלּוֹת עֶרְוָה, “to uncover nakedness,” which describes sexual transgressions in Leviticus 18 and 20. This is the same position taken by Jesus in the Sermon on the Mount, except whereas Jesus presents it as more stringent than the Torah law, Beit Shammai is presenting as reflecting the Torah law.

Beit Hillel (דבר)

Beit Hillel also derive their interpretation from the phrase “because he finds *ervat davar*about her.” However, they focus on the term *davar*, “thing” or “something”:

וּבֵית הִלֵּל אוֹמְרִים, אֲפִלּוּ הִקְדִּיחָה תַבְשִׁילוֹ, שֶׁנֶּאֱמַר, כִּי מָצָא בָהּ עֶרְוַת דָּבָר.

Beit Hillel say: Even if she burns his food, as it says: “Because he finds *ervat davar*about her.”

The term *davar* suggests to Beit Hillel that a man must have some grounds to divorce his wife, but they can presumably be any grounds at all—even something as minor as burning the food.[8]

Rabbi Akiva (לא תמצא חן בעיניו)

Rabbi Akiva takes the most “lenient” position—from the husband’s perspective—declaring that a man may divorce his wife for essentially no reason at all:

רַבִּי עֲקִיבָא אוֹמֵר: אֲפִלּוּ מָצָא אַחֶרֶת נָאָה הֵימֶנָּה, שֶׁנֶּאֱמַר, וְהָיָה אִם לֹא תִמְצָא חֵן בְּעֵינָיו:

Rabbi Akiva says: Even if he finds another more beautiful than she, as it says: “She fails to please him.”

In other words, the husband does not need to have any specific complaint about his wife, even the most trifling one, but can divorce her merely because he is no longer interested in her or because he finds someone more attractive.

R. Akiva bases his interpretation on the first part of the verse, the phrase אִם לֹא תִמְצָא חֵן בְּעֵינָיו, “she fails to please him,” literally, “she does not find favor/beauty in his eyes,” a purely subjective criterion.

Akiva ignores the second phrase, “because he finds something obnoxious about her.” Most likely, he assumes that this phrase is simply meant as one illustrative example of why a man might divorce his wife, not a prescriptive rule limiting when divorce is permitted.

Modern Scholarship

Many modern scholars understand*ervat davar*much like Beit Shammai, as indicating some sort of sexual impropriety, if not outright adultery. Samuel Rolles Driver, for example, writes that the woman is guilty of “immodest or indecent behaviour” that is “short of actual unchastity.”[9]Others, including Jacob Rabinowitz, Arie Toeg, and Ekhert Otto, maintain that it refers to adultery.[10]

Scholars who take this position frequently cite Beit Shammai as precedent for their understanding.[11] In addition, many Christian scholars read this verse in light of the related passage in Matthew.[12] Driver exemplifies both of these tendencies. He draws on the Mishnah to support his understanding of the law as limiting divorce to cases of sexual impropriety, while also viewing the law as laying the groundwork for Jesus’s more expansive teaching.

*Ervat Davar*in Deuteronomy 23:15

Many commentators from Beit Shammai onward have understood *ervat davar*in light of the expression “to uncover nakedness” in Leviticus 18 and 20. However, this is problematic, not only because the two expressions are different but also because the term *ervah*may have different connotations in the Holiness Collection and the Deuteronomic Law Collection.

In fact, the term *ervat davar*also appears elsewhere in Deuteronomy. Deuteronomy 23 explains that when making a war camp, it is important to protect the camp from any offensive thing (כל דבר רע), and specifically lists nocturnal emissions and feces.

Thus, any soldier with a nocturnal emission must leave the camp until he has washed himself the next day and can then return around sunset the next evening (when he will be pure again). Also, anyone who needs to defecate must leave the camp with a shovel and bury his feces outside the camp. The text concludes these regulations as follows:

דברים‎כג:טו‏ כִּי יְ-הוָה אֱלֹהֶיךָ מִתְהַלֵּךְ בְּקֶרֶב מַחֲנֶךָ לְהַצִּילְךָ וְלָתֵת אֹיְבֶיךָ לְפָנֶיךָ וְהָיָה מַחֲנֶיךָ קָדוֹשׁ **וְלֹא־יִרְאֶה בְךָ עֶרְוַת דָּבָר**וְשָׁב מֵאַחֲרֶיךָ׃

Deut 23:15 Since YHWH your God moves about in your camp to protect you and to deliver your enemies to you, let your camp be holy; **let Him not find anything unseemly (*ervat davar*) among you** and turn away from you.

