

Introduction to Tractate Gittin

The writ of divorce, to which reference is made at Deu. 24: 1–4, severs the sacred relationship of husband and wife in Heaven’s eyes. The Mishnah and Talmud take up the provision of the document and the rules governing its transmission in *Gittin*.

- I. The writ of divorce
 - A. Transmitting the writ of divorce
 - B. The writ of divorce and the writ of emancipation of slaves
 - C. Preparing a writ of divorce
- II. Rules of agency and writs of divorce
- III. Rulings pertinent to the writ of divorce made for good order and other similar rulings
- IV. The slave
- V. The wife’s receipt of the writ of divorce
- VI. The husband’s instructions on the preparation and delivery of the writ
 - A. Instructing agents to prepare the writ
 - B. The conditional writ of divorce
- VII. The impaired writ of divorce
 - A. The writ of divorce that is subject to doubt
 - B. The writ of divorce that is subject to flaws or imperfections
 - C. An invalidating restriction in a writ of divorce
 - D. Confusing writs of divorce

Because the formation, transmission, and preservation of life constitute the critical issue with which the law is concerned, it understands that the purpose of a woman’s consecration to marriage is to produce children. *Gittin* takes for granted that both parties must concur in the consecration to marriage, which consecration is a “sanctification” or “setting apart,” indeed, a “making holy” for a particular purpose. More particularly the woman being betrothed to the man agrees on that occasion that she intends to carry out the responsibilities that her betrothal is meant to make possible. The sanctification of a woman accordingly takes place when the woman consents. Her consent means that she is available for that man and is not otherwise consecrated nor prohibited by rules of consanguinity or incest. Designating a woman as “holy” or “set apart” for a particular man requires the woman’s participation through her assent. Put in the negative, unlike a beast sanctified for the altar, a woman enters the relationship of sanctification only when she agrees to do so. The consecrated relationship thus involves affirmative intentionality on the part of both parties.

This mutually affirmative intentionality is not the case when it comes to the writ of divorce. The desacralization of the relationship is the point at which the woman is no longer consecrated to her husband, but becomes available to another man of her choice (within the prohibitions of incest). In this desacralization the man (by divorce) or God (by

death), but not the woman, intervenes. The husband on his own initiative acts to desanctify what he had intentionally previously sanctified. Scripture does not contemplate a role for the woman in its account of how the relationship of sanctification to a particular man is secularized, that is, how it is nullified.

Even though only the husband may initiate the writ of divorce, have it written, and have it delivered, the law provides the wife with an important part in the process of ordinary divorce. According to *Gittin*, the woman has

- (1) the right to dictate the conditions of delivery;
- (2) the right to be correctly informed of the terms of the divorce; and
- (3) the responsibility to dictate the circumstances under which she will receive the document.

With these rights and responsibilities, however, come severe and long-lasting penalties for a woman whose writ of divorce turns out to be impaired (and so invalid), who on the strength of such a document remarries. The woman must thoughtfully exercise her power within the transaction, for she is not only given a role in the process but also bears a very heavy responsibility in the correct implementation of the divorce.