

## Chapter 4 Law of Succession

### *Introduction*

The Babatha and the Salome Komaise archives contain a number of documents that may, indirectly, reveal something about the law of succession current at the time. These are documents that are in some way or the other related to the death of a person and may thus tell us something about the legal consequences of this death. A document could in such a case reveal what the order of succession was: who the deceased's legal heir was considered to be at the time of his death. The order of succession in this sense always refers to intestate succession, succession according to the law, i.e. without possible interference of legal acts made by the testator during his lifetime (such as wills). Because the order of succession was determined by the law and not by a legal act, the order of succession is often taken for granted: it will not be explicitly mentioned in the documents. This is logical, as the death of the deceased caused his legal heir to take up his position as such, without any further judicial act.<sup>365</sup> Accordingly it was assumed, taken for granted, that this or that person was the deceased's legal heir. Starting from that assumption, legal acts were made regarding the property of the deceased. Documents in the archives that are in one way or the other related to the death of a person and management of his property are P. Yadin 5, 12-15, 20, 21-22, 23-24, 25 and 26 and SK 63.<sup>366</sup> None of these documents concerns a will; only one of them gives a direct clue as to who was considered to be legal heir.<sup>367</sup> Therefore, these documents give only indirect evidence as to the order of succession at the time and consequently as to the applicable law. I will discuss each papyrus individually to see what it reveals about the order of succession, in particular the rights of inheritance of the son, the wife and the daughter. On the basis of this evidence I will formulate a possible explanation for the position of the daughter towards her father's estate and investigate whether this explanation can be supported by evidence of the position of the daughter towards her father's estate in legal documents (both law codes and legal acts) from other ancient eastern legal systems.

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<sup>365</sup> This is called succession based on the law, thus contrary to succession based on a will. In the latter instance the deceased while living determined who would be his legal heir, regardless of the order of succession determined in the law. Contrary to modern practice, it was in antiquity less common to make a will and if it was done, it is clear that not every choice of heir was allowed. In general there was a preference for family members. Wills could be made as such (for example in Roman law) but other legal systems did not know a will (a disposition of one's entire property to take effect after death) and therefore used gifts to reach the same effect. I will come back to this in detail below.

<sup>366</sup> I do not mention the deeds of gift (P. Yadin 7, 19 and SK 64) at this point since I am, for the moment, only concerned with succession based on the law. I will discuss the relationship of deeds of gift and law of succession below, 134-135.

I realise that this division is random in a sense, since P. Yadin 21-22 do not have to do with order of succession, succession based on the law, in the strict sense of the term. Babatha's right there is not based on law of succession, but on her marriage contract and a debt, that is, on prior legal acts between her and her deceased husband. Nevertheless, I think it is sensible to discuss all documents that contain legal acts that follow the death of someone and concern the management of his property together. We can thus get a clear picture of who is acting as heir (on the basis of the law) and who apparently has other claims (based on legal acts).

<sup>367</sup> P. Yadin 24; see my discussion below, 128ff..

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## I. EVIDENCE FOR APPLICABLE LAW OF SUCCESSION IN THE ARCHIVES

*Son:*

In the instance of **P. Yadin 5** Joseph son of Joseph surnamed Zaboudos declares that he holds certain items on deposit in favor of Jesus, son of his brother Jesus.<sup>368</sup> These items as is clarified have been part of a business that Joseph and Jesus, the father, had together.<sup>369</sup> The situation suggests that Jesus, the father, died and that the son as his legal heir was entitled to half of the business. Although there is no explicit mention of the word for heir in the papyrus, this is the most likely explanation for the transaction between uncle and nephew.

See Lewis, 35, who understands the situation this way: ‘In 5 the situation appears to be that the brothers Joseph and Jesus had been in business together, and, Jesus having recently died, Joseph here records the money value of his various properties and enterprises, and acknowledges that he has that sum “on deposit” to the credit of the heir, the younger Jesus.’

Lewis explains the deposit form by relating the situation to that of soldiers in Egypt who were not allowed to marry during active service but still lived with Egyptian women. ‘They would disguise the dowries they received by acknowledging them as deposits’, referring to M. Chr. 372, for a remark by the prefect that ‘we realize that the deposits are dowries.’<sup>370</sup> See for a discussion of more cases of ‘concealed dowry’, Phang, S.E., *The marriage of Roman Soldiers (13 B.C. – A.D. 235), Law and Family in the Imperial Army*, Leiden, 2001, 22ff. In all of the cases Phang discusses (from P. Catt. I, III and VI), the return of money to the woman based on the *actio depositi* is refused because the matter at issue is said to be a concealed dowry and not a real *depositum*. Since the woman was not married to the soldier, she could not ask for return of the dowry. Only wives could do so, basing themselves on the *actio rei uxoriae*, the action of the wife to ask for return of her dowry.

Lewis relates the instance of P. Yadin 5 to an attempt ‘to conceal the true nature of the transaction and thereby to circumvent a legal impediment.’ This may be true in the example of the soldiers, who called dowries deposits to circumvent the legal consequences of the prohibition for them to marry, but it need not be in the instance of P. Yadin 5. It would be hard to say what legal impediment is circumvented here. It seems rather that the uncle sought to formalize his relationship with the heir by using the deposit construction. After all, there was no legal tie between uncle (former partner) and nephew (heir) concerning the objects of the business that belonged to the heir but were held by the former business partner. By using a deposit construction the relationship between former partner and heir was formalized, ensuring eventual delivery of the property while not requiring this delivery to be instant. This probably allowed the former partner to finish his business transactions (for example, concerning payments, costs and debts that needed honoring).<sup>371</sup>

By declaring that he had the items on deposit with him in favor of the heir, the remaining partner could ensure that he did not have to return the goods immediately to the heir. The fact that the brother of the deceased is obviously not the owner of the property but the son is, would then be evidence for inheritance by the son over the brother of the father.

One cannot be one hundred percent sure about this since it is not clear what the sum of the business encompasses and what share the heir is entitled to. From πάντων in line 8 of fragment a one could even get the impression that the nephew is entitled to all of the business: ‘as a deposit of *all* the assets of silver ...’ Nevertheless, line 12 speaks of ‘from everything which was found [to belong] to your father and me, between me and him.’ This suggests that the nephew was entitled to a share in the business. To the parties to the contract it would of course have been obvious since there is an amount of money mentioned that represented either half or the whole of the value of the business. Personally, I think that it would be best to understand it as being that the heir is entitled to all the assets that belonged to his

<sup>368</sup> P. Yadin 5:5ff. (fragment a).

<sup>369</sup> P. Yadin 5:12-13 (fragment a).

<sup>370</sup> This papyrus stems from Egypt and is dated to 117 CE. See Lewis, 35.

<sup>371</sup> See P. Yadin 5:9-10 of fragment a and lines 2ff. of fragment b).

father, amounting to half of the value of the business that the father and the uncle had together. Obviously, the entitlement of the nephew is related to his father's death: he is heir, even though he is not styled as such in the papyrus text.

Perhaps the brother was in charge of the property as long as the heir had not yet come of age. The situation could then resemble that of **P. Yadin 12-15**.

These papyri concern the guardianship over Babatha's minor son, Jesus, or rather with management of the property of this minor son by guardians. P. Yadin 12 deals with the appointment of the guardians, two men, one a Jew, the other one a Nabatean, appointed by the city council of Petra.<sup>372</sup> One could get the impression that this appointment of guardians immediately followed the death of the father, but I think this is unlikely when one reads P. Yadin 13. In this document, a petition to the provincial governor, Babatha complains about having received too little maintenance money for her son.<sup>373</sup> Lewis responded to this saying 'the gravamen of her complaint is that the two guardians, "appointed four months ago and more" (line 20), have been giving her an insufficient sum, only two denarii a month, toward the maintenance of her orphan son (lines 22-24).'<sup>374</sup> The appointment of guardians obviously refers to the decision of the city council mentioned in P. Yadin 12.<sup>375</sup> The way in which the appointed guardians are introduced in P. Yadin 13, however, suggests that their appointment did *not* automatically follow the death of Jesus' father. I point to lines 17-19, where there is mention of the appointment of someone to see to debts and maintenance money. These lines follow a damaged part of the papyrus in which, according to Lewis, Babatha 'details some of the financial interests of her late husband.'<sup>376</sup> Lewis does not relate this to the complaint about the guardians.<sup>377</sup>

<sup>372</sup> For the appearance of a city council, 'which conducted its business in Greek,' see Millar, F., *The Roman Near East. 31 BC-AD 337*, Cambridge (MA), 1993, 417 (418-419 about the transformation of cities in general). For the council as body for appointing guardians (instead of the city magistrates) see Cotton, H.M., The guardianship of Jesus son of Babatha: Roman and local law in the province of Arabia, *JRS* 83 (1993), 95-96. For the details concerning the appointment see my treatment of guardianship below, 176ff..

<sup>373</sup> That P. Yadin 13 is a petition to the governor can be inferred from the use of the word *axioma* in line 1. The name of the Roman governor to whom the petition is addressed is missing (there is a lacuna in the first line), but Lewis has convincingly argued that it was Julius Julianus, who is mentioned in P. Yadin 14 and 15 as well (52). For Julius Julianus as governor of Arabia see Bowersock, G.W., *Roman Arabia*, Cambridge 1983, 86 (with references) and 161. A petition was used to explain about a dispute and to have permission granted to proceed with the case, as can be seen in P. Yadin 25, where a petition to the governor and his permission to go ahead are mentioned.

<sup>374</sup> See Lewis, 51.

<sup>375</sup> This dates P. Yadin 13 some four months after P. Yadin 12. Since P. Yadin 12 can be dated 'between 27 February and 28 June 124' (Lewis, 47), P. Yadin 13 can be dated to 'second half of 124' (Lewis, 51). P. Yadin 12 cannot be dated to an exact month since the ending of line 9 is too damaged to restore the name of the proper month. Any of the months from February to June is possible (see Lewis, 50).

<sup>376</sup> See Lewis, 51.

<sup>377</sup> Neither does Chiusi, T., *Zur Vormundschaft der Mutter*, *ZSav (Rom. Abt.)*, 181: 'In welchem Zusammenhang diese Aufzählung erfolgte, lässt sich nicht mehr sagen. Man könnte vorsichtig vermuten, dass Babatha dem Statthalter die Ereignisse darlegen wollte, aufgrund derer ihre ökonomische Situation schwierig geworden war.' and Chiusi T., Babatha vs. the guardians of her son: A struggle for guardianship – Legal and practical aspects of P. Yadin 12-15, 27, in: Katzoff, R., Schaps, D., *Law of the Judean Desert Documents*, Leiden, 2005, 110: 'One may assume that Babatha told some details of the economic situation of her family or of her late husband's family in the first part of the petition, because the text mentions the fortune of Joseph, her late husband's brother, the shares of Babatha's son Jesus in the family property, a chirographon and a receipt of business affairs. The context of this enumeration of topics cannot be reconstrued. One might assume that Babatha wanted to explain the circumstances of her economic situation to the provincial governor.'

However, in my opinion, it is obvious that the two matters are closely connected. In lines 7-8 Babatha mentions Joseph 'his brother', obviously the brother of the deceased Jesus, referring to 'his own property' but also 'the share of the orphan.' This latter phrase is used twice, once to refer to 'the half' of something. There is furthermore mention of 'in name of the orphan ...', 'to his brother an expenditure in silver', something 'handwritten' and 'merchandise'.<sup>378</sup> Then the more or less complete lines 17-18 mentioned above refer to the appointment of someone to take care of debts for maintenance and supervision of money, and she complains that *Joseph has not provided maintenance* nor the guardians, who have been appointed for more than four months.<sup>379</sup> Consequently, we have a clear reference to the guardians, *in connection with this Joseph*. As it is put by Babatha, it appears that neither Joseph nor the appointed guardians have provided maintenance for the child. Their relationship appears to be that the guardians were appointed to take care of the maintenance money and make sure that it was paid. The fragmentary state of the papyrus makes it difficult to decide whether Joseph had promised the appointment or Babatha had requested it. In any case it is clear to me that Babatha was in some kind of dispute with her brother in law over property that belonged to her son and in that context guardians had been appointed.

What exactly the position of the brother of the deceased was is hard to tell. It is in any case clear that he had something to do with the management of the property of the deceased. This could mean that he was considered a sort of guardian to see to the property of the minor heir until he would come of age. Hannah Cotton suggested to me to compare the situation here to that of P. Yadin 5, where also the brother of the deceased is holding property that clearly belongs to the heir. In doing so I found that the situations might have been the same, but the legal solution to them was obviously different.

In the fragmentary first lines of P. Yadin 13 all kinds of words are legible that could refer to a business situation. We would then have to envisage that the father of the orphan had been in a business with his brother Joseph and that this business had to be split up like the one in P. Yadin 5. Joseph was still effectively in control of the property, while the orphan was entitled to his share (the share of his father) in that.<sup>380</sup> There is no mention here, though, of formally turning the situation into a deposit construction. Instead it appears that there had been agreement about the naming of someone to see to debts and maintenance money. This could refer to the appointment of the guardians, who had then been appointed either on Babatha's request, Joseph's proposal or an agreement between them. Still the construction had not worked, because neither Joseph nor the guardians have given enough maintenance money, enough that is in Babatha's opinion. This means that P. Yadin 5 and 12-15 indeed refer to a situation of a deceased man's brother holding property of a business that belonged to the deceased's heir, but there is an important difference in the way in

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I note that I do not think P. Yadin 12-15 are concerned with 'a struggle for guardianship': in my opinion the papyri are not so much concerned with the question of who could be guardian, but of what should be done in case of mismanagement of property by appointed guardians. I refer to my detailed discussion of P. Yadin 12-15 and 28-30 in Chapter 5 below.

