DID MOSES PERMIT DIVORCE?
MODAL wēqāṭal AS KEY TO NEW TESTAMENT
READINGS OF DEUTERONOMY 24:1-4

Andrew Warren

Summary

The New Testament discussions of divorce, both in Matthew 19 and elsewhere, are dominated by a distinction between Permission and Obligation. It is generally assumed that the debate arises from a ‘presupposition’ of divorce in Deuteronomy 24. An improved syntactic analysis of the Old Testament text shows Moses to have in fact issued a specific directive on divorce, but in such a way that it was open to the kind of misunderstanding that we see corrected by Jesus. This analysis is supported by all the New Testament texts. By applying the categories of linguistic modality to main-clause verbs, verbs of reporting, verbs of divorcing and conditional clauses, it is possible to shed more light on how Jesus and the Pharisees dealt with the Old Testament text, and to show just what was wrong with the Pharisees’ understanding of Hebrew grammar.

I. Modal Force: Permissive and Obligative

The study of modality conventionally distinguishes between the Epistemic (modality of knowledge, e.g. subjunctive) and the Deontic (modality of volition, e.g. imperative). Each of these systems includes weak (‘may’) and strong (‘must’) modal force. In Epistemic terms, these represent respectively Possibility and Necessity; in Deontic terms, Permission and Obligation. Hence the following schema:

1This paper is greatly indebted to discussion with, and forthcoming publications of, David Instone Brewer, Research Librarian at Tyndale House.
3These and other key terms are capitalised in the following for clarity.
The Deontic morphological mood, the ‘imperative’, may be used to express weak or strong modal force—‘Come in!’ may be an expression of Permission or Obligation. These categories may help in understanding New Testament interpretations of Old Testament instructions on divorce.4

II. New Testament Interpretations:
Pharisees reading Obligative and Jesus Permissive

In Matthew 19, on the question of Moses’s attitude to divorce, we find Jesus correcting the Pharisees’ Obligative ἐντέλλω, ‘command’, to Permissive ἐπιτρέπω, ‘allow’:

Some Pharisees came to him, and to test him they asked, ‘Is it lawful for a man [εἰ ἔξεστιν ἀνθρώπω] to divorce his wife for any cause?’... They said to him, ‘Why then did Moses command us to give a certificate of dismissal and to divorce her?’ [τι σὺν Μωϋσῆς ἐνετέλλατο δοῦναι βιβλίον ἀποστασίον καὶ ἀπολύσαι αὐτήν;] He said to them, ‘It was because you were so hard-hearted that Moses allowed you to divorce your wives [ὅτι Μωϋσῆς πρὸς τὴν σκληροκαρδίαν ύμῶν ἐπέτρεψεν ύμῖν ἀπολύσαι τὰς γυναίκας ύμῶν], but from the beginning it was not so....’ (Mt. 19:3-9, NRSV)

Hays comments on these readings of the Law as follows:

The distinction between permission and command, marked by the verbs employed in this exchange, provides the basis for Jesus to escape the charge of opposing Moses: the Torah

---

4These categories are also applied to the Hebrew of the Psalms in my doctoral thesis, and to other New Testament texts at the end of this paper.
certainly does not mandate divorce. Indeed, the passage in question, Deuteronomy 24:1-4, presupposes the practice of divorce and merely prohibits a man from remarrying his divorced wife after an intervening second marriage; that is the only commandment actually stated in the passage. The certificate of divorce was no doubt originally intended as a document of legal protection for the woman, proving that she was free to remarry; again, however, this is presupposed rather than legislated by Deuteronomy 24:1.5

In the following, I hope to show that, far from ‘presupposing’ the procedure for divorce, Deuteronomy 24:1 does in fact legislate upon it, and, moreover, in such a way that both ‘permission and command’ can naturally be read. I try to show from a grammatical perspective why a Permissive reading must be correct.

III. Deuteronomy 24 wēqāṭal Permissive or Obligative

Deuteronomy 24:1-4 is a case law, prohibiting remarriage to one’s former wife after she has meanwhile remarried and been divorced again. The syntax of these verses is mostly unmarked, being a series of wēqāṭal clauses. I here suggest a reanalysis of the syntax, which gives a new, Deontic main-clause status to the first mention (v. 1bβ) of the tripartite procedure for a legally valid divorce.