According to this passage, because God traveled in the Israelite camp, it was important for it to be kept free of impurity or uncleanliness.

Connecting the Two Uses of *Ervat Davar*

The connection between semen and excrement and the grounds for divorce in Deuteronomy 24:1 is unclear. Toeg, noting the connection to “private parts,” sees this verse as supporting his understanding of *ervat davar*as connoting adultery. Driver, on the other hand, observes that what is described in Deuteronomy 23 is not “immoral” but only “unbecoming” and sees that as consistent with his view that the woman is guilty of immodest behavior that is not legally prohibited. John Walton, noting the connection to ritual impurity, suggests that the woman suffers from a long-term menstrual irregularity that renders her ritually impure.[13]

Driver’s observation is salient: *ervat davar*here does not seem to connote sinfulness. It does not necessarily even refer to behavior. Walton’s suggestion may be in the right category, but it seems too specific. Semen is ritually polluting, but excrement is not. Most likely, *ervat davar*is a general term for something subjectively repellent.[14] The man has simply discovered something about his wife that he does not like.

The Second Divorce

While the meaning of *ervat davar*remains somewhat ambiguous, the motivation for the second divorce is described quite straightforwardly: וּשְׂנֵאָהּ הָאִישׁ הָאַחֲרוֹן, “then this latter man dislikes/rejects her.” The root ש.נ.א, which means “hate” in modern Hebrew, is sometimes used in the Bible to describe a man’s rejection of his wife or his preference for another, not necessarily for any specific reason.

Genesis 29:31, 33 state that Leah was “rejected” or “disliked” (‏שְׂנוּאָה) by Jacob. Similarly, Deuteronomy 21:15-17 states that if a man loves one of his wives and rejects or dislikes another, and the disfavored wife bears his firstborn son, he cannot give the preferred wife’s son the greater portion of his inheritance; it must go to the firstborn.[15] Finally, Deut 22:13–19 describes a case in which a man marries a woman and decides that he dislikes her and falsely accuses her of not being a virgin.  All of these cases reflect subjective dislike.

Westbrook: Two Reasons for Divorce

Raymond Westbrook, the late scholar of ancient Near Eastern law, suggests that the two cases in Deuteronomy 24 present two different scenarios: the first divorce in Deuteronomy 24 has objective grounds—though not necessarily sexual impropriety—while the second divorce has no objective or legal grounds. He connects the first case to the Laws of Hammurabi 141:

If the wife of a man… accumulates a private hoard, scatters her household, slanders her husband… he may divorce her without giving her anything, not her journey-money, not her divorce-money.

But even if Westbrook is correct in understanding *ervat davar*as referring to this type of substantive misbehavior, the fact remains that the text also describes as its second case a divorce without grounds. This indicates that in Israelite society, a man could divorce his wife simply because he disliked her.

Unilateral Divorce Left Women Very Vulnerable

Deuteronomy does not actually *legislate* that a man may divorce his wife for any reason. That is simply an assumption made by this passage, presumably on the basis of prevailing practice. Nevertheless, whether it is being legislated or assumed, the implication of the verse is that unilateral divorce of a wife by a husband without cause was a possibility.

If so, this would have been a serious problem for women in antiquity, who, without husbands to provide for them, could be in a very precarious economic position. Deuteronomy repeatedly lists widows among the economically disadvantaged members of society whom Israelites are instructed to care and provide for; it may have been worse for divorcées.[16]

Deuteronomy does list limited cases in which a man is prohibited from divorcing his wife: if he falsely accuses her of not being a virgin (Deut 22:13–19), or if he rapes her when she is still a virgin (Deut 22:28–29).[17]Although today such an arrangement would be considered far from ideal, in biblical times it would have at least offered the woman some financial protection. But the Torah offers no such protection for women in the vast majority of marriages.