<sup>378</sup> Lines 11, 12, 14 and 17 respectively.

<sup>379</sup> Lines 19-22. I take Joseph to be the subject of the 'he has given' in line 19; regarding context he seems to be the most logical choice.

<sup>380</sup> I refer to lines 8-15 that speak of his own property (obviously Joseph's, line 8), 'from the belongings of' (should have followed a plural noun, perhaps 'brothers' or 'partners'?, line 9), 'in the name of the orphan' (line 11), 'share of the orphan' (lines 13-15). In line 15 the share of the orphan is specified as half of something.

which this situation is dealt with. In the first instance, of P. Yadin 5, brother and son, remaining partner and heir, formalize their relationship by way of a deposit construction, enabling the partner to keep holding the property, while the heir has his claims acknowledged and will receive his share in due time. In P. Yadin 12-15 on the contrary we find no such transaction, but the brother who is holding the property is somehow supervised by guardians who should see to the payment of maintenance money to properly raise the orphan. The difference is in my opinion caused by the position of the heir. In P. Yadin 12-15 we are obviously dealing with a minor, else he would not need a guardian to see to his property interests, but he could do so himself. Indeed, in that case, we would have expected him to write his own petition to the governor to complain about the behavior of his uncle who was in charge of the property of his father that was part of the business the two of them had. In P. Yadin 5 on the other hand the heir makes a deal with the uncle in person; there is no mention of a guardian. This strongly suggests the heir there was of age.<sup>381</sup> This means that P. Yadin 5 and 12-15 testify to different solutions for the management of property that was part of a business after one of the business partners died. The element both documents share is the idea that the property remained in the remaining partner's possession probably to allow him to continue the business. In the case of an heir who was of age the remaining partner made a deal with him to keep the property by way of a deposit, while in the case of a minor heir it seems that the remaining partner managed the property for him, paying maintenance money. In this latter instance the part the remaining partner plays, looks like that of a guardian. I will come back to the position of the brother of the deceased in relation to the appointment of guardians in my discussion of guardianship below. In any case it seems clear both from P. Yadin 5 and 12-15 that the son inherited from his father.

*Other children/wife in presence of son:*

In both instances there is no indication that there were other children. Nor is there an indication that the mother of the child, the wife of the deceased, had any claims to the deceased's estate. In P. Yadin 5 a debt the deceased had towards his wife is singled out from the claims the heir can make and is acknowledged as another separate debt resting on the business: 'over and above seven hundred ten "blacks" of silver which your mother has received as [repayment of] her wedding money, which she had [as a lien] against Jesus your father.'<sup>382</sup> The claim of the wife is thus related to her marriage with the deceased, therefore it is not a claim based on succession. This means that P. Yadin 5 seems to indicate that the wife did not inherit from her husband.

<sup>381</sup> We do not know his age and minority cannot be excluded a priori, since the document dates to 110 CE. Jesus was probably married to Babatha in 120 and had his son before his death, i.e. somewhere before 124. This leaves the possibility open that he was a minor in P. Yadin 5. But as I have explained above, the transaction he engages in personally without interference of any outsider strongly suggests that he was of age and could manage his own (property) affairs.

<sup>382</sup> P. Yadin 5:14-16 (of fragment a). For "blacks", see Lewis, 35-36; Y. Meshorer (in *The Israel Museum Journal* 10 (1992) 67-74) tried to identify the "blacks" with a kind of denarii but this attempt has met with criticism from N. Lewis (in *Classical Studies in Honor of David Sohlberg*, Ramat Gan 1996, 399-401), who is certain of a Semitic origin of the monetary unit. In a postscriptum he refers to an article by Cotton, who mentions in passing that identification of "blacks" with denarii would be in her view unacceptable (*ZPE* 100, 1994, 553, note 20). New bibliography on the "blacks" can be found in W. Weiser and H.M. Cotton, "'Gebt Dem Kaiser, Was Des Kaisers Ist...': Die Geldwährungen der Griechen, Juden, Nabatäer und Römer im syrisch-nabatäischen Raum unter besonderer Berücksichtigung des Kurses von Sela'/Melaina und Lepton nach der Annexion des Königreiches der Nabatäer durch Rom," *ZPE* 114 (1996), 237-87.

P. Yadin 12-15 do not reveal much about the position of the wife regarding her husband's estate, but there are interesting details in P. Yadin 21-22. In these documents Babatha sells the produce of orchards that belonged to her late husband Judah the son of Eleazar Khthousion. Obviously, this man was her second husband, she married him before 128.<sup>383</sup> Since she refers to him as her late husband, it is clear Babatha was widowed again. She sells the produce of the orchards which she, as she says explicitly, distrains in lieu of her dowry and debt.<sup>384</sup> This means that in P. Yadin 21-22 we find a widow selling produce of orchards that belong to the property of her deceased husband, while she is entitled to do so based on rights related to dowry and debt. This suggests that the widow did not have a right based on succession. Like in P. Yadin 5 the claim the wife can make on the property of her deceased husband is related to her marriage to him, and more precisely her dowry.<sup>385</sup> In the specific instance of P. Yadin 21-22 Babatha is also entitled to the property because of an unpaid debt, but this does not have anything to do with succession either. A creditor of the deceased was entitled to repayment of his money at the debtor's death and could enter his claim(s) with the heirs. This claim on the property of the deceased, his estate, was obviously not based on succession but on the legal act the creditor had made with the deceased during his lifetime.

P. Yadin 26 presents us with a number of difficulties as it deals with a dispute between Babatha and a woman named Miryam concerning certain property of Babatha's deceased husband Judah. Miryam, who only appears here, was apparently Judah's first wife, probably the mother of his daughter Shelamzion whom I will discuss in more detail below. Babatha designates Judah as 'my and your deceased husband.'<sup>386</sup> Miryam seems to do the same, but this is not completely certain as part of her statement is damaged.<sup>387</sup> Whether that dispute implies Judah had divorced Miryam or that he had entered into a bigamous match with Babatha is not clear.<sup>388</sup> Katzoff discusses five possibilities when considering the claims the women could bring: intestate succession, testamentary succession, succession based on marriage contract, settlements from marriage contract, and misunderstanding concerning personal possessions. The first option, intestate succession, is rejected by Katzoff on the same grounds I have rejected it above: Jewish law does not know intestacy

<sup>383</sup> Their marriage contract is recorded in P. Yadin 10; this document's dating has not been preserved. Babatha is explicitly styled Judah's wife in P. Yadin 17 of February 128 CE (see lines 4/22). However, Judah acts as Babatha's guardian in P. Yadin 14, 15 and 16, as Lewis remarked: 'a function normally performed by a woman's husband' (58). This could mean they were already married in October 125.

<sup>384</sup> Babatha uses this formulation in P. Yadin 22:9-10 and the purchaser also expresses himself along these lines in P. Yadin 21:11-12. Since P. Yadin 21 was presumably written first, we may assume that the 'as you say' of line 11 should be taken literally: 'as you have just said, told me,' perhaps even 'dictated me' (see Lewis, 94, on the sequence of writing of these documents).

<sup>385</sup> Dowry here referred to by *proix* (προίξ), in P. Yadin 5 the term wedding money (ἀργύριον γαμικόν) is used. I will discuss the dowry and the different terms for it in my treatment of the marriage documents below, 231, especially nt. 422.

<sup>386</sup> P. Yadin 26:7-8.

<sup>387</sup> P. Yadin 26:13-14 (the Greek for 'my' and 'your' is restored, see Lewis, 113), in line 15 she speaks only of 'my husband' (but this could have to do with the fact that she is there referring to arrangements Judah made specifically for her, probably within the context of their marriage).

<sup>388</sup> Lewis took P. Yadin 26 to be 'an unprecedented documentary source to the extant evidence on the subject of polygamy,' adding further on that 'polygamy ... was indulged in as a matter of course considerably farther down the social scale than has hitherto been recognized' (24). I am not sure that the evidence is as conclusive and univocal as Lewis concludes. Besides that, a single instance of bigamy does not justify the assumption that it was 'indulged in as a matter of course.'

inheritance for the wife and, as Katzoff adds, neither does Attic (Hellenistic) or Roman law. Roman law does acknowledge the wife as an intestate heir if there are no other blood relatives (*cognati*) and there are in this case (Shelamzion, Judah's daughter). Consequently, it seems that Babatha nor Miryam could in any case under whichever system of law be the legal (intestate) heir.<sup>389</sup> The second option, testamentary succession, could play a part if Judah had left a will. Katzoff does not mention this, but he probably thought of this, since Miryam mentions written instructions by her husband.<sup>390</sup> Katzoff grants that there is no will found in the archive and that it would not seem likely that Judah would leave something to a wife he had divorced. He adds, however, that people may do unexpected things in wills and that the more unexpected the beneficiary is, the more likely his (in this case her) position will be contested. I think, however, that the fact that no will is found in the archive (not only not pertaining to this argument but not in general) is probably due to the fact that gifts were used to the effect of wills. This will be discussed in detail below.<sup>391</sup> It is therefore rather surprising Katzoff did not mention this possibility of a gift. Suppose Judah had made Miryam a gift during their marriage and Miryam now saw herself as entitled to the property concerned in the gift. It might well be that the validity of such a gift was disputed after the husband's death. Was the gift still valid after the divorce or not? In the gift of P. Yadin 7, for instance, it is determined that the donee has to stay the wife of the donor and take care of him. This can be understood to be a *conditio sine qua non*. In that case Miryam would not be entitled to the gift anymore. A complication connected with the assumption of a gift is that it is not clear whether the property Babatha alludes to has recently been seized by Miryam or whether she was holding it for a long time, perhaps the entire period after her divorce. It could be that Judah never did anything about this, but Babatha intends to do so. I suggest this could have been the case because Judah's estate did not offer enough to satisfy Babatha's claims: the amount of money concerned in the dowry and the loan of P. Yadin 17 could amount to some seven hundred denarii, a very substantial sum indeed!

Katzoff's third explanation is based on the clause, sometimes found in Greek marriage contracts from Egypt, of mutual succession of the spouses. He notes though that these clauses are not found in the marriage contracts from the Judean Desert (whether Greek or Aramaic). The clause is in any case not there in Babatha's marriage contract of P. Yadin 10. It therefore seems unlikely that such a clause was behind the present dispute. I also note that it could be disputed whether Miryam could still invoke the clause when she was divorced by Judah. Since we do not know, however, whether her marriage to Judah should be considered terminated or not, we cannot really say anything about this.

A clause found in marriage contracts, for example, those from Elephantine, that Katzoff does not mention, is a clause determining the consequences of a second marriage, while the first is not terminated yet. The clause is a bit ambiguous since it says that the husband is not allowed to bring in another wife next to the one he is marrying now, but it is at the same time said that if he does so, this will cause the first

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<sup>389</sup> Whether wives in Hellenistic and Roman Egypt could inherit as intestate heirs in the case of absence of *cognati* was a matter of dispute between Taubenschlag and Kreller as Katzoff explains (129). This dispute is only of interest if we assume that the law in Arabia was the same as in Egypt and if we could assume Shelamzion died before her father (I think this assumption is unlikely). See Katzoff, 129.

<sup>390</sup> P. Yadin 26:14-15.

<sup>391</sup> See 134-135 below.

marriage to end (it will be like a divorce).<sup>392</sup> This would mean that a second marriage would effect divorce. If such a clause had been part of the marriage contract between Miryam and Judah the clause would probably not have made the match with Babatha invalid, but Miryam's own marriage with Judah. Therefore, it does not seem likely she is basing her claims on such a clause.<sup>393</sup>

Katzoff suggests as a fourth possibility that Miryam's claim was based on a prior divorce: she might have been promised something which she never received. I think Katzoff is right in remarking here that the claims of the wives in their individual positions, as divorcee and widow, could explain the use of the phrase 'my and your deceased husband' to refer to Judah. Therefore, we do not necessarily have to accept polygamy behind the conflict.

The last possibility Katzoff mentions is that there was a dispute concerning what property belonged to which person. He points out that household possessions are often treated as communal by the spouses and then concludes that 'these sorts of misunderstandings could be enough to account for attempts by each of the former wives to take hold of personal objects leading to the law suit in *P. Yadin 26*.'

Katzoff also discussed the question of why, in the latter two cases, Miryam presses her claims after Judah has died, while she could have done so right after the divorce. Fear of Judah or awareness of the weakness of her claims could indeed have been a reason, although I think it is more likely to argue, as Katzoff has done himself earlier on in the article, that Miryam held the goods under dispute from the start of her marriage, thus that she had never given up on them. Babatha now presses her that she should, even taking the case to court. I argued above that a reason for this could be that Judah's estate did not encompass enough to satisfy Babatha's claims. I then envisage the following scenario: Judah who originally came from En-Gedi has left possessions there in the keeping of Miryam. Babatha is now, after Judah's death, intending on having her dowry and the debt returned to her. She cannot have her claims satisfied from the property within the estate (perhaps only the property in Mahoza?) and thus she turns to the property still in En-gedi. She may have warned Miryam before to hand the property over, since it is said by Miryam that she has told Babatha on an earlier occasion to stay away from the property.<sup>394</sup> Thus it could be that Babatha has tried to get Miryam to give the property to her, but being unsuccessful in this respect she is now pressing charges to have the property given to her. She might have been induced to try this by the acts of Besas, who summoned Babatha to explain her holding of the orchards belonging to Judah (*P. Yadin 23-24*, to be discussed in detail below). For Babatha uses the same strategy: she asks the other party to explain her behavior, inferring that the grounds for it should be given. Should these grounds be lacking, then the property should be given to the person entitled to it. It is therefore not that illogical that Babatha summons Miryam on the same day she is herself summoned again in the suit by Besas (and Julia Crispina). She might have decided to try her luck in a suit as well.<sup>395</sup>

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<sup>392</sup> See for example K7.