1. Traditional Reading: wēqāṭalas Conditional Protasis

The structure of this law has been traditionally understood, since the Septuagint, as a number of protases, leading up to one apodosis in v. 4. So, for example, LXX, RSV, NIV, NASB:

When a man takes a wife and marries her, if then she finds no favour in his eyes because he has found some indecency in her, and he writes her a bill of divorce and puts it in her hand

42 TYNDALE BULLETIN 49.1 (1998)

and sends her out of his house... then her former husband... may not take her again... (Dt. 24:1-4, RSV)

According to this reading, Moses makes no ruling on the Permissibility or otherwise of divorce. Rather, the whole procedure (‘if... he writes... and puts... and sends...’) occurs in a subordinate clause as a ‘presupposed’ (so Hays above) social convention. As Yaron writes,

The execution of a bill of divorce... is mentioned only obiter, as part of the relevant facts of the case.... Only the beginning of verse 4 is taken up by the operative provision.6

2. New Reading: weqatlas Modal Apodosis

A textlinguistic appreciation of the various shifts in grammatical subject (underlined below) and certain patterns of repetition tends to suggest a new reading of Deuteronomy 24:1-4, based on four levels of conditional protasis, all finally resolved in v. 4.7


7P = protasis; A = apodosis; subordinate clauses are indented and in smaller type. An alternative analysis might treat v. 4, within the larger apodosis (vv. 1b-4), as resolving the compound protasis vv. 1b-3 (ב) thus:

1a When

1b THEN הדוה... IF (ב)

1bβ THEN ... IF (ב)

2 And IF (ב)

3 and IF (ב)

or IF (ב)...

4 ... THEN...

My reading of 1bβ as apodosis is unaffected.
When a man takes a woman and marries her:

she doesn't find favour in his eyes because he has found some indecency in her,

he may must write her a certificate of divorce, put it in her hand and send her from his house.

she goes out of his house and goes and becomes [the wife] of another man the second man hates her and writes her a certificate of divorce, puts it in her hand and sends her from his house,

the second man dies, who has taken her as his wife, the first husband, who sent her away, cannot again take her to be his wife after she has been made to declare herself to be unclean for that is an abomination before the Lord.

Thus you will not bring guilt on the land which the Lord your God is giving to you as an inheritance.

The traditional reading is undoubtedly correct in considering v. 4 (anticipated in v. 1b) the principal apodosis of the text. However, the weqatal form used in v. 1, הבורא האב, which the traditional reading understands as coordinate ('and if he

---

8Declarative, or more properly, 'delocutive' (D.R. Hillers, 'Delocutive Verbs in Biblical Hebrew', JBL 86 (1967) 320-24) hothpael, that is, hothpael interpreted as equivalent to hophal. So Bauer-Leander, 285 §38j' and (tentatively) Joüon-Muraoka, 159 §33h; contra J.H. Walton, 'The Place of the hutqattel within the D-Stem Group and its Implications in Deuteronomy 24:4', HS 32 (1991) 7-17 (who reads 'after she has been made to declare herself to be unclean'), Bergstrasser, II 99 §g note (who reads as equivalent to hithpael) and Meyer, 2.156 §81.4c (who reads as causative reflexive). This is important, since it supports Westbrook's interpretation of the first divorce as having been based on a legal pronouncement of her uncleanness (עשתה דבע).
writes'), is also the standard verbal form, especially after a conditional marker such as ב or על ("if"), for marking a Deontic apodosis ('then he may/must write'). Therefore, protasis and apodosis here need to be distinguished by means of lexis and discourse-level features, in particular, by shift in main-clause subject.

The opening formula ... "ל, 'When...' (1P), is often used as the introduction to case laws, and can be read as a title/topic to which השתייה, 'and it may/must be...', introduces the text/comment (anticipating v. 4). The next protasis (2P) is then clearly marked by ב, 'if...', and a subject-shift (Man #1 to Woman).

The first apodosis (2A) can be argued to begin with הבנה as follows. Firstly, the detailing of all three elements ('write... put... and send') shows that the focus here is on the procedure for divorce, not the mere fact of it—this is a stipulation, not a presupposition. Second, 'not finding favour' naturally infers that the husband will act, especially if the (indecency) is a sexual impropriety; if 'write... put... and send' were coordinate to this, they would be a superfluous reference to the implementation of his 'not finding favour'. The text is not saying 'If he doesn't like her, and if, what's more, he divorces her', but rather, 'If he doesn't like her, then he may/must write... put... and send...'. Thirdly, there is another subject-shift here (Woman to Man #1).