**Postscript**

Later *Halakhah* Protects Women but Still Enables Men

The rabbis instituted regulations in *halakhah*(Jewish Law) to protect women from the precarious position in which divorce placed them. Perhaps the most notable is the requirement of a marriage contract (*ketubah*) allowing a divorcée to keep her dowry and any property she brought into the marriage as well as providing her with continued financial support. And in the eleventh century, the Ashkenazi community prohibited divorce without the woman’s consent, as part of what is called “the decree of Rabbeinu Gershom.”

Nevertheless, *halakhah* ultimately supported the most lenient interpretation of Deuteronomy 24:1, allowing a man to divorce his wife on virtually any grounds. More important, it still left men with greater power, since only they could initiate divorce. In modern times, with the advent of civil divorce in Western countries, this has left religious Jewish women vulnerable to becoming *agunot*, “chained” to husbands who refuse them a religious divorce after the couple is civilly divorced.

Particularly in the Orthodox world, this has become the contemporary ethical challenge regarding divorce, with various solutions such as halakhic prenuptials and conditional marriages as just two of many creative attempts to rectify this millennia-old inequity.[18]

[View Footnotes](https://www.thetorah.com/article/when-is-a-man-allowed-to-divorce-his-wife)

1. I discuss possible reasons for this law in my essay [“Remarrying Your Ex-Wife,”](http://thetorah.com/remarrying-your-ex-wife/) *TheTorah.com* (2017).
2. The text continues:

דברים כד:ג…אוֹ כִי יָמוּת הָאִישׁ הָאַחֲרוֹן אֲשֶׁר־לְקָחָהּ לוֹ לְאִשָּׁה׃ כד:דלֹא־יוּכַל בַּעְלָהּ הָרִאשׁוֹן אֲשֶׁר־שִׁלְּחָהּ לָשׁוּב לְקַחְתָּהּ לִהְיוֹת לוֹ לְאִשָּׁה אַחֲרֵי אֲשֶׁר הֻטַּמָּאָה כִּי־תוֹעֵבָה הִוא לִפְנֵי יְ-הוָה וְלֹא תַחֲטִיא אֶת־הָאָרֶץ אֲשֶׁר יְ-הוָה אֱלֹהֶיךָ נֹתֵן לְךָ נַחֲלָה׃

Deut 24:3 …or the man who married her last dies.  4Then the first husband who divorced her shall not take her to wife again, since she has been defiled — for that would be abhorrent to YHWH. You must not bring sin upon the land that YHWH your God is giving you as a heritage.