<sup>393</sup> We do not know of course how well founded Miryam's claim was anyway. Maybe she simply tried to hold on to property that was still in her possession while she really had no right to it at all. Therefore, we need not assume that she based her claims on invalidity of Babatha's marriage. I add here that if the contract Judah made for Babatha can be expected to have been like the one he made for Miryam before, the clause about a second marriage is not likely to have been in it.

<sup>394</sup> *P. Yadin 26:12-14*.

<sup>395</sup> I will discuss the question of whether *P. Yadin 26* testifies to polygamy in Chapter 6 below, see 223-226.

*In absence of a son:*

Contrary to Babatha's first husband Jesus, who left a son at his death, Babatha's second husband Judah did not have any son we know of from the archive. The only child of Judah that is referred to is his daughter from a previous marriage, Shelamzion.<sup>396</sup> Assuming that Judah indeed had no sons at the time of his death, the question would be whether his daughter would be his legal heir. P. Yadin 20, a document that testifies to the settlement of a dispute, could be interpreted to mean both that she was and that she was not.

In the document, Besas, 'guardian of the orphans of Jesus son of Khthousion' and Julia Crispina, 'supervisor', acknowledge the right of Shelamzion to a courtyard.<sup>397</sup> It has been disputed whether this courtyard is the one donated to her in P. Yadin 19. I think Cotton convincingly argued this is unlikely.<sup>398</sup> This means that Shelamzion's right to the courtyard, acknowledged in P. Yadin 20, did not come about by a deed of gift found in the archive. The matter is complicated by the fact that the courtyard is said to have belonged to Khthousion, the father of Judah and Jesus and Shelamzion's grandfather. This implies that the dispute here concerned competing claims to a courtyard of a grandfather by the sons of one deceased son and the daughter of the other. Obviously, the daughter's right is acknowledged. This could have various reasons. We could assume that both the sons of the one deceased son and the daughter of the other were heirs to their father's share in the estate of the grandfather. The estate may not have yet been divided and at the death of both sons, the grandchildren had to decide which parts of the estate would belong to whom. Perhaps a sort of provisional division had been made by the deceased sons, which entitled Shelamzion to this specific courtyard. In any case, in such a scenario we would have to assume that both the sons and the daughter would take the place of their father in being rightful heirs to the estate of the grandfather. This means that P. Yadin 20 can be read to imply that the daughter, in absence of a son, inherited her father's estate. The challenge made to her rights by the guardian of the minor sons of the deceased's brother would then have concerned the division of the property of the grandfather between the sons, or to put it differently, whether Shelamzion could be considered to be entitled to this piece of property because her father had been.

Nevertheless, Cotton's suggestion that the guardian might have challenged Shelamzion's right to take the place of her father in inheriting part of her grandfather's estate makes sense.<sup>399</sup> This could suggest that daughters were not equal to sons in this respect. I note, however, that in such a case Shelamzion must have been able to prove her right to the courtyard in another way. If we assume that daughters, unlike sons, did not take their father's place in the order of succession, this means that

<sup>396</sup> See P. Yadin 18, where Judah marries Shelamzion off to another Judah (nicknamed Cimber). This man functions as Shelamzion's guardian in P. Yadin 20.

<sup>397</sup> The position of Julia Crispina is unclear. Her name suggests she was a Roman citizen (see Lewis, 92). Her relationship to the orphans is also unclear. Lewis takes her to be a guardian like Besas, even though she clearly has another title, ἐπίσκοπος, 'supervisor' (see Lewis, 92). I believe that this title, together with the role she plays in the disputes suggests she was not a guardian like Besas (not an *epitropos*). I tend to agree with Cotton that if Julia Crispina was indeed a Roman citizen this makes it less rather than more likely that she was a guardian (see Cotton, The guardianship of Jesus, 97, n. 39). Perhaps her function can be compared to that of the Egyptian ἐπακολουθήτρια, as John Rea has suggested (see Cotton, The guardianship of Jesus, 97). I will discuss Julia Crispina in detail below, 197ff..

<sup>398</sup> See Cotton, H.M., Courtyard(s) in Ein-gedi: P. Yadin 11, 19 and 20 of the Babatha archive, *ZPE* 112 (1996), 197-201.

<sup>399</sup> See Cotton, Courtyard(s), 201.

the property cannot have passed to her on the basis of this order of succession. Since P. Yadin 20 shows that Shelamzion's right was acknowledged, we have to assume that it was based on a legal act that she had to produce to prove her right. It would be logical to think of a deed of gift. However, there is no deed of gift to that point in the archive. The only deed of gift to Shelamzion we have is P. Yadin 19, where the deed is made by the father, Judah. This deed of gift concerns a courtyard and it has been argued by Lewis that this is the same courtyard as the one described in P. Yadin 20. This would mean that Judah made a deed of gift of a courtyard that had previously belonged to his father. Whether his father was deceased at the time and the inheritance divided we cannot know. Perhaps the guardian disputed Judah's ability to make a gift concerning part of an undivided inheritance. This would mean that the dispute does not directly concern the rights of a daughter to inherit her father's estate (and the claims to his father's undivided inheritance incorporated in this).

Nevertheless, the mere fact that Judah made a gift of the courtyard to his daughter is telling. Why make a deed of gift to a daughter who would be heir anyway by virtue of her position as an only child? Could it be that the deed of gift functioned to provide the daughter with part of the estate she could not receive by way of succession? Obviously, there is room to suggest that the daughter would not inherit her father's estate, even in the absence of sons.<sup>400</sup> This could mean that the gifts were used to provide the daughter with property anyway.

Attractive as this interpretation may seem, it has to be stressed that it is unclear whether the courtyards of P. Yadin 19 and 20 indeed concern the same property. I tend to agree with Cotton who explains that this is unlikely considering the changes in abutters.<sup>401</sup> This would mean that the courtyard of P. Yadin 19 is other than that of P. Yadin 20, and that P. Yadin 20 may not reveal much about the order of succession after all. The dispute between the children of two deceased brothers over a courtyard that belonged to a grandfather can be read to imply Shelamzion would have been her father's heir. Only if we had a deed of gift of the courtyard concerned could we suggest that Shelamzion held another position towards the property than the orphans of her deceased father's brother.

Until now I have assumed that the guardian in P. Yadin 20 acts representing the orphaned sons of Judah's brother as *heirs to their father's share* in the undivided estate of the grandfather. This derives from the obvious fact that the courtyard of P. Yadin 20 belonged to Khthousion the grandfather, and not to Judah. Nevertheless, the

<sup>400</sup> See Cotton, H.M., Greenfield, J., Babatha's Property and the Law of Succession in the Babatha Archive, *ZPE* 104 (1994), 219 and Cotton, H.M., Deeds of Gift and the Law of Succession in the Documents from the Judean Desert, *Akten des 21. Internationalen Papyrologenkongresses Berlin 13-19.8 1995*, *Archive für Papyrusforschung Beiheft* 3, 1997, 182. In both articles it is emphasized that provisions by a father in favor of his daughter may have been made when he married again, that is, speculating on the possible birth of a son-heir (Cotton/Greenfield, note 50, Cotton, 183). This means that a gift to a daughter who is at that time an only child need not automatically and unequivocally imply that the daughter would not inherit *in the absence of sons*. I will come back to this in detail below.

<sup>401</sup> Cotton, Courtyards, 200: 'There appear to be too many changes in the abutters over a period which lasted no more than twenty six months. P. Yadin 19 and P. Yadin 20 do not describe, therefore, the same courtyard.' Disputed by Lewis in *In the World of P. Yadin*, *SCI* 18 (1999), 127-129. Indeed, when encountering a courtyard that once belonged to a grandfather and now the property of the granddaughter, it is likely that the courtyard was transferred by either succession or gift. But this may be the case just as well when we assume that there were two courtyards at issue: one in P. Yadin 19 (gift by father to daughter) and another in P. Yadin 20 (gift by grandfather to daughter or perhaps succession, if we assume that father predeceased grandfather).

question remains whether the guardian was not acting as representative of the legal heirs to Judah's estate. This would imply that Shelamzion is not heir to her father's estate (with possibly competing claims of the heirs of her father's brother to the same piece of property) but that the heirs of her father's brother are actually also Judah's heirs. To put it differently, is it possible that Besas is acting as the representative of Judah's heirs investigating into Shelamzion's right to the courtyard concerned, *as the right of an outsider*? In that case, the order of succession would be very different from what we assumed above: Shelamzion is not heir to her father's estate, but the sons of his deceased brother are.

That a brother played a part in estate affairs after a man's death has been observed above in both P. Yadin 5 and 13. In both cases I have assumed that the brother was in a business with the deceased and that he managed the business even after the heir had become entitled to half of it by virtue of his right to his father's property. This means that the brother managed a business consisting of both his own property and another's which he either held as a deposit or until the heir came of age. In both cases the part of the business that belonged to the deceased does not belong to the brother after the death but to the heir. The brother has possession but not ownership. This is especially clear in the case of the deposit construction of P. Yadin 5: deposited property passes into the possession of the depositary but not into his ownership. The depositor is owner and can therefore reclaim his property at any time. This is important since in both cases the deceased has left a son. This son is obviously owner of the property, by virtue of being his father's heir.

However, what about a man who only leaves a daughter? What position does she hold towards her father's estate? I explained above that P. Yadin 20 is not the best example since the courtyard obviously belonged to the grandfather and one could argue Shelamzion was Judah's heir, like the orphans were Jesus' heirs. Nevertheless, it is important, I think, that the dispute was raised by the sons of the deceased's brother. This at least opens the possibility they had a claim to the property of the deceased in their own rights. Could the sons of a deceased man's brother be his heirs?

The idea that Besas is acting as representative of the legal heirs of Judah is supported by what we find in P. Yadin 23-24. Here Besas investigates into Babatha's rights to certain orchards, demanding proof of her that she is entitled to these orchards. If this proof is not delivered he will register the orchards in the name of the orphans. This latter fact implies that the orphans were considered to be entitled to Judah's property on the basis of the law. Their right does not have to be proved by any legal act, but is taken for granted. Babatha's right, on the other hand, requires proof, which suggests that she could only be entitled to her husband's property by way of a legal act. Indeed, we have seen in the instances of P. Yadin 5 and 21-22 that the claims of a widow were not based on law of succession but on her marriage contract or other legal acts. Only by legal acts drawn up during her husband's life time could she have claims to his property after his death. In the case of P. Yadin 23-24, Babatha would probably produce proof of her marriage contract and the debt she adduced for her right to sell in P. Yadin 21-22. There, as I mentioned above, she sells the produce of orchards that are not hers (she is not heir) because she is entitled to the orchards on the basis of her dowry and a debt. Although Besas inquires into the registration of the orchards in her name, it is clear he is referring to the same orchards: he cannot be referring to the registration of P. Yadin 16 since Babatha there is clearly registering her own

property.<sup>402</sup> What Besas wants to know is why property that belongs to Judah is registered in Babatha's name. It has plausibly been argued by Cotton that this concerned the practice, known from Egypt, to have women register their claims on their husbands' property based on their marriage contract. The debt the husband acknowledged towards his wife in her marriage contract would create a lien on his entire property and the demand to register this fact was made to protect future purchasers of the property.<sup>403</sup> Besas is thus probably referring to the fact that the property is registered with Babatha's claim on it. If Babatha cannot prove her right to the property (by producing her marriage contract and in this case also her document of debt) the property will be registered in the name of the orphans. Since Besas simply speaks of registry without referring to any legal act that made the orphans owner of the property, it is logical to assume they have become owners on the basis of succession. This means that the registration will not make them owners - they have been owners ever since Judah died - but that the registration will mark them as owners of the *unencumbered* property. Following Cotton's argument, referred to above, there rested a claim in favor of the wife on all the husband's property. At Judah's death, his heirs became owners of this property by way of law of succession. There is no legal act required for the transfer of ownership but the property is still registered in Judah's name with the claims concerning Babatha on it. Babatha now either has to prove her rights, after which the heirs will have to satisfy her, or she will fail in doing so and be deprived of those rights. The claim the wife has on her husband's property then becomes a defunct right. In either case, the heirs will in the end be owners of the unencumbered property.<sup>404</sup>

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<sup>402</sup> See P. Yadin 16, a census declaration in which Babatha is registering her own property. Judah is with her as her guardian but he is obviously not registering himself. The presence of a guardian did not mean that the guardian himself got involved in the deal: he was not party. See my treatment of guardianship in Chapter 5 below.