The next protasis (3P) is marked by repetition of הבנה ('and if she goes out of his house') after the preceding הבנה הבנה ('and send her from his house') and a subject-shift (Man #1 to Woman). The next subject-shift (Woman to Man #2) marks a distinct sub-protasis (4P1), within which the procedure

---

9See, for example, after ב: Ex. 21:8a, 11, 23; after על: Ex. 21:35; Dt. 17:4b (so NIV), 5. B.K. Waltke and M. O'Connor, An Introduction to Biblical Hebrew Syntax (Winona Lake: Eisenbrauns, 1990) 526 §32.2.1b.

10Or, more idiomatically, 'shall', which, it should be noticed, is also volitional, not a pure future (if such exists!).

WARREN: Did Moses permit Divorce? 45

for divorce is spelled out, though its status is this time clearly that of ‘given’ information. The repetition of רָאָשׁ הָאָרֶץ ('the second man') (4P2) shows that 3a and 3b are parallel, both following on from the conditional force of 3P. Finally, the main apodosis is clearly v. 4, marked by prohibitive נָלַל, the modal verb בָּל (‘can’) and a last subject-shift (Man #2 to Man #1).

The various levels of conditional dependency and their subject-shifts may be summarised as follows:12

<table>
<thead>
<tr>
<th>1P</th>
<th>When M1 marries W</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>⇒THEN...</td>
</tr>
<tr>
<td>2P</td>
<td>IF W displeases M</td>
</tr>
<tr>
<td>2A</td>
<td>⇒THEN M1 may/must divorce W</td>
</tr>
<tr>
<td>3P</td>
<td>¬IF W marries M2</td>
</tr>
<tr>
<td>4P1</td>
<td>¬IF M2 dislikes and so divorces W</td>
</tr>
<tr>
<td>4P2</td>
<td>¬IF M2 dies</td>
</tr>
<tr>
<td>1-2-3-4A</td>
<td>⇒ T H E N M1 may not marry W.</td>
</tr>
</tbody>
</table>

The complexity lies in the way each condition depends on the preceding one, so that the final apodosis is in fact dependent upon and resolves all four levels of condition: the title (1P), the first marriage and divorce (2P/A), the second marriage (3P), and the second divorce or bereavement (4P1/2). In other words, the final ruling ‘he may not marry her again’ is only applicable if the four preceding compounded conditions have been fulfilled—if a man marries a woman (1P), and divorces her (2P/A), she remarries (3P) and is divorced again or bereaved (4P).13

Within this context, it has been shown that v. 1 ‘write... put... and send’ is to be understood as a first apodosis, with the full volitional force of the weqatal form. In contrast to the reading of LXX, RSV etc. above, then, I read:

When a man takes a woman and marries her: If she doesn’t find favour in his eyes, because he’s found some indecency in her, then he may/must write [למַלְכָּה] her a certificate of divorce, put it [ותַנָּה] in her hand, and send her [לָאָדוֹת] from his house.

12Compare Westbrook, ‘Restoration of Marriage’, 388.
13In Je. 3:1 and Mt. 5:32, the first marriage (1P) and the second divorce (4P) are simply assumed.
3. הָלָה as Modal: Permissive or Obligative

In contrast to LXX, which simply presupposes the procedure for divorce, we have seen that MT as understood above does in fact stipulate a procedure. Only this reading could have given rise to the Permission/Obligation debate found in the New Testament, and this ambiguity lies in the weqātal form of הָלָה (‘he may/must write... put... and send...’) in Deuteronomy 24:1. Like yiqtol, weqātal most often (if not always) has a modal meaning, which, like that of the subjunctive in many languages, covers the entire modal range from Permissive (‘he may’) to Obligative (‘he must’).