1. Several ancient Near Eastern law codes discuss instances of men divorcing their wives, with no hint that the woman plays an active role. See, e.g., Laws of Hammurabi 138–40; Code of Ur-Nammu 6–7. See also these Sumerian and Old Assyrian divorce documents: http://jewishchristianlit.com/Topics/Contracts/.
2. There are some extant divorce documents from the ancient Near East (see n. 3), but there is not, to my knowledge, any external evidence of the practice described here, in which the man gives a divorce document directly to his wife.
3. This latter would be translating the term as a “reversed construct state” (סמיכות הפוכה), also called “genitive of genus,” which is when the subordinate element of the clause comes before the superordinate element. This is a very unusual form in biblical Hebrew. Some other possible examples would be Prov 14:1 (חכמות נשים as “women of wisdom” instead of “wisest of women”) and Prov 15:20 (כסיל אדם as “a foolish man” instead of “a fool of a man”). See discussion in Bruce K. Waltke and M. O’Conner, *An Introduction to Biblical Hebrew Syntax* (Winona Lake: Eisenbrauns, 1990), 153-154 [9.5.3i]. The form became more common among medieval *paytanim*/poets (see discussion [here](https://www.safa-ivrit.org/writers/etsion/segel.php).)
4. See the preceding vv. 27–28: ““You have heard that it was said, ‘You shall not commit adultery.’ But I say to you that everyone who looks at a woman with lust has already committed adultery with her in his heart.” Aaron M. Gale, in his commentary on Matthew in the *Jewish Annotated New Testament*compares this entire section of the Sermon on the Mount, called “the Antitheses” to the rabbinic principle of “making a fence around the Torah” (m. *Avot* 1:1). Amy-Jill Levine and Marc Zvi Brettler, eds. *The Jewish Annotated New Testament: New Revised Standard Version Bible Translation,*2nd Edition (New York: Oxford University Press, 2017), 20.
5. In paraphrasing *ervat davar* as *devar ervah* (“a matter of *ervah*”), Beit Shammai seem to be understanding the phrase as a reversed construct (see n. 5).
6. That Beit Hillel derive this interpretation from the term *davar*is explicit in a *baraita* in b. *Gittin* 90a. According to the *baraita*, Beit Hillel understands *ervah*in the same way as Beit Shammai—as referring to adultery—but maintain that it functions in this verse not to limit divorce to cases of adultery but rather to teach that even in cases of adultery, a woman may remarry.
7. Samuel Rolles Driver, *Deuteronomy* (Edinburgh, T&T Clark, 1909), p. 271.
8. Moshe Weinfeld, *Deuteronomy and the Deuteronomic School*(Winona Lake, Ind.: Eisenbrauns, 1992), 269–70, n. 4; Ekhert Otto, Das Verbot der Wiederherstellung einer geschiedenen Ehe: Deuteronomium 24, 1–4 im Kontext des israelitischen und judäischen Eherechts,” *Ugarit-Forschungen*24 (1992): 301–10. Other advocates of this view are Jacob A. Rabinowitz, “The ‘Great Sin’ in Ancient Egyptian Marriage Contracts,” *JNES*18 (1959): 73; and Arie Toeg, “Does Deuteronomy XXIV, 1–4 Incorporate a General Law on Divorce?” *Dine Israel*2 (1970): vi–ix [Hebrew].
9. See Driver, Rabinowitz, and Toeg, cited above.
10. E.g., C. F. Keil and F. Delitzch, *The Pentateuch*(Edinburgh: T&T Clark, 1967), 416–19; Anthony Phillips, *Ancient Israel’s Criminal Law: A New Approach to the Decalogue*(Oxford: Blackwell, 197), 111–12; Richard M. Davidson, “Divorce and Remarriage in Deuteronomy 24:1–4,” *JATS*10 (1999): 2–22; and Driver, cited above.
11. John H. Walton, “The Place of the Hutqattal Within the D-Stem Group and Its Implications in Deuteronomy 24:4,” *Hebrew Studies*32 (1991): 7–17.
12. On this passage, see Alan Cooper’s essay [“Keeping Excrement Out of God’s Presence”](http://thetorah.com/keeping-excrement-out-of-gods-presence/) (*TheTorah.com*[2015]). Cooper observes that “the first [law] addresses what looks like a straightforward matter of ritual impurity … The second seems to address the more amorphous concept of excrement being disgusting.”
13. Editor’s note: For more on this law, see Kristine Garroway, [“Does the Birthright Law Apply to Reuben? What About Ishmael?”](https://thetorah.com/does-the-birthright-law-apply-to-reuben-what-about-ishmael/) *TheTorah.com*(2018).
14. See especially Deut 24:19, 20; 26:12–17. The vulnerable position of the widow is also presumed by Exod 22:21; Deut 14:29; 16:11, 14; 24:17; 27:19; Isa 1:17, 23; Jer 7:6; 22:3; Ezek 22:7; Zech 7:10; Mal 3:5; Ps 68:6; 94:6; 146:9.
15. On this law, see Zev Farber’s essay [“Marrying Your Daughter to Her Rapist”](http://thetorah.com/marrying-your-daughter-to-her-rapist/) (*TheTorah.com*[2014]) and my essay [“The Rape of the Unbetrothed Virgin in Torah and Assyrian Law: A Comparative Analysis”](http://thetorah.com/rape-unbetrothed-virgin/)(*TheTorah.com*[2013]).
16. On various approaches to this problem by Orthodox and Conservative rabbis, see Soriya Daniels, [“Potential Solutions to the Agunah Problem,”](https://www.myjewishlearning.com/article/potential-solutions-to-the-agunah-problem/)*My Jewish Learning*.