<sup>403</sup> See Cotton, *Deeds of Gift* ..., 185: 'In Egypt, as we learn from the prefects' edicts cited in the celebrated petition of Dionysia, wives were ordered to deposit a copy of their marriage contracts in the same public archives in which their husbands' properties were registered, in order to warn prospective buyers that these properties were entailed. Something similar must have taken place in Judea as we know from two deeds of sale, one in Aramaic from Feb./March 134 and one in Hebrew, from Sept./Oct. 135 (*DJD* II, no. 30), where the wife renounces all claims to the property sold, presumably because her husband's entire property was put in lien to secure the return of the money of her kethubbah or dowry on the dissolution of the marriage, and he had to get her acquiescence before selling any part of it.'

<sup>404</sup> The question of whether registration was constitutive for the transferral of ownership is obviously not relevant here. What is at issue is not registry of ownership but a case where a factual situation does not correspond with what is registered. The orphans have become owners by Judah's death, but judging by the registered facts Babatha has a claim to that property. The demand of Besas to reveal the right Babatha has to the property concerned is obviously aimed at clearing the property of the claims. Furthermore, it is clear that registry was not constitutive for transferral of ownership from the instance of P. Yadin 19, where Judah transfers a courtyard to his daughter by way of gift, indicating that he will register the right of the daughter, if she wants him to (see P. Yadin 19:25-27, outer text). This denotes that registry was not a part of the transferral itself: in that case it would have to be done, regardless of the wishes of the donee. I also refer to P. Yadin 20, where Besas acknowledged Shelamzion's right to a courtyard and promises to register with the authorities, again when she wants him to (see P. Yadin 20:12-13/34-36). This registration will obviously not have a constitutive value for Shelamzion's ownership: she had to be owner at the time of the dispute or she would not have been able to prove her right to the courtyard. What Besas will probably register is the fact that the ownership of the courtyard is not disputed anymore.

It is interesting to note that the instance of P. Yadin 23-24 seems to indicate that in case of a dispute over registered facts, the person who claimed to have rights based on these facts had to prove that he did. This was probably so because this right was based on a legal act and not on a rule of law.

Lewis proposed another interpretation when he argued that the reference to registry in name of the wife is to a practice of registering property the husband bought for the wife during marriage in her name, meaning to have the ownership revert to the husband in case of a divorce or to his estate in case of his death.<sup>405</sup> This interpretation of the registration in Babatha's name does not influence the argument that the orphans were Judah's legal heirs: where registry that had ownership revert to the estate was concerned, after Judah's death the orphans could also inquire into Babatha's exact rights. In fact, one can imagine that the possibility that either Cotton's suggestion or Lewis's was at issue prompted the guardian of the orphans to inquire into Babatha's rights: was there a relationship with dowry and a lien on the property until the dowry was repaid to the widow, or could her rights based on registry in her name be regarded as defunct now that Judah had died?

Besas' approach only makes sense if the orphans are indeed Judah's heirs. Why ask Babatha to prove an apparently registered right if the orphans did not have a stronger claim of their own? Only if Judah's death brought the right of the orphans into existence can Besas act as he plans to. This conclusion is supported by the evidence found in P. Yadin 25, which concerns the same dispute. Julia Crispina there summons Babatha to court saying she is holding the property of the orphans to which she is not entitled. Entitled here clearly refers to ownership or the passing of ownership. Babatha is holding property that did not pass into her ownership. Since the property is styled as the orphans', it is clear it did pass into their ownership. Obviously, this happened on the basis of succession.

Nowhere in all of this is the daughter even mentioned. What was already inferred by the dispute in P. Yadin 20 is here proven: Judah had a daughter when he died but she was apparently not his heir. This implies that it is indeed likely that the daughter did not have claims to her father's property based on succession, *even if there were no sons*. Obviously, the brother of the deceased was his legal heir and in his absence, his sons. This conclusion is supported by Lewis' restoration of some damaged lines in P. Yadin 24. Lewis suggests as a restoration for line 7: 'the right of the orphans of his brother to inherit.'<sup>406</sup> This could indicate that Besas explained in P. Yadin 24 what the order of succession was. Lewis seems to take a wrong turn though, in his interpretation when he renders: 'to inherit ... from the name [i.e. the registered ownership] of Jesus their father.' How is it possible the orchards are registered in Jesus' name? They are clearly the property of Judah and a claim in favor of Babatha is registered as well. But they are of course not registered in Jesus' name. What the clause is meant to convey is that the orphans have a right to inherit *Judah's* estate as the legal successors of their father, i.e. using his right to the estate. What is thus explained here is that the orphans are the legal heirs by way of substitution. This means that the brother of the deceased was indeed his legal heir. In the cases of P. Yadin 5 and 12-15, we have met a brother of a deceased who was obviously not his heir. The only conclusion we can draw from the combined evidence is that sons

<sup>405</sup> See Lewis, *In the World of P. Yadin*, *SCI* 18 (1999), 125-127. I do not think Lewis is right when he takes the registry referred to in P. Yadin 24 to be the census. I tend to agree with Cotton and Greenfield that ἀπογραφή does not seem to have that specific meaning here (see Cotton, Greenfield, Babatha's property, 213, about the meaning of the word ἀπογραφή).

<sup>406</sup> See Lewis, 105: lines 7-8: κὸν δῖκεον τῶν ὀρφαν[ῶν ± 25  
τ]ῶν αὐτῶν εἰδῶν ἐξ ὀνο[ματο]ς Ἰησοῦ[ο]υ πατρὸς αὐτῶν, ο]ῦ;  
for the twenty five missing letters Lewis proposes to read τοῦ ἀδελφοῦ αὐτοῦ κληρονομεῖν *aut sim*.

inherited their father's estate and in their absence their brothers did. The presence of a daughter apparently did not change this latter fact.

SK 63 presents an interesting case: the daughter Salome Komaise declares that she has no claims against her mother concerning the property of her deceased father *and her deceased brother*.<sup>407</sup> This means that SK 63 presents us with a case where there is a deceased brother. It is unclear whether he died before or after the father. Neither is it clear in what capacity both mother and daughter act. It is unlikely that the mother had any rights based on intestate succession either to her husband's or her son's estate and therefore the rights that are acknowledged here were most likely based on gift. We would expect, however, that those rights were acknowledged by the heir(s) to the estate, as we have seen in P. Yadin 20: the legal heirs of the deceased, Judah, acknowledge Shelamzion's right to a courtyard. In the present instance of SK 63, this would imply that Salome Komaise was heir. This would present the sole instance in the two archives of a daughter being heir to her father's estate, although P. Yadin 20 could also be read to yield that a daughter could be substitute for her father in inheriting a share in the grandfather's estate.<sup>408</sup> SK 63 could present a case of a daughter inheriting in the absence of sons especially considering the evident fact that the son-heir has died. However, Salome is not explicitly called an heir and the extent of the claims either of the women had to the estate is not clear. Reading the text of the document one gets the impression that the daughter declares she has no rights at all to the estate, as she declares she has no claims vis-à-vis her mother regarding 'the properties left by Levi her late husband and by ...los/las her late son and brother of her who agrees.'<sup>409</sup> Since the property is described from the viewpoint of the mother-wife, it is almost as if she was entitled to these properties. Salome's renunciation of her claims seems to support that assumption. However, it might be true that this renunciation of claims followed a renunciation by the mother as is implied by the phrase 'and also she Salome ....'<sup>410</sup> Accordingly, both documents read together would then yield a mutual recognition on the part of both parties that their rights to the property (and probably to specific properties within it) would be acknowledged by the other. What kind of rights were meant remains unclear: the mother might recognize the position of the daughter as heir and the daughter that of the mother as donee, or both might recognize each other's rights as donees.<sup>411</sup> In the latter instance, however,

<sup>407</sup> The impression of the document is that the mother had written a similar document in favor of the daughter because the text reads: and also she Salome daughter of .... See Cotton in Cotton/Yardeni, 195.

<sup>408</sup> Interpretation varies because it is not clear what courtyard is concerned and how the acknowledgement should be understood: as an acknowledgement of the rights of one heir-substitute to the share of her father for whom she is substitute by other heirs-substitutes who are substitute for the brother of this father concerning shares in the estate of the grandfather or as an acknowledgement of the rights of a third party-donee by the heirs of the deceased father. See 126ff. above.

<sup>409</sup> SK 63:6-7.

<sup>410</sup> SK 63:4. See Cotton in Cotton/Yardeni, 195 about the possibility there was 'a separate deed of renunciation of claims by another person; probably the mother, Salome Grapte, for her part, had written a deed of renunciation in favor of the daughter.'

<sup>411</sup> This is also the suggestion by Cotton, see Cotton, H.M., *The Archive of Salome Komaise Daughter of Levi: Another Archive from the 'Cave of Letters'*, *ZPE* 105 (1995), 177: 'The law of succession in force at the time (at least amongst the Jews) in the province of Arabia is partly revealed to us in the Babatha archive: it seems not to have automatically granted a wife the right to inherit from her husband not a daughter the right to inherit from her parents, when in competition with sons of her father's brother. On the other hand, the legal system reflected in these documents recognized a legal instrument which mitigated the rigour of the rules of succession so prejudicial to women: the deed of gift. It could

there would have to be heirs, probably brothers of the deceased husband or their sons but we find no mention of them. The matter seems to have been settled between mother and daughter.

Since the rights of the mother-wife will almost certainly have been restricted to the possibility of rights based on gift, we have to assume the daughter is the heir here. This situation would present difficulties for the overall interpretation of the position of the daughter in absence of sons in the archives. As we have seen above, Shelamzion obviously did not inherit her father's estate, even though no brother was ever mentioned. If SK 63 indeed shows that Salome Komaise was heir to her father's estate (after her brother died), this would provide completely different evidence. I think it likely to assume that she was heir since there is no mention of other heirs to the estate concerned, given that those would have been expected to be involved in any settlement concerning the estate. The only heirs mentioned in the text are 'her heirs' in line 9, probably referring to heirs of Salome Grapte, the mother.<sup>412</sup> From a logical point of view, this phrase seems to be out of place: the most likely heir of Salome Grapte would be Salome Komaise. How can she declare something towards her mothers' heirs if she is that heir herself? Nevertheless, it is possible that Salome Grapte had children from another marriage who were her heirs or that she was expected to remarry and bear other children who would be her heirs. It is also possible that the phrase was simply customary, denoting that the claims were renounced not only for the present but for always: in the future they cannot be brought against legal successors by way of succession either. Thus it is ensured that the property concerned really became the unchallenged property of the other party. Because Salome Komaise is only renouncing her own claims to the property concerned, we do not know whether she acted as owner of this property or as claimant (for example, based on a deed of gift).

I also want to add that we do not know the sequence of the deaths in this family: did the son actually predecease his father or did he survive him? To put it differently, are we talking about a daughter possibly inheriting her father's estate in the absence of a son, or is this a case of a mother and sister arguing over the estate of their deceased son and brother? In this latter instance the content of SK 63 would not be relevant for our investigation into the position of the daughter towards her father's estate. This means that twofold caution is wanted here: first of all it is not obvious that Salome Komaise actually acts in capacity of heir, secondly it is not clear whether the estate of the father is the one concerned, or if the brother initially survived the father and his estate is at issue. SK 63 cannot therefore, intriguing though it may be, be understood as presenting clear evidence about the daughter's position towards her father's estate.

*Order of succession based on documentary evidence:*

The instances of P. Yadin 5, 20, 21-22, 23-24 and 25 show that the order of succession in this archive was most likely that the son is legal heir of his father's estate and in his absence the brother of the deceased is legal heir. Whether there is a son or not, the wife never has any claims based on the law of succession. The daughter does not inherit, even in the absence of a son.

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be that the controversy concerned property made over to mother and/or daughter in deed(s) of gift with provisions to become effective after the donor's death.'

<sup>412</sup> I imply this since the word is in the accusative case, probably connecting with the accusative case of Salome Grapte's name following the preposition πρὸς ('vis-à-vis'). Cotton does not discuss this line or its implications.

*What law determined the order of succession found in the documents?*

The conclusion reached above is not new: it was already observed by Cotton and Greenfield that the daughter did not seem to have a right based on the law of succession, even in absence of a son, when in competition with brothers of the deceased or their sons.<sup>413</sup> They took this as an indication that the law prevailing in the area at the time was not Jewish law: after all, they argue, Jewish law does recognize the rights of the daughter to inherit her father's estate in the absence of sons. They quote both from the Bible, Numbers 27, and the Mishna, Baba Bathra 8:2, where it is determined that if a man dies without leaving a son, his daughter will inherit his estate. In the Mishna it is said in as many words that the daughter is preferred over the brother of the deceased and his offspring. However, this is obviously not the case in our documents, in any case not with Shelamzion, Judah's daughter. She is obviously an only child, but just as obviously not her father's heir.<sup>414</sup> If, however, the law followed here is not Jewish law, then what law is it? Roman law clearly does not qualify, as sons and daughters there have equal shares in their father's estate: 'there was never any systematic exclusion of daughters.'<sup>415</sup> I would even assume that Roman law does not apply here, from the fact that Besas explains about the order of succession in P. Yadin 24.<sup>416</sup> If this order had been obvious to the Roman court, he need not have mentioned it.

The order of succession must then follow some other, probably indigenous law.

The first possibility to come to mind would obviously be Jewish law, as this law did initially prefer the claims of the brother and his descendants over those of the daughter. In the original order of succession given in Biblical law, there was no room for the daughter to inherit her father's estate: in the absence of a son an inheritance went to the deceased's brothers. However, this order of succession was apparently changed in favor of the daughter by the events and the ruling described in Numbers 27. The Mishna text cited by Cotton and Greenfield obviously goes back to this. Nevertheless, the conclusion drawn by Cotton and Greenfield that the situation in our documents does not resemble Jewish law is drawn with complete disregard of

<sup>413</sup> See Cotton, Greenfield, Babatha's Property and the Law of Succession, 220; also see Cotton, The Archive of Salome Komaise, 177 (cited above in nt. 411) and Cotton, Deeds of Gift ..., 186.