Thus the most literal version of Deuteronomy 24:1 found in the New Testament in fact appears in Matthew 5:31 (similarly 1 Cor. 7:15 and Josephus, Ant. 4:253):

It was also said, ‘Whoever divorces [ὁς ἀν ὀπολύσῃ] his wife, let him give [δότω] her a certificate of divorce.’ (Mt. 5:31, NRSV)

The volition to divorce implied by the Hebrew condition אֲשֶׁר לָא[Y דְ]אָמַר נַעַה (‘If she doesn’t find favour in his eyes’) is expressed here with the subjunctive ὁς ἀν ὀπολύσῃ (‘Whoever would divorce’14). The modality of the weqātal apodosis ... לָא (‘then he may/must write... put’15) then corresponds to that of the third-person imperative δότω (‘let him give’). Thus this New Testament text confirms my reading of Deuteronomy 24:1b as an apodosis, and of the weqātal form as volitional. The Greek third-person imperative (like the English imperative ‘Come in!’ under 1 above) has the full modal range from Permission to Obligation, as is attested in, for example, Robertson’s list of functions of the imperative: ‘Command or

---

14Contra NRSV, which appears to read the subjunctive as due to the indefinite subject.
15The Hebrew verb here, נָה, is of course usually translated ‘give’; it appears here as ‘put’ purely for the sake of English idiom with the locative complement ‘in her hand’.
WARREN: Did Moses permit Divorce? 47

Exhortation’, ‘Prohibition’, ‘Entreaty’, ‘Permission’ and ‘Concession or Condition’.16

The interpretations of Deuteronomy 24:1 ...ثַּתְמָהוּ אֲשֶׁר considered under Section II above may be summarised as follows:

1. Conditional Protasis (‘if he writes...’)
   'Εὰν... γράψει... καὶ δόσει... καὶ ἔξαποστελέι... (LXX)
2. Permissive Apodosis (‘then he may write...’)
   ἐπέτρεψεν... (γράφας καὶ) ἀπολύσαι... (Mt. 19:8//Mk. 10:4)
3. Obligative Apodosis (‘then he must write...’)
   ἐνετείλατο δούναι... καὶ ἀπολύσαι... (Mt. 19:7)

The first interpretation has been ruled out above by discourse analysis of MT, the wording of the dispute in Matthew 19//Mark 10, and the version in Matthew 5. The second and third interpretations are both possible in the third-person imperatives of Matthew 5 and 1 Corinthians 7:15;17 in Mark 10, the Pharisees read Permissive, whilst in Matthew 19, as we have seen, the Pharisees read Obligative and Jesus Permissive.18

17Similarly, Josephus, Ant. 4:253.
18A brief note on Mk. 10 is in order here, since it appears to present the roles as exactly the reverse of those in Mt. 19. It is true, as stated above, that the Pharisees here express a Permissive interpretation (ἐξεστίν, ἐπέτρεψεν), but not, in fact, that Jesus expresses the Obligative. The text reads as follows:

Some Pharisees came, and to test him they asked, ‘Is it lawful [ei ἐξεστίν] for a man to divorce his wife?’ He answered them, ‘What did Moses command you? [τι ὑμῖν ἐνετείλατο Μωϋσῆς?]’ They said, ‘Moses allowed a man to write a certificate of dismissal and to divorce her [ἐπέτρεψεν Μωϋσῆς βιβλίον ἀποστασιον γράψαι καὶ ἀπολύσαι].’ But Jesus said to them, ‘Because of your hardness of heart he wrote this commandment [ἐντολήν] for you...’ (Mk. 10:2-5, NRSV)

The formal procedure of the three verbs in Deuteronomy 24:1 and 3 may be summarised from a linguistic perspective as two actions. The first action is the *writing* and *giving* of the certificate of divorce; this action is summarised in Mark 10:4 as ‘writing’ and in Matthew 5:31 and 19:7 as ‘giving’. In the second action, *sending* the woman away (an Obligative action, meaning ‘You must go!’), the New Testament makes a modal distinction by using the term ‘release’, which is inherently Permissive (‘You may go!’).

In the Old Testament, זָ Formatter 'send away' (consistently ἔξηγος θελλαα in LXX), is used of divorce together with the term מָ.Formatter 'certificate of divorce' in the Law (Dt. 24:1-4) and the Prophets (Is. 50:1; Je. 3:8). It also occurs in other legal restrictions on divorce (Dt. 22:19, 22), a prophetic repudiation of divorce (Mal. 2:16) and the accounts of Abraham’s dismissal of Hagar (Gn. 21:14) and then his concubines (Gn. 25:6). Both the Hebrew and the Greek appear to have the status of technical terms. זָ Formatter is basically Obligative, as is shown by its use for banishment (Gn. 3:23; Is. 16:2), commanding slaves (Gn. 20:2), defeating enemies (Lv. 18:24) and firing arrows (Ps. 18:14). It is clearly Permissive, however, in the request by the man wrestling with Jacob at Penuel that Jacob should let him go:

Though Jesus here uses a verbal and a nominal form from ἐντέλλω (ἐνετείλατο, ἐντολήν), it should be noted that this does not necessarily represent the modality of the legislation itself—it is possible to command/prescribe that something is Permissible (though it is not possible to Permit that something is Obligatory—see below, section 6). It is this generic use of ἐνετείλατο and ἐντολή that is to be understood here. Further, one might note that the initial question here is slightly different to that in Mt. 19. There, Jesus was asked—at least initially (though see below on the change in v. 7)—about the Permissibility of Hillelite divorce (κατὰ πᾶσαν αἰτίαν, ‘for any cause’); here there is no such specification.

19Hence my term here ‘inherent modality’ for what is usually termed ‘fientivity’ or ‘dynamism’.

20LXX has unprefixed ἀποστέλλειν here.
WARREN: Did Moses permit Divorce?

(Gn. 32:27) רָאָם שָלָהָ כִּי סְעָלָהָ
Then he said, ‘Let me go…’
But Jacob said, ‘I will not let you go…’

(NRSV)

In the New Testament, ἀπολύω, ‘release’, is used in all four main divorce texts in the Gospels (Mt. 5:31-2; 19:3, 7-9; Mk. 10:2, 4, 11-12; Lk. 16:18) as well as in the account of Joseph’s intention to divorce Mary (Mt. 1:19); the non-prefixed form λύω is used in Paul’s discussion in 1 Corinthians 7:27. ἀπολύω is undoubtedly basically Permissive, as is shown by its use for cancelling debts (Mt. 18:27), releasing prisoners (Lk. 23:16-25; Acts 4:21-23; 16:35-36 et passim), healing (Lk. 13:12) and forgiveness (Lk. 6:37). However, it is clearly Obligative in the disciples suggestion that Jesus tell the persistent Canaanite woman to go away:

καὶ προσελθόντες οἱ μαθηταὶ αὐτοῦ ἥρωτον αὐτὸν λέγοντες· ἀπόλυσον αὐτήν, ὅτι κράζει ὅπισθεν ἡμῶν. (Mt. 15:23)
And his disciples came and urged him, saying, ‘Send her away, for she keeps shouting after us.’ (NRSV)

A further context where we see terminology with inherent modality being used with extended meaning is in Paul’s treatment in 1 Corinthians 7:10-16. Predominant terms here are χωρίζω, ‘separate’ (1 Cor. 7:10-11, 15; also Mt. 19:6; Mk. 10:9) and ἀφίημι, ‘send away’ (1 Cor. 7:11-13). Hays has argued persuasively for synonymity between these two terms on the basis of the parallel between vv. 10 and 11:

γυναίκα ἀπὸ ἀνδρός μὴ χωρισθῆναι, ‘a woman should not be separated from her husband’ (1 Cor. 7:10)
ἀνδρα γυναίκα μὴ ἀφιέναι, ‘a man should not send away his wife’ (1 Cor. 7:11)

21 It has occasionally been argued, however, that it is Permissive here, in the sense ‘Let her go!’, i.e. ‘Grant her request!’ See the discussion in W.D. Davies and D.C. Allison, The Gospel according to Saint Matthew, vol. 2 (Edinburgh: T. & T. Clark, 1991) 549-50.
This may, however, be simply a question of active and passive participant roles.

Whilst acknowledging a certain flexibility in the use of all of the terms discussed, we may conclude that נְנִש is essentially Obligative and ἀπολύω essentially Permissive. There has therefore been a striking shift in all the New Testament texts towards a Permissive attitude in a man’s divorcing of his wife.

V. Compositional Modality

It is well known that the (morphological) aspect of a clause interacts closely with the inherent (lexical) aspect of its verb. Similarly, we may say that the modal force of the clauses with which we are concerned here (ἐντέλλω vs. ἐπιτρέπω [Section II above]; ἔφηται as Obligative or Permissive [Section III.3 above]) interacts with the inherent modality of the terms involved (נְנִש/ἤζηποστέλλω vs. ἀπολύω [Section IV above]). This presents four possibilities:

<table>
<thead>
<tr>
<th>Clause:</th>
<th>OBLIGATIVE</th>
<th>PERMISSIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verb:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OBLIGATIVE</td>
<td>ἔφηται, ἐντέλλω</td>
<td>ἔφηται, ἐπιτρέπω</td>
</tr>
<tr>
<td>נְנִש/paragus / ἤζηποστέλλω</td>
<td>‘He must send.’ (Dt. 24:1)</td>
<td>‘He may send.’ (Dt. 24:1)</td>
</tr>
<tr>
<td>PERMISSIVE</td>
<td>ἀπολύω</td>
<td>‘He commanded to release.’ (Mt. 19:7)</td>
</tr>
</tbody>
</table>

Thus the New Testament texts reflect a two-pronged shift towards a more Permissive attitude.