<sup>414</sup> Questions can be raised about the position of Salome Komaise as presented in SK 63, but as explained above, the understanding of the document's implications is impeded by the lack of data on the deaths of father and son. If the father predeceased the son, we are not dealing with a case of a daughter inheriting or failing to inherit her father's estate. See my discussion above, 131ff.

<sup>415</sup> See Mireille Corbier in: Pomeroy, S. (ed.), *Women's history and ancient history*, Chapel Hill, 1991, 185. She mentions, however, that in practice there were cases of unequal sharing between male and female heirs and that juriconsults discussed special bequests for a daughter if she married a relative in the *familia*. However, these appear to have been isolated instances. In general, all children were entitled to a share in their father's estate regardless of their sex or marital status.

The complications of the Roman system were not so much in differentiation dependant on gender but were related to the concept of *patria potestas*. Initially, only those in a household who became *sui iuris* at the *pater familias*' death could inherit. This meant that, for example, daughters who were married *cum manu* could not inherit part of their father's estate because they were already *sui iuris* before their father's death. Children who were emancipated could not inherit either and this applied to sons and daughters alike. For these instances, the praetor gave a series of rulings, based on the idea that a praetor cannot change the order of succession because he cannot make a new law (*praetor heredem facere non posset* – 'the praetor cannot make a person heir'). What the praetor did was opening a way to give all legitimate children (*liberi*) the possibility to ask for possession of their share in their father's estate and if the praetor thought they qualified, this possession would be granted. Basically, this came down to a division of the inheritance amongst the children, even though they were possibly not all heirs in the strictly formal sense of the term.

<sup>416</sup> See my discussion above, 130-131, also see small print on 98.

developments directly following the change of the daughter's position as described in Numbers 27. In Numbers 36 a specific element is introduced concerning the position of the daughter with respect to her father's estate as presented in the Old Testament. In Numbers 27:11, it was originally stated that the order of succession given there (including the right of the daughter to inherit in the absence of a son) was a 'legal requirement.'<sup>417</sup> However, the rule established is debated in Numbers 36, as the relatives of the deceased object to the consequences of the daughter's right to her father's estate, in the case of her marriage. It is then determined that daughters can inherit when they have no brother but *only if they marry within their tribe*. This makes it clear that there was awareness that the marriage of the daughter could affect the family property and that this was unwanted. The property had to stay within a certain defined group (the tribe, obviously, since the whole passage is closely related to the shares the tribes received in the Promised Land). I think it is not at all odd to assume that this example created an ongoing awareness of the risk involved in having a daughter inherit her father's estate. I do not wish to argue that the rule given in Numbers 36 still applied in Babatha's lifetime. I find it hard to say how a distinction between tribes would have been made. There is, in the documents, no evidence that people were designated to a certain tribe. This kind of distinction does not seem to have been important. The Mishnaic passage on order of succession, quoted above, does not mention a possible marriage of the daughter in relation to her position with respect to her father's estate. Indeed, it was determined in Baba Batra 8:4 that the position of the son and the daughter was the same where inheritance was concerned.<sup>418</sup> Nevertheless, it was determined in Talmudic times, i.e. three centuries later, that the enjoinder of Numbers 36 was 'applicable only to the particular generation to whom the enjoinder was directed.'<sup>419</sup> This suggests that the enjoinder's possible application was still under consideration.

It is important to note in this respect that Cotton and Greenfield have argued that deeds of gift might have been used to mitigate the rigor of the law of succession that, as we can gather, did not allow for daughters to inherit (part of) their father's estate. Indeed, all gifts found in the Babatha and Salome Komaise archives are made to women, in one instance a wife (Babatha's mother in P. Yadin 7), in the two others a daughter (Shelamzion in P. Yadin 19 and Salome Komaise in SK 64). It is presumed that on the occasion of the gift to the wife in P. Yadin 7, the husband concerned also drew up a deed of gift in favor of his daughter, Babatha. This deed of gift would then have been the means by which Babatha eventually came to own the orchards she registers as her own property in P. Yadin 16. I think it is likely that Babatha became owner of this property by way of a gift, since there were few other ways by which a woman could become owner of real estate at the time. The interesting detail about Cotton and Greenfield's suggestion for this presumed gift to Babatha is that they think it was presented to her on the occasion of her marriage to her first husband Jesus.<sup>420</sup>

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<sup>417</sup> NIV, the original Hebrew reads: *chukkat mishpat*, ordinance (or statute) of law. This presents the only clear case of a rule of inheritance law in the Old Testament, see also Ben-Barak, Z., Inheritance by daughters in the Ancient Near East, *JSS* 25 (1980), 25-26.

<sup>418</sup> The only exception is the double share the son receives in the estate of his father (but not in that of his mother). The daughter only receives the maintenance she is entitled to from her father's estate and not from her mother's.

<sup>419</sup> See BB 120a, also the commentary of Rasbam at this point (see Elon, *Principles*, 446).

<sup>420</sup> They also take this to be the occasion for the gift the husband gave to his wife; see Cotton, Greenfield, 218: 'Having provided for his daughter Babatha, ..., her father, Shimeon the son of Menachem, wanted to make sure that in the event of his death, his widow, Miriam daughter of Yosef would keep the rest of his property.'

The gift to Shelamzion, in P. Yadin 19, is related to marriage as well and the same is assumed for the gift to Salome Komaise in SK64.<sup>421</sup> This is significant in understanding the relationship between law of succession and gift because it need not be true that daughters could not inherit their father's estate in general and that gifts were used (in various instances) to counterbalance the consequences of this rule. On the contrary, it seems that the gifts were made *at a specific moment*, at the time of a daughter's marriage, suggesting that it was this marriage that occasioned a change in the daughter's position based on the law of succession, which the gift then sought to counterbalance. Such a change is in fact already implied in the rule laid down in Numbers 36: a daughter who is heir to her father's estate by virtue of her position as an only child can only inherit if she marries within her tribe. If she does not do so, she cannot inherit. This means that marriage can indeed change the position of the daughter towards her father's estate. We see in both the case of Babatha and Shelamzion that the gifts were substantial and could thus be seen as ample compensation for loss of claims based on the law of succession.

If my assumptions above are true, the law of succession at the time would not deny a daughter her right to inherit her father's estate, as long as she was unmarried or married to the next of kin. In such cases, the family estate would stay within the family. However, where the daughter was married to an outsider, her marriage would mean losing her position towards her father's estate. This would not be unlike Jewish law at all but as a consequence of the Biblical rules. It is true, of course, that the Mishna does not mention any relationship between the law of succession and marriage or marital status of the daughter but it seems to give the daughter a right to inherit over the brothers of the father without further detailing. However, in our documents it is obvious that the daughter-only child does not inherit her father's estate and that she is presented with a gift on the occasion of her marriage. It is therefore worthwhile to pursue the argument for a relationship between marriage, marital status and law of succession further and investigate whether this can be related to a broader oriental context. How did other oriental laws treat the daughter, specifically in the absence of sons?

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<sup>421</sup> See Cotton, Greenfield, 220, note 54. Another possibility is that the mother who bestowed the gift wanted to make sure her daughter got some of her property either in case a male heir would be born or in case of her death (220, main text; this has to do with the second marriage of the mother which might occasion the birth of a son or at least leave the second husband heir in case of the mother's death).

II. DISCUSSION OF LEGAL POSITION OF DAUGHTER  
IN ANCIENT EASTERN LEGAL SYSTEMS

*Order of presentation*

*Egypt*

*Evidence from legal code and documents*

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*Mesopotamia*

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*Egypt**Evidence from legal code and documents*

There are two types of evidence for Ancient Egyptian rules of inheritance: more or less direct evidence for rules from legal codes or legal manuals, and indirect evidence for rules deduced from their application in wills, testaments, and other instruments, as well as from patterns of succession to office and divisions of property. Direct evidence for the rules of succession to priestly offices are provided by the Gnomon of the Idios Logos.<sup>422</sup> Direct evidence for the rules of inheritance of property are provided by the Legal Code or Manual of Hermopolis.<sup>423</sup> These two sources make it clear that the rules for succession to offices, which were not partable among multiple heirs, were different from the rules for succession to property, which was partable among multiple heirs, both male and female. Only succession to property will be discussed here.<sup>424</sup>

The rules for inheritance found in the Legal Code or Manual of Hermopolis make a distinction between inheritance with and without a will. For it says: 'in case a man dies ... having not written shares for his children ...'<sup>425</sup> This makes it clear that it was possible to make a will and thereby change the shares that the rules of law that are to follow determine.<sup>426</sup> Wills were made to deviate from the law of intestate succession, for example when a large estate was at stake.

<sup>422</sup> BGU 5, lines 181-215 (¶71-96).

<sup>423</sup> See Mattha, G., *The demotic legal code of Hermopolis West* [text in transliteration ed. with transl. and notes; pref., additional notes and glossary by George R. Hughes], Le Caire, 1975 or Donker van Heel, K., *The legal manual of Hermopolis*, Leiden, 1990. Those unfamiliar with Ancient Egyptian will probably find the last one easier to work with. It also incorporates later suggestions of, for example, P.W. Pestman.

There are now other similar texts known from Egypt, see Sandra Luisa Lippert, *Ein demotisches juristisches Lehrbuch, Untersuchungen zu Papyrus Berlin P 23757 rto* (Ägyptologische Abhandlungen 66), Wiesbaden, 2004. This text does not contain references to law of succession and will not be discussed here.

<sup>424</sup> When discussing inheritance and succession in ancient Egypt, a distinction is usually made between the transfer of property and the accession to offices or positions that cannot be divided. For the latter, the term succession is used as the heir succeeds the testator in the office or position, while the term inheritance is then reserved for the transfer of property (that can be divided). The distinction is made because women could not succeed their fathers in offices and positions but could inherit from their fathers. Consequently, their position is different when it comes to succession or inheritance. However, from a legal point of view the difference between inheritance and succession is otherwise. The term succession is used for the heirs stepping into the shoes of the testator, both regarding his property and eventual offices or positions. The term order of succession, for example, denotes in what order certain family members are named heirs: for example, first the children, then the brother of the deceased, then his parents etc. In the same way we can speak of intestate and testamentary succession: succession that is determined by the law or by a will. In the following I will not be discussing the succession of heirs to offices and positions but only matters of transfer of property. In accordance with legal terminology, I will call these instances succession, succession then referring to the way in which certain persons are called to be heirs.

<sup>425</sup> Legal Manual Column VIII,30. [When referring to the Legal Manual I use Donker van Heel's edition, mentioned above, nt. 423; he uses the transliteration and translation as provided by Pestman in a forthcoming article *La succession ab intestat selon le droit démotique* (reconstitution imaginaire d'un chapitre du <code civil démotique>)]

<sup>426</sup> It is important to point out in this respect as Seidl already did, that the way in which the Legal Manual phrases it (in case a man dies, having not written shares for his children) seems to imply that the will would concern a division of the estate amongst the children (Seidl, E., *Ägyptische Rechtsgeschichte der Saiten- und Perserzeit*, Glückstadt 1968 (2e rev. ed.), 81). This means that the reference to a will does not necessarily imply that a person could make his estate over to anyone he chose (an outsider). Indeed the examples the Legal Manual gives for wills and the consequences of

In the instance where a man did not write shares for his children it is described that it is the eldest son who gains possession of the inheritance, unless the other children demand their shares. Then the eldest son has to write out all the names of the children that have a claim to the inheritance.<sup>427</sup> When a child dies before having received his share, his eldest son takes his place. If he does not have a son, the eldest son (i.e. the deceased son's eldest brother) takes his share.<sup>428</sup> We can therefore see that Egyptian law knew rules of substitution, that is, rules that determine what happens when an heir died before he received his share.<sup>429</sup> It was also determined that a share that was allotted to a certain child would go back to the eldest son if the child died *after* having received the share, without himself having sons who could inherit.<sup>430</sup> This solves the problem of family property ending up with non-relatives.

The child who initially gained possession of the inheritance was clearly the eldest son. But it is not self-evident that this means that only sons inherited. The role of temporary possessor of the estate and also divider of it is granted to the eldest son, but all children, whether male or female, can receive shares.<sup>431</sup> It is also clear that all children can receive shares from either their father or their mother. This means that the children always inherit the estate of their parents, regardless of their or the parents' sex.

There is a specific passage devoted to the case where a man dies having a daughter (or daughters), but no son.<sup>432</sup> There the eldest daughter acquires the rights of the eldest son in receiving two shares of the inheritance, but it is determined that she does not have the right of the eldest son to inherit the shares of predeceased children. This means that the daughter is not equal to the son in that respect.<sup>433</sup> That a female child was not considered equal to a male in general, can be seen in the remark where it is determined that when a man first begets a daughter and then a son, the son will be considered to be the eldest son.<sup>434</sup> In general one can say that always as soon as there is a male child, no matter whether he is firstborn or not, he acts as the eldest son, who manages the property until the other children demand division of it. He can also take the extra share, when appropriate.