VI. The Protasis: Conditionality and Modal Force

I hope the above discussion will have served to bring some clarity to the modal force of particular grammatical forms and lexical items. It has left some questions of clausal contingency
unanswered, however. In particular, it has focused solely on the Permissive/Obligative apodosis of Deuteronomy 24:1. Here, we turn to the conditional protasis.

The subjective Volition to divorce, יָרָהוּ בָּרָה, (‘If she doesn’t find favour in his eyes’) is only a secondary condition in Deuteronomy 24:1—the primary condition is the objective Offence, הקְרֵמָא בֵּיהוָה דָּבָר, ‘because he has found some indecency [?] in her’. Thus one might paraphrase:

If he has found some indecency in her [Offence] and if she therefore doesn’t find favour in his eyes [Volition], then he may/must write...

This compound condition was dissected in at least two distinct ways by Rabbinic Judaism. On the one hand, Mishnaic legislation Obliged a husband to divorce his wife if she committed adultery, thus crossing directly from the Offence to (their Obligative reading of) the ruling itself, effectively reading: ... קְרֵמָא בֵּיהוָה דָּבָר יָרָהוּ בָּרָה...’25 On the other hand, the liberal, Hillelite (Permissive) reading of יָרָהוּ בָּרָה, by the very admission of R. Akiba, renders this Offence clause effectively synonymous with the Volition clause, יָרָהוּ בָּרָה, ‘If she doesn’t find favour in his eyes’, thus telescoping both conditions into the secondary Volition.26

23Contrast the second divorce (Dt. 24:3a), based purely on נָשָׁה, for which Westbrook, ‘Restoration of Marriage’, 402, argues that ‘The verb “hate” is used to show that the action arose from a subjective motive and without objective grounds to justify it—and for this reason is blameworthy.’ See, however, in response, also D.R. Hillers, ‘Some Performative Utterances in the Bible’, in D.P. Wright, D.N. Freeman and A. Hurvitz (eds.), Pomegranates and Golden Bells: Studies in Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom (Winona Lake: Eisenbrauns, 1995) 757-66, 765.
24Compare that which spans Dt. 24:1-4, as discussed above.
25m. Soṭa 4; 6:1.
26m. Git 9:10, where the conservative, Shammasite reading (reflected in Mt. 19:9 μὴ ἐπὶ πορνεία and Mt. 5:31 παρεκτός λόγου πορνείας) is explained as focusing on the word תַּרְעָר, whilst the liberal, Hillelite reading (reflected in Mt. 19:3 κατὰ πᾶσαν αἰτίαν and Josephus, Ant. 4:253 καθ’ ἀσθητοτοῦν
These two Rabbinic manipulations of the Old Testament text meant, on the one hand, that it was ‘righteous’ of Joseph to want to divorce Mary (cf. Mt. 1:19), and on the other, that one could divorce one’s wife for spoiling one’s food (רבד) or simply if one found someone more beautiful (جمال אשת האדם). 

The secondary condition, the husband’s Volition to divorce (Dt. 24:1 לכת + modal yiqtol), corresponds to the subjunctive ‘Whoever would divorce’ (γινώσκειν ζητεῖν) in Matthew 5:31, the indicative ‘if... separates’ (εἰ... χωρίζεται) in 1 Corinthians 7:15 and the verb ‘to want’ (γινώσκειν ζητεῖν) in Josephus, Antiquities 4:253. In all four of these texts, the modal strength of the apodosis is unspecified (wēqājāl and imperatives respectively), so how are we (or the Pharisees in Mt. 19, for that matter) to decide whether these texts permit or oblige one to divorce one’s wife? The answer lies in the protasis.

In purely linguistic terms, a protasis based in the Hearer’s volition can only govern Permission.27 Any other protasis can govern Permission or Obligation. Consider the sample sentences:28

Moses said,

(1) ‘If Bathsheba commits adultery [ØVOL(H)],
then Uriah may [ØVOL(S)] divorce her.’