The Demotic legal documents from Egypt bear out the same: children inherit their parents' estate, sons and daughters alike. It appears from both literary sources and legal texts that remarriage of a parent was considered a serious threat for the claims of the children from the first marriage.<sup>435</sup> After the marriage they had to share the

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those wills for the division, all concern division amongst the children (for example giving the estate to one child or giving a certain child a bigger share; see for example Column IX,21-22).

<sup>427</sup> Column VIII,31-33.

<sup>428</sup> Column IX,3-4.

<sup>429</sup> The system for this was quite elaborate as can be seen from the fact that an eldest son takes the shares of his siblings who died before the division and did not have children, while an eldest daughter (i.e. a daughter in absence of a son, acting like the eldest son) does not: compare Column IX,3-4 to Column IX,16-17.

<sup>430</sup> Column IX,3-4. In case he did have sons, those would take his place.

<sup>431</sup> Column VIII,32 (where the word for children is used en not merely a word for sons) and Column IX,2-3, where both sons and daughters are mentioned explicitly.

<sup>432</sup> Column IX,14-16.

<sup>433</sup> Column IX,16-17; see nt. 429 above.

<sup>434</sup> Column IX,29-30.

<sup>435</sup> See for a discussion of some texts: Pestman, P.W., *The Law of Succession in Ancient Egypt*, in: Brugnan, J., David, M., et. al., *Essays on Oriental Laws of Succession* (Studia et Documenta ad Iura Orientis Antiqui Pertinentia IX), Leiden, 1969, 59ff.

inheritance with children born from the second marriage.<sup>436</sup> It is obvious, however, that the children are considered entitled to their share, even while their parent is still alive. This means that often measures are taken to make sure that a child will receive something of his paternal property. Because there are a great number of variations in the texts it is difficult to determine what kind of division was made when the deceased had made no arrangements at all. Pestman has enumerated a number of cases in which it seems that one of the heirs does not receive anything (is perhaps disinherited) while evidence from other papyri shows that the heir concerned did receive something (for instance because he was bought out).<sup>437</sup> In a case of a son and a daughter the son seems to inherit his father's estate as he sells a house that is part of the estate without intervention of his sister. Nevertheless another document shows that the daughter had received her share.<sup>438</sup> For the present investigation it is important to note that there are instances where daughters receive some of the paternal estate upon their marriage and consequently relinquish their claims to the estate that are based on succession.<sup>439</sup> Pestman also observed that where daughters appear to receive less substantial shares than sons this may be due to the fact that they received property upon marriage (thus that this property together with what they received upon their father's death made up their intestate inheritance share).<sup>440</sup> This indicates that even though daughters inherited on equal basis with sons there was a relation with marriage as the property they received then was viewed either as their share or as part of their share. The relationship between marriage and succession will play an important part in the discussion of other legal systems below.

An interesting case with respect to P. Yadin 20 is P. Louvre 2430 where the children of two deceased sons divide the inheritance of the grandfather. For one son a son acts as his heir, for the other son his four daughters. This makes it clear that under Egyptian law the daughters of a deceased son-heir could act as heirs in his stead. As I discussed above, this is not clear in P. Yadin 20. There Shelamzion can be acting as heir of her father Judah, in a conflict with the heirs of her father's brother, which would present us with the same situation as in P. Louvre 2430, but her right could also be challenged by the brother's sons as heirs of her father's estate. I have mentioned above that the combination with evidence from P. Yadin 23-24 suggests that the orphans of the brother were indeed Judah's heirs. In that case P. Yadin 20 has to be read as a conflict between the legal heirs of a deceased and his daughter, who is apparently not his heir. This would present us with a completely different situation than the one found under Egyptian law.

### *Conclusions*

Under Egyptian law both sons and daughters inherit the paternal estate. Their position on the basis of succession appears to be equal, except for some privileges of the eldest son: when first a daughter is born and then a son, the son is regarded eldest son and the eldest son inherits the shares of his siblings who die without children (whether before or after the division of the inheritance), while the eldest daughter does not.

<sup>436</sup> Pestman, *Law of Succession*, 59-60: the case of Senhor (P. BM 10.120 A/B, P. Bibl. Nat. 216 and 217 and P. Tur. 2126).

<sup>437</sup> Pestman, *Law of Succession*, 66.

<sup>438</sup> Pestman, *Law of Succession*, 66: the case of Paret's estate (P. Phil. 7,8 and 9).

<sup>439</sup> Pestman, *Law of Succession*, 66, the case of Herakleia (P. gr. Mich. II 121 verso xii 3/4/10 and V 341.9).

<sup>440</sup> Pestman, *Law of Succession*, 65.

From documents it appears that daughters indeed shared the estate with sons; in some cases where they seem to be excluded they did receive a share by some kind of arrangement. This arrangement was obviously not meant to *create* a right to the share (that right was based on intestate succession), but to pay the share to the daughter by some other means.

Where the daughter's share is related to a portion received upon marriage (whether this portion makes up the entire share or part of it) there could be a link between marriage and succession as assumed for the Judean Desert documents and to be discussed for other legal systems below. Nevertheless, it is important to keep in mind that under Egyptian law daughters are entitled to a share in their father's estate alongside their brothers: *the daughters are heirs on the basis of intestate succession*.<sup>441</sup> This means that when they receive a portion of the father's estate upon marriage this portion is given to them by way of a share in the inheritance based on their rights to it as intestate heirs. For the Judean Desert documents one could argue that a gift upon marriage is made to make up for loss of claims on the basis of succession, but this is a different legal situation: the gift does not provide the daughter with her share, but provides her with property she could not (or rather no longer) acquire on the basis of succession. The gift then takes the place of the right to the property on the basis of succession.

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<sup>441</sup> This seems to have been a specific feature of Egyptian law as opposed to the other laws in the ancient Near East; in his introduction to *A History of Ancient Near Eastern Law* Westbrook speaks of 'a major dichotomy' that 'existed between Egypt and Asiatic systems as regards daughters as heirs' (Leiden 2003, 36). See my detailed discussion of these 'Asiatic systems' below.

*Mesopotamia:*

Under this heading I will treat early Mesopotamian law (anterior to Hammurabi's Code), Old Babylonian law (Code of Hammurabi), with a few remarks on Neo-Babylonian law, and Assyrian law, covering Old, Middle and Neo Assyrian law. I will also include a short excursus on Athenian law since it is mentioned in several commentaries on Old Babylonian law of succession, comparing Athenian and Biblical Jewish law.

*Mesopotamian law anterior to Hammurabi's Code:*

Between 1947 and 1952, three collections of laws were brought to light that contain legal material that is older than the Code of Hammurabi (of 1750 BCE): the Laws of Ur-nammu (2100 BCE), the Laws of Lipit-Eshtar (1930 BCE) and the Laws of Eshnunna (1770 BCE).<sup>442</sup>

The Laws are comparable in content, that is, as far as the preserved text reveals. For example, the Laws of Ur-nammu and those of Eshnunna do not contain information about law of inheritance and succession. Our understanding of the contents of the legislation of Lipit-Eshtar suffers from substantial lacunae in the text, for example, a gap of 34 lines where a part about inheritance and succession probably began.<sup>443</sup> What is still legible conveys the impression that children can inherit independently of their gender.<sup>444</sup> However, whether this was true can be immediately questioned looking at another provision in the same text: 'If the father is living, his daughter whether she be an *entu*, a *natitu* or a heirodole, shall dwell in the house like an heir' or in another translation: 'If during a father's lifetime his daughter becomes an *ugbaltu*, a *naditu* or a *qadistu*, they (her brothers) shall divide the estate considering her as an equal heir.'<sup>445</sup> Obviously, an unmarried daughter is concerned, as she is described as a priestess.<sup>445</sup> According to the first translation, the priestess daughter dwells in her father's house like an heir, the other seems to denote that the moment she becomes a priestess she gains the status of heir alongside her brothers. In both instances it is clear that her

<sup>442</sup> The names can be spelled in various ways, for example, Ur-nammu or Ur Namma, Lipit Eshtar or Lipit-Ishtar.

For more details about the finds and early law in general see Speiser, E.A., *Early Law and Civilization*, in: *Collected Writings*, Philadelphia 1971 (reproduced in *Jewish Law and Decision-Making*, 66ff.). I note that Speiser describes the laws of Eshnunna as 'a still older body of law' (compared with the Laws of Lipit Eshtar), which suggests that the Laws of Eshnunna would have to be placed between the Laws of Ur-nammu and those of Lipit-Eshtar. Yet he remarks that the language of the laws is Akkadian rather than Sumerian. I adhere to the sequence as presented in the recent edition of the laws by Roth: Roth, M., *Law Collections from Mesopotamia and Asia Minor*, Atlanta 1995: Laws of Ur Namma (LU, 2100 BCE) 14-22, Laws of Lipit-Ishtar (LL, 1930 BCE) 23-35, both under the Sumerian section, and Laws of Eshnunna (LE, 1770 BCE) under the Babylonian section. I have not distinguished between Sumerian and Babylonian material in my presentation above.

<sup>443</sup> See Schreiber, *Jewish law and ...*, 87, where it is noted that some ten and thirty-four lines located close to each other are destroyed. Roth has restored more of the text (she presents a section 20 a, b and c) but these parts do not reveal more about inheritance, dealing rather with the way in which a man has to take care of children he promised to raise. This seems to connect with the contents of 20, which deals with the rescue of a child. Yet the arrangement in 22 and 23 obviously deal with inheritance (and specifically the position of the daughter) which could suggest that the gap between 20c and 21 contained more information on inheritance. See discussion above.

<sup>444</sup> See parts 24-27 where there is mention of children without specifying whether they are male or female (the word *dumu* is used, meaning child, without specifying the sex). Compare nt. 450 below.

<sup>445</sup> All the terms used to refer to the daughter have a connection with priesthood, although the degrees may vary: an *ugbaltu* was really a priestess, while an *entu*, a *naditu* and a *qadistu* were more of temple dedicatees or female temple attendants. *Entu* referred to the highest class of such temple attendants, *qadistu* to the lowest. A *qadistu* was usually a minor girl.

position as a priestess is closely connected with her status as heir. First of all, this implies that daughters would not normally inherit alongside their brothers and secondly it indicates that a daughter could only be heir equal to her brothers if she was a priestess, that is, a woman who was to remain unmarried. Only if she was a priestess of some kind, i.e. an unmarried woman, did she live in the house of her father *like an heir*. In other instances, it is implied that this was different.

Of course one could argue that marital status is not of foremost importance but rather the fact that she was a priestess. However, the implication of the fact that she was a priestess was that she was unmarried. This was the fact that really mattered: a daughter who was a priestess did inherit not because she was a priestess but because this status implied that she was unmarried. That way, her share in her father's estate would ultimately revert to her brothers.<sup>446</sup> Therefore, having her inherit would not damage the family property. This idea can be found in later Mesopotamian law as well, for example, in the Code of Hammurabi to be discussed below.

Besides the law texts that are often fragmentary or do not reveal details about succession and inheritance at all, there are also documents from those early periods that explicitly mention the position of the daughter regarding her father's estate. A text from Gudea (Lagash; 2150 BCE), for example, declares that 'in the house in which there is no son, the daughter enters into the position of heiress.'<sup>447</sup> It is remarked though that 'this declaration may well express the ideal aspirations of society' and that a daughter did not usually inherit even though she was apparently entitled to do so under this provision.<sup>448</sup>

Nevertheless, an Old Babylonian legal text from Nippur reads something to the same effect: 'If a man dies and he has no sons, his unmarried daughters shall become his heirs.'<sup>449</sup> For the word heir the term *ibila* is used, interpreted as denoting only male heirs.<sup>450</sup> The text thus expresses that a daughter is instituted in the position which normally only a son could hold. Contrary to the text cited above, this text explicitly mentions the daughter's marital status: *unmarried* daughters become *ibila*, heir, implying that married daughters do not. This link between marital status and inheritance rights could also be at the heart of a legal case recorded in a document from the Ur III period, concerning the disinheritance of an adopted daughter at her

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<sup>446</sup> I note in this respect that some classes of priestesses/temple attendants were allowed to marry, but not to bear children (see Roth, 271, under *naditu*). From a legal point of view this meant that their share in the estate of their father would indeed revert to the brothers as the daughters would not have legal heirs of their own.

<sup>447</sup> Statue B, vii: 44-46, mentioned by Ben-Barak, Z., *Inheritance by daughters in the ancient near east*, *JSS* 25 (1980), 23, n. 1 and Wilcke in Westbrook (ed.), *A History of ...*, 165, stating that this text 'introduced the right of a daughter to become an heir to her parental estate, that is, not just to her mother's property.' Division of the estate of a woman by her daughters is discussed by Wilcke (in Westbrook (ed.), *A History of ...*, 165), where obviously a daughter renounces her claim to her mother's property in favor of her sister.

<sup>448</sup> Ben-Barak, *Inheritance by daughters*, 23.

<sup>449</sup> Classified by Ben-Barak, *Inheritance by daughters*, 23, as Old Babylonian, discussed by Bertrand Lafont and Westbrook in the section about Ur III: 'according to one law code, if the father died leaving no son, his unmarried daughter should become his *ibila*' (*A history of ...*, 206). See their n. 94 and their discussion at the beginning of the chapter on the Ur III period about the difficulties in assigning texts stating that this is 'indicative of the continuity of the legal tradition between the Ur III and early Old Babylonian periods.'