(2) ‘If Bathsheba commits adultery [ØVOL(H)],
then Uriah must [+VOL(S)] divorce her.’

(3) ‘If Uriah wants to divorce his wife [+VOL(H)],
then he may [ØVOL(S)] divorce her.’

(4)* ‘If Uriah wants to divorce his wife [+VOL(H)],
then he must [+VOL(S)] divorce her.’

αἰτιας is explained as focusing on the word רבד and (so R. Akiba) the Volition clause.


28VOL = volition, H = Hearer, i.e. Uriah, S = Speaker, i.e. Moses, and * = ungrammatical. The names are of course just examples.
WARREN: Did Moses permit Divorce?

In (1), neither Speaker nor Hearer has expressed volition, so this ruling has no necessary outcome; combined with the Hearer’s Volition, it may effect a divorce in Matthew 19:8 // Mark 10:4. (2) and (3), by contrast, both express volition on behalf of one of the parties, and so both result necessarily in a divorce; (2) is the Mishnaic Obligation of divorce in the event of adultery, and (3) the Hillelite Permission of divorce for any reason. (4) is ungrammatical because it legitimates the Hearer’s volition in the protasis, whilst delegitimating it in the apodosis. In our analysis of those Hebrew and Greek forms which are unspecified for modal strength, we can therefore apply the rules:

Rule 1: If the protasis expresses Volition [+VOL(H)],
the apodosis is Permissive [ØVOL(S)].

Rule 2: If the apodosis is Obligative [+VOL(S)],
the protasis expresses the Offence [ØVOL(H)].

VII. Reading the Apodosis: Permissive or Obligative?

As we have seen, Deuteronomy 24:1 has a compound protasis of primary Offence and secondary Volition.

*If he has found some indecency in her [Offence]*
*and if she therefore doesn’t find favour in his eyes [Volition],*
*then he may/must write...*

Only Jesus’s Permissive reading (Mt. 19:8) is compatible with both the Offence clause (as sample sentence (1) above) and the Volition clause (3). The Pharisees’ Obligative reading (Mt. 19:7) is only compatible with an Offence protasis (Rule 2); it therefore corresponds exactly to the Mishnaic Obligation to divorce an adulteress. We may conclude that their question in v. 3,

*Is it lawful for a man [εἰ ἔξεστιν ἄνθρωπῳ] to divorce his wife for any cause [κατὰ πᾶσαν αἴτιαν]?*

relates to the Hillelite Permission of divorce in the case of Volition, whilst their question in v. 7,
Why then did Moses command [ἐνετείλατο] us to give a certificate of dismissal and to divorce her?

relates to the Mishnaic Obligation of divorce in the case of the specific Offence of adultery. The Pharisees have themselves redefined the condition as adultery by using the term ‘command’. It is impossible to understand the Offence implicit in ‘Why did Moses command us…?’ (v. 7) as present in the preceding ‘for any cause’ (v. 3), since this would mean ‘Moses commanded us to divide our wives for any cause’!

Jesus’s answer must be read in this light. In particular, it should be noted that he refers to ‘the beginning’ (ἀρχή) to counter both their Permission of divorce for any reason (v. 3-4) and their Obligation of divorce in the case of adultery (v. 7-8).29

According to Jesus, then,

Moses said,

‘If your wife has committed adultery [Offence],

and if you therefore want to divorce her [Volition],

then you may do so.’

but it wasn’t like that to start with.

Jesus is therefore not redefining the Law in any way, but following the Pharisees’ interpretation (v. 7) of רוה תיבר as adultery, taking both the Offence and the husband’s Volition as necessary conditions, and therefore (inevitably!) reading והֻכָה as Permissive. Both the Mishnaic Obligation to divorce an adulteress and the Hillelite Permission to divorce ‘for any cause’ are simply due to bad grammar, and are excluded by the wording of Deuteronomy 24:1. Jesus’s ‘new’ contribution goes beyond all this, as he argues that the order of creation made no provision for divorce even in these circumstances.

29Compare the Qumran Damascus Document against divorce (or perhaps polygamy): CD 4:21 (‘the foundation of creation is “male and female he created them”’).
VIII. Conclusion

A new analysis of the structure of Deuteronomy 24:1-4 has shown that Moses did in fact issue a ruling on the procedure for divorce, rather than (as has been commonly held since the LXX) simply presupposing it. The wēqātal form used admits the range of modal interpretation from Permissive ‘may’ to Obligative ‘must’. This explains New Testament references to divorce, which either retain this ambiguity with third-person imperatives (Mt. 5:31; 1 Cor. 7:15; similarly Josephus, Ant. 4:253) or resolve it as ‘may’ (Mt. 19:8/ /Mk. 10:4) or ‘must’ (Mt. 19:7). The terminology used has generally been moderated from the Old Testament’s Obligative ἐξαποστέλλω to the New Testament’s Permissive ἀπολύω. Volitional conditional clauses have been shown to be incompatible with Obligative main clauses, so that the Permissive reading of Deuteronomy 24:1 (Mt. 19:8/ /Mk. 10:4) must be the correct one, and the Pharisees’ Obligative reading in Matthew 19:7 must be both manipulative of the Old Testament text and even discontinuous with their own previous Permissive reading in v. 3. This discontinuity also means that Jesus’s Permissive reading relates not to the Hillelite Volition condition of v. 3, but to the Shammaite adultery condition of v. 7. Matthew 5:31 and Josephus, Antiquities 4:253 must also be Permissive.30

By reducing main-clause verbal forms (wēqātal), verbs of speaking (ἐντέλλω, ἐπιτρέπω) and verbs of divorcing (πληρ. ἔξαποστέλλω, ἀπολύω) all to the two modal values of Obligation and Permission, and conditional protases to objective and subjective categories (Offence and Volition), it has been possible to clarify in a more systematic way than previously the relationships between Biblical divorce texts. Though diachronic linguistic study can certainly still clarify the relationships between the various verbs used for divorcing, and historical research may reveal the background to Pharisaical

30A still unresolved problem is the indicative–imperative sequence of identical verbs in 1 Cor. 7:15 εἰ δέ ὁ ἄπιστος χωρίζεται, χωρίζεσθω (‘But if the unbeliever separates, let him separate’); one may need to think in terms of inceptive–imperative or real–attitudinal.
interpretations of the Torah text, an economical linguistic model has produced a solid basis for such further study.

Finally, these conclusions will affect our reading of some related texts. They may illuminate the force of other third-person imperatives such as ἄνθρωπος μὴ χωριζέτω (Mt. 19:6//Mk. 10:9), which is clearly forcefully Prohibitive (‘man must not separate’), though standardly rendered so weakly as to sound Expressive/Optative (‘let man not separate’).31

Secondly, the closing comment,

Anyone who divorces his wife (except for unchastity) and marries another commits adultery,

which is present with variations in Matthew 5:32; 19:9; Mark 10:11-12 and Luke 16:18, will no longer be read as Jesus’s ‘new’ contribution (see e.g. Mt. 5:32 NRSV ‘but’), but as the natural extension of his reading of Deuteronomy 24. What is new, as Hays so powerfully demonstrates,32 is Jesus’s location of the Deuteronomic Law within the creational paradigm of marriage as a divine—and therefore binding—institution.33

31Similarly, the ‘commandments’ in 1 Cor. 7:10 and 1 Jn. 4:21!
32Hays, ibid.
33The modal categories used here might be used in the interpretation of other imperative, subjunctive and optative forms, and of Deontic clause types, including: wishes (Mt. 26:39, 42; Jn. 17:21, 23), curses (Mt. 21:19//Mk. 11:14; Acts 1:20; 8:20; Rom. 11:9-10) and blessings (passim); dismissals, whether ‘letting someone go’ or ‘sending someone away’ (Mk. 11:6; Mk. 5:12//Mt. 8:31//Lk. 8:32; Mk. 7:29; Jn. 4:50; Acts 24:25), expressions of permission (Lk. 17:8), requests for permission (Acts 10:29; 21:37) and even a request for a command (Mt. 14:28). Applications of theological importance might include 1 Cor. 7:6 (‘I say this as a concession, not as a command.’), 1 Cor. 6:12-13//10:23 (‘Everything is permissible but not everything is beneficial.’), the various NT versions of Isa 6:10 (‘lest they see with their eyes and hear with their ears’—Mt. 13:10-17; Mk. 4:11-12; Lk. 8:10; Jn. 12:37-41; Acts 28:24-28; Rom. 11:7-8) and discussions such as Rom. 14.