<sup>450</sup> See Bertrand Lafont and Westbrook in Westbrook (ed.), *A History of ...*, 206: 'The term for heir, *ibila*, might equally well be translated "son and heir". In note 93 they explain that 'the sign is, in fact, composed of the signs for 'child' (*dumu*) and 'male' (*nita2*), but in some legal documents it is spelled phonetically.'

marriage.<sup>451</sup> A man adopted two girls and made them his legal heirs (*ibila*). When one of them was about to marry a certain Nibaba she was disinherited. Ben-Barak suggested that the disinheritance might concern ‘a declaration that Nibaba had no intention of joining the family of the bride.’<sup>452</sup> Following this suggestion, the situation implies that disinheritance followed when the adopted father realized that his property would pass out of his family. This is often the reason behind arrangements for daughters as heirs. For this reason, marriage is so vital in this respect. Only if the marriage ensures that the property will stay within the family does it not change the position of the daughter towards her father’s estate.

‘This contrasts with the statement at the end of an Old Babylonian letter from Sippar: “There is no right to inheritance for daughters in Sippar, be they the eldest or not.”’<sup>453</sup> Indeed, this remark which seems to altogether exclude the daughter as heir seems to deviate strongly from the positions assumed above. However, I think that the addition ‘be they the eldest or not’ could imply that the remark sees to a situation where there are sons.<sup>454</sup> The rule would then express that even if a daughter is the firstborn child, she cannot inherit. In that case the remark does not necessarily denote that a daughter could not inherit *if there were no sons*.

In general it seems that daughters could inherit if there were no male descendants, while in one instance it is specifically determined that this provision applies to *unmarried* daughters. The Ur III document about the disinheritance of the adopted daughter at her marriage shows that the choice of a marriage candidate was vital for a daughter who was heir. Ben-Barak has even concluded that ‘according to the Ur III document the daughter was obliged to marry someone with a certain affinity to her father.’ Such an obligation would obviously be aimed at securing the family property and would thus come close to the arrangement found in Numbers 36. A clear link existed between marital status or future marriage and the position of the daughter as possible heir to her father’s estate in the absence of sons.

### *Old Babylonian law*

The matter of succession in Babylonian law is rather complicated as the code of Hammurabi<sup>455</sup> does not give clear rules on the order of succession. ‘The Laws deal only with certain special cases of succession and give no statement of the general law which has to be discovered by inference from isolated provisions and from the

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<sup>451</sup> See Lafont/Westbrook in Westbrook (ed.), *A History of ...*, 206: ‘In NG 204:34-37 two apparently adoptive daughters are called *ibila*.’ They mention the case immediately following the discussion of the rule that in case a man dies leaving no son his unmarried daughter can become his heir. They do not, however, expound, however, on the relevance of the disinheritance for our understanding of the (unmarried?) daughter as *ibila*.

<sup>452</sup> Ben-Barak, *Inheritance by daughters*, 23.

<sup>453</sup> *Idem*.

<sup>454</sup> Thus contra Ben-Barak, who discusses this instance under the heading ‘daughters inheriting without sons.’

<sup>455</sup> This is the primary source on Babylonian law as it is transmitted fairly intact and seems to contain a lot of older material, for example, from the laws of Bilalama, see Driver, G.R., Miles, J.C., *The Babylonian laws (edited with translation and commentary)*, Oxford, 1968 (rev. ed.), Vol. II, 5ff. This edition discusses all available sources of Babylonian law, giving text and translation not only of Hammurabi’s Code but also of other laws like the law of Lipit-Ishtar, Susian land law and so-called Neo-Babylonian laws.

Roth presents text and translation of the Code of Hammurabi (76-142) but gives no (legal) commentary. For that, one still has to turn to Driver and Miles, cited above. A general overview of legal issues in the Code of Hammurabi (i.e. not a full commentary on the complete text) is given in Westbrook (ed.), *A History of ...*, 361 ff.

documents which deal with the division of property at death.<sup>456</sup> The position of daughters is especially difficult to determine as there seems to be contradictory evidence and developments might have occurred over time.

The most important point for the whole discussion is the question of whether *maru*, the word used in the Laws to denote the heirs, can only refer to males or can include females as well.<sup>457</sup> Driver and Miles produced an extensive excursus on the subject, referring to instances where inclusion of daughters indeed seems likely.<sup>458</sup> In documents it could in any case occur that daughters were designated by the word *maru*. However, it is important to note that in the Laws the only right to inherit her father's estate clearly granted to a daughter is granted to an unmarried priestess.<sup>459</sup> The idea behind this was obviously that in such a case the woman would not have children of her own and that the property would therefore revert to the family (her brothers and their children) after her death. This shows that the position of daughters with respect to their father's estate concerned considerations of keeping the family property within the family. If it was guaranteed that the property would revert into the family the daughter was entitled to inherit alongside her brothers. This suggests a link between the daughter's right to inherit part of her father's estate and her marital status comparable to the one suggested above with regard to the Judean Desert documents.

'The Laws do not refer to the case where a man has no sons.'<sup>460</sup> This is, in my opinion, a bit unexpected since we have seen in the older material that several references are made to a situation where a man dies leaving no sons. I mentioned the statue from Gudea (Lagash) above, as well as the Old Babylonian documents from Nippur. One can assume that this idea of the (unmarried) daughter inheriting if there were no sons was accepted and practiced.<sup>461</sup> Nevertheless, the Laws do not refer explicitly to this case. The only thing that is determined is, as mentioned above, that the unmarried daughter inherits alongside her brothers. One could argue, a fortiori, that this would be expected even more so if there were no brothers.

I note, though, that in the Laws it is determined that the unmarried daughter is priestess, while this is not determined in the (older) document from Nippur. Nevertheless, it is important to note that in both cases the daughters are required to be

<sup>456</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 324.

<sup>457</sup> In the Assyrian laws the terms seem to refer exclusively to males, see Driver and Miles, *The Assyrian Laws*, Oxford, 1935, 295 ('In Assyria it seems that only males inherit; for in §§ 1-4 the persons who inherit are described as brothers (Ass. *ahṣḥāḗ*), and this term is obviously restricted to males. Consequently, when the persons who inherit a man's property are described as his 'sons' (Ass. *mārē*) it must be assumed that the term is employed in its strict and literal sense.' I have mentioned the interpretation of *ibila*, used in the early Mesopotamian material above (nt. 450).

<sup>458</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 338-341.

See also Westbrook, R., Old Babylonian Period in: Westbrook, R. (ed.), *A History of Ancient Near Eastern Law*, Leiden 2003, Vol. I, 395, where he discusses the terminology in the Laws: 'The law codes use Sumerian terminology, which can be ambiguous as to gender. *Dumu* means "son" (Akk. *marum*) and *dumu.mi2* means "daughter" (Akk. *martum*), but especially in the plural, *dumu* can be gender non-specific. Nonetheless, *dumu* is paradigmatically a son and should be taken as such unless the context demands otherwise. It should be noted that Sum. *ibila*/Akk. *aplum* can mean "son", "heir", "son-and-heir", or "first-born son", depending on context. Only rarely could it be interpreted as applying to female heirs. See Kraus, "Erbrechtliche Terminologie ..." 18-24.'

<sup>459</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 334ff. This has to be understood as 'an inheritance-share in lieu of a dowry' while normally the dowry functions in lieu of inheritance (see Westbrook, R., *Old Babylonian Marriage Law*, Horn, 1988, 89 and Westbrook in Westbrook, *A History of ...*, Vol. I, 397.

<sup>460</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 334.

<sup>461</sup> 'Since this is a legal document, it may be assumed that this custom was the accepted practice in that society.' Ben-Barak, *Inheritance by daughters*, 23.

*unmarried*. Apparently, marital status was important in determining whether a daughter could be heir or not. The fact that a daughter is priestess determines that she will remain unmarried, while the document from Nippur does not make any demands on that point. In this respect, I think it is interesting to recall the example of the disinheritance of an adopted daughter following her marriage, discussed above.<sup>462</sup> If a daughter was made heir and subsequently married, this could cause problems. This realization could be at the heart of the rule laid down in the Laws which only gives a share in the estate to the unmarried daughter who remains unmarried. Comparing the older evidence with the rule in the Laws, one gets the impression that the position of the daughter changed in that unmarried daughters-priestesses could inherit in any case, even alongside their brothers, because they would remain unmarried and their share would eventually revert to their own family. This implies that unmarried daughters that would not stay that way would not have a right to inherit, in any case, not alongside their brothers. It is obvious that married daughters would in any case have no rights to the inheritance.

Driver and Miles mention the implication of some documents that daughters inherited *if there were no sons*: ‘in the documents property is occasionally divided between daughters alone, in which case it may be that they inherit in default of sons.’<sup>463</sup> The question is, however, whether they inherit *in default of sons* or simply inherit as children of the deceased. To put it differently, did all children inherit regardless of their sex and did daughters in absence of sons inherit as such, or did sons inherit and could daughters only inherit in default of sons? I do not think the material is conclusive in that respect. On the one hand, the Laws only determine that daughters who are unmarried priestesses can inherit alongside their brothers. As mentioned above this resulted in reversion of the property to the sons/brothers after the woman’s death. Therefore, this way of allowing a daughter to inherit cannot be taken to apply to other daughters as well: indeed, the concept behind it would go against this. Therefore, it seems likely that the Laws started from the assumption that only sons inherited and daughters could inherit if they were unmarried priestesses. Further support for the idea can be found in my opinion in the arrangements in the Laws that sons who inherit have to provide their sisters with a husband and a dowry.<sup>464</sup> This would come down to a share in the father’s estate anyway.<sup>465</sup> Precisely because an unmarried priestess could not benefit from this arrangement, she would inherit a share of her own at her father’s death.

While the Laws seem to restrict the right of a daughter to inherit part of her father’s estate to the unmarried daughter priestess, the documentary evidence is not so univocal. Daughters did receive a part of their father’s inheritance designated as their share, but it is not clear what this share encompassed, thus whether it was equal to the share of the brother(s). In some cases, where the daughter is said to take part in the division, it is clear that her share is granted to her on the basis of

<sup>462</sup> Adduced by Ben-Barak, *Inheritance by daughters*, 23; see also Bertrand Lafont/Westbrook in Westbrook (ed.), *A History of ...*, 206.

<sup>463</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 341.

<sup>464</sup> See Westbrook, *Old Babylonian Marriage Law*, 89: ‘CH makes the provision of a dowry obligatory in certain cases. In paragraph 184, if a *sugitum* has not been provided with a dowry and married off during her father’s lifetime, her brothers are obliged to perform both these tasks after his death.’

<sup>465</sup> See Westbrook in Westbrook, *A history of ...*, 397: ‘In lieu of inheritance a daughter would receive marital property.’ For the details of the arrangements concerning the marital property see Westbrook, *Old Babylonian Marriage*, 89-102.

inheritance/succession. Driver and Miles mention the example of a daughter who shares with her brother 'whatever belongs to their father' and of two sisters who receive their share as 'part of their father's estate.'<sup>466</sup> In the latter instance Driver and Miles point out that the sisters could be heirs in default of male children. Of course this does not apply to the first example. Therefore, we cannot be sure whether the sisters would not have inherited a share, had there been a brother.

What is significant about the examples Driver and Miles give is that the daughters concerned are *all unmarried*. It is not clear though whether they were all priestesses as well. If they were, they would inherit on the basis of the rule given in the Laws that allowed a daughter who was an unmarried priestess a share in her father's estate alongside her brothers. Driver and Miles remark that if not all women were priestesses there could be a link with *seriktum*, dowry.<sup>467</sup> As long as a daughter had not received a dowry yet, she could inherit a share in her father's estate. Driver and Miles suggest that the daughter could benefit from this share, while it was managed by her brothers. The property thus stayed within their control. The question they do not raise, however, is what the status was of a married daughter. From the evidence as it can be inferred both from the Laws and the documents I get the impression that married daughters did not inherit. The Laws only mention the unmarried priestess, the documents concern daughters who are not married. This would effectively mean that the daughter's position towards her father's estate changed upon marriage. Before her marriage, she was entitled to a share in the estate and after her marriage obviously no longer. I think this is very important for our understanding of the Judean Desert documents. Could it be that the daughters concerned there did not inherit, not because they did or did not have a brother, but because they were married? In both the Babatha and the Salome Komaise archive, the daughters concerned are married when their father dies. In fact, they are all married when gifts are made to them providing them with some of their father's property. This makes it likely that the reason for providing them with a gift was not a desire to change the consequences of the law of succession as such, but to counterbalance a change on the basis of this law of succession at that specific moment, i.e. in connection with marriage. The situation in Babylonian law suggests that a daughter's position towards her father's estate was indeed linked with her marital status.

*Excursus: the daughter-heir in Athenian law*

In their discussion of Babylonian inheritance law, Driver and Miles also mentioned the possibility of succession by brothers of the deceased, if the deceased had left no descendant at all (whether male or female).<sup>468</sup> They mention Jewish law as showing a preference for the brother as heir if there were no descendants of the deceased. They also refer to the marriage rule of Numbers 36, explaining that a daughter had to marry a man of her own tribe to keep the property together. Then they refer to ancient Athenian law as similar to Jewish law in the preference for male heirs. The daughter does not have any right of inheritance if she has brothers. If a man dies leaving only a daughter behind, the daughter functions as *epikleros*, daughter-heir. She is married off

<sup>466</sup> See Driver and Miles, *Babylonian Laws*, Vol. II, 337.

<sup>467</sup> For the specific meaning of *seriktum* 'dowry' as part of the marital property, see Westbrook, *Old Babylonian Marriage Law*, 24-28, 89.

<sup>468</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 342.

to 'a near agnatic relative to whose son by her the inheritance passed at his majority.'<sup>469</sup>

The term used for this daughter should not be translated with 'heiress' since it is obvious from the arrangements concerning her position that she is not really an heiress at all.<sup>470</sup> She does not actually inherit but is considered as keeping the property with her, that is, until a real heir is available. At the death of their father she becomes 'adjudicable' by the nearest male relative of her father, to whom she is married off with the prospect of producing a son to maintain the father's estate.<sup>471</sup> This means that the daughter-heir should really not be regarded as an heir at all: the property does not really become hers but she 'stands in, as it were, for her non-existent brother until she has produced a son.'<sup>472</sup> Since the Athenian system recognised adoption as a way for a man to provide his estate with an heir, it would have been common that a man who had only a daughter made the husband of his daughter into his son and thus heir by way of adoption.

The question is, of course, what happened if a man died having only a daughter, who was married to a man who had not been made into the father's legal heir. At the death of the father, the daughter inevitably became daughter-heir and adjudicable as described above. A passage in Isaios (a Greek orator, 420-350) suggests that a daughter-heir who was already married nevertheless passes 'into the legal control of their next-of-kin.'<sup>473</sup> Isaios then adds: 'Indeed it has frequently happened that husbands have thus been deprived of their wives.'<sup>474</sup> This makes it clear that in such a case indeed the daughter's marriage was ended to enable the marriage with the next-of-kin, required by law.

The arrangements in Athenian law outlined above make it clear that there was a strong preference for inheritance by males, even going so far as to require the daughter who inherited in absence of sons to marry her father's next-of-kin to bear an heir for his estate. This arrangement seems to resemble the rule found in Numbers 36, where daughters who inherit in the absence of sons are required to marry someone of their father's tribe. Indeed, the rules are discussed by Driver and Miles as 'similar.'<sup>475</sup>

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<sup>469</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 342, note 4. The same idea as in Athenian law seems to have existed in Gortyna, where the daughters were designated by the term patrioiokoi (see Kohler, J., Ziebarth, E., *Das Stadtrecht von Gortyn und seine Beziehungen zum Gemeingriechischen Rechte*, Hildesheim, 1979 (reprod. of 1912 version), 67-70: the daughter was required to marry a close male relative (see reference for exact details). The strict view that in the event that she was married, her marriage ended at the moment her father (or brother) died was not maintained in Gortyn: the daughter was expected to end the marriage herself and then marry the person required. There were different rules for cases where a daughter already had children at the time she had to end her earlier marriage or not (see 69-70 for details).

<sup>470</sup> See Just, R., *Women in Athenian Law and Life*, London 1989, 96.

<sup>471</sup> See Just, *Women in ...*, 96, about the exact procedure and its consequences.

<sup>472</sup> See Just, *Women in ...*, 98. In this respect Athenian law differed from, for example, law at Gortyn where an epikleros 'was permitted to keep part of the patrimony and marry outside her father's lineage' (Pomeroy, S., *Families in Classical and Hellenistic Greece*, Oxford, 1997, 53). At Gortyn in general daughters had a better position regarding their father's estate than in Athens: 'daughters inherited half as much as sons' (Pomeroy, *Families ...*, 53). Pomeroy suggests for both cases that law at Sparta might have been the same as at Gortyn. This (and an apparent general shortage of men) resulted in a relatively high percentage of female ownership of land at Sparta: Pomeroy believes that the number Aristotle gives, two-fifths, is credible (Pol. 1270a; Pomeroy, *Families ...*, 54).

<sup>473</sup> Idem.

<sup>474</sup> Quoted by Just, *Women in ...*, 96.

<sup>475</sup> Driver and Miles, *Babylonian Laws*, Vol. II, 342, note 4. See also Driver and Miles, *Assyrian Laws*, Oxford, 1935, 245, note 3, where they compare the rules at Athens to 'Semitic practice' referring to the daughters of Zelophehad (Numbers 27 and 36). See also Westbrook in Westbrook, *A History of ...*, 57:

However, I think the rules are fundamentally different. The Athenian rule only determines something for the moment the father died: at that moment a daughter becomes daughter-heir and is adjudicable. Before that time nothing regarding the order of succession is determined. I think this concerns the possibility of adoption in the Athenian system: a man could make his son-in-law his son and thereby his heir. This meant that a daughter was not required to marry someone of her father's family in all cases. In fact she was free to marry whomever she wanted, and there could only occur a problem if her father died without a (natural or adopted) son. Thus marriage did not change her position: if she remained the only child and her father did not adopt her husband as his heir, she would automatically become daughter-heir and be married off to the nearest male relative of her father.

The Biblical requirement worked in a completely different way: it determined that daughters who are (likely to be) heirs are only allowed to marry someone of their father's tribe. Since the Bible does not know adoption the family property can only be kept in the family by relationships with family members with whom a real blood tie exists. Therefore, it would be possible in that context that a daughter's position towards her father's estate changed upon her marriage. If she married someone who was not related to her father's family, it was from that moment on clear that she could not be her father's heir. Regardless of what would happen next, her position had already changed. Therefore, gifts to counterbalance that effect might have been required.

Despite this difference, the comparison with the Athenian rules is important because it shows, again, that a daughter's marriage was linked with matters of succession and inheritance. The cases of both Babylonian and Athenian law show that it is not odd to assume that a daughter had certain rights to her father's estate as long as she was unmarried, or provided she married the right person. In all cases, arrangements were aimed at keeping the family property within the family.

#### *Assyrian laws:*

Three periods can be distinguished: Old Assyrian (early second millennium), Middle Assyrian (around 1200-1000 BCE) and Neo-Assyrian (1000-617). Of these periods only the second has yielded a real corpus of law, the Middle Assyrian Laws, while the others provide documentary evidence in the form of thousands of texts of which many 'qualify as sources of law.'<sup>476</sup>

#### a. Old Assyrian period:

'No law code has been found but from some quotes and references in letters and verdicts, which refer to "words written on the stela" we know that laws existed and had been published.'<sup>477</sup> The evidence for legal practice and procedure is mainly found in administrative orders, judicial records and private legal documents. 'Our knowledge of inheritance law is based on a few testaments and scattered references in letters and records. The relationship of the testaments to traditional law is difficult to

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Biblical law (Num. 36:1-12) insists on their marrying their cousins, like the contemporary Greek *epikleros/patroiokos*.'

<sup>476</sup> See Veenhof in Westbrook, *A History of ...*, 431 concerning the 20,000 cuneiform texts found in the commercial quarter of the ancient Anatolian city of Kanish. The main sources of law for the Neo-Assyrian period are private legal documents of which more than thousand are known. 'The earliest texts date to the late ninth century, but the majority stem from the seventh century.' Besides those there are royal decrees and letters from archives in Nineveh, Kalhu and Guzana. See Radner in Westbrook, *A History of ...*, 884.

<sup>477</sup> Veenhof in Westbrook, *A History of ...*, 431.

discern: they may, for example, have ameliorated the entitlements of women.<sup>478</sup> This latter observation is important, since records show that daughters received a share alongside their brothers. Because we do not know whether this happened based on intestate succession or on a will, the records do not provide any evidence on the position of the daughter in the order of intestate succession. This means that we cannot decide whether daughters had the right to inherit based on law. I think the evidence suggests they did not, for example, because a daughter who is heir requests to see the will of her father. This could suggest that she expects to find her share recorded there and not so much given by law.<sup>479</sup> This would mean that a daughter's position was not necessarily safeguarded in rules of intestate succession. Regarding this matter, it is noteworthy that a daughter who is a priestess and thus unmarried receives additional items (a bigger share?). Veenhof seems to relate the receipt of something extra to the position of the woman as unmarried, i.e. independent.<sup>480</sup> It could be, however, that the special position of the unmarried daughter was related to considerations of protecting the family property: money given to an unmarried daughter would eventually revert to the family. If it is true that the unmarried daughter was often the eldest daughter who could take the first share (after the eldest son, before the other children), this idea would make even more sense: a certain part of the estate would be entrusted to a daughter whose position ensured that the property would eventually revert to the family.<sup>481</sup> In any case, the arrangement shows that the position of a daughter could be related to marriage.

#### b. Middle Assyrian:

The main sources of law for this period are the so-called Middle Assyrian Laws, preserved on three clay tablets.<sup>482</sup> They present what was not the law of Assur but of an Assyrian colony in Asia Minor.<sup>483</sup> The tablets date from the twelfth century BCE, but the laws contained on them may date back to the fifteenth century BCE. They have probably been influenced both by Babylonian and Sumerian law. Although they are quite extensive and offer material for comparison with other laws, there are no rules on succession of daughters. From a regulation on tablet A it could be inferred that 'in intestate succession, the heirs are ranked in the following order: son of deceased, then his undivided brothers.'<sup>484</sup> Driver and Miles concluded that the Assyrian laws were stricter than the Babylonian ones in this respect, not allowing a daughter part in her father's estate.<sup>485</sup> They add: 'although her *seriktum* may be

<sup>478</sup> Idem, 457.

<sup>479</sup> Text AKT 3 94, referred to by Veenhof in Westbrook, *A History of ...*, 458, n. 140. He adduces the example to support the observation that 'both sons and daughters shared in the deceased's estate.' However, this does not necessarily mean 'share in the deceased's estate based on intestate succession,' see my remarks about this above. In my opinion the example of AKT 3 94 suggests that a daughter derived her rights to a share in her father's estate from his will rather than from rules of intestate succession.

<sup>480</sup> Veenhof in Westbrook, *A History of ...*, 459.

<sup>481</sup> See Veenhof in Westbrook, *A History of ...*, 459: 'Frequently the (eldest?) daughter, who had become a priestess (*ugbaltum*) and thus was unmarried and had to live independently, received additional items.'

<sup>482</sup> It has been suggested that the collection does not present a code of laws but was 'compiled in the manner of modern "restatements" which organize laws broadly by subject matter' (Sophie Lafont in Westbrook, *A History of ...*, 521). In this thesis I use the word law(s) in a broad range of meanings, not defined by or restricted to a modern sense of legal code (see 22 above). Compare nt. 508 below.

<sup>483</sup> Driver, G.R. and Miles, J.C., *Assyrian Laws*, Oxford, 1935.

<sup>484</sup> MAL A 25; see Sophie Lafont in Westbrook, *A History of ...*, 542.

<sup>485</sup> Driver and Miles, *Assyrian Laws*, 239.

regarded as a satisfaction for her share of it.<sup>486</sup> I take this to come close to what the Babylonian laws convey: a married daughter has received a *seriktum* and therefore does not inherit a share in her father's estate. The unmarried daughter still living in her father's house (i.e. waiting for marriage) will be provided with a *seriktum* by her brothers, which will then serve as her share in her father's estate. This does not mean that she is an heir, however, as the brothers are heirs, with the obligation of providing their sister(s) with a *seriktum*. In the Babylonian laws it is then determined that only the unmarried daughter who is priestess (i.e. will not marry at all) can inherit alongside her brothers (be a real heir). We do not find any reference to this latter situation in the Assyrian laws. This means that we cannot be sure that this specific link with marriage existed there. Nevertheless, the relationship with *seriktum* does suggest that a daughter's position towards her father's estate was indeed related to her marital status.

From the documents it can be gathered that daughters sometimes 'inherited on an equal basis with their brothers (OBT 105:8-10) or were the object of special provisions (OBT 2037).<sup>487</sup> It should be noted that OBT 105 is clearly a will; consequently, it does not say anything about the position of daughters in the law of succession.<sup>488</sup> One could even argue that the fact that wills in favor of daughters were made suggests that the daughter would not inherit by law of succession, certainly not if she had brothers.

The 'special provisions' concern a specific designation of property that will be the daughter's, consisting of both movables and immovables. Concerning the immovables (a house), it is determined that after her death it will be her sons', but if she never begets any sons, the property will pass to the sons of the testator.<sup>489</sup> This indicates that the testator had sons and that he made the provisions for his daughter to grant her a share in his estate. This suggests that daughters did not automatically inherit: they were not heirs based on intestate succession. Indeed, the sons are obviously the favored heirs, as it is determined that in the event of the daughter dying without heirs the property will revert to the original heirs, the deceased's sons. This indicates that giving a share to a daughter, at least a share in immovables, was only done on the condition that it would pass to her sons. These were obviously seen as continuing the testator's family.<sup>490</sup> The persons who would have inherited if the daughter had not (the 'original' heirs) are the beneficiaries of the arrangement if the daughter died

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<sup>486</sup> Idem

<sup>487</sup> Sophie Lafont in Westbrook, *A History of ...*, 544.

<sup>488</sup> See terminology in lines 3-5: 'PN has settled his estate by testament.' It is obvious that in such cases the daughters only inherit 'on an equal basis with their brothers' because the will says so.

<sup>489</sup> Lines 39-42; Lafont in Westbrook, *A History of ...*, 544. The division between movables and immovables is apparent as it is only determined that her sons should inherit regarding the house she gets and otherwise the sons of the testator. This denotes at the same time that the testator did have sons and made up this document to favor his daughter. See the text and translation of OBT 2037 in Wilcke, C., *Assyrische Testamente, Zeitschrift für Assyriologie und Vorderasiatische Archäologie* 66 (1976), 224-229. Wilcke points out that the document could be interpreted either as a will (a disposition of property to become effective at the testator's death) or a 'Mitgift.' Since no mention is made in the document of a wedding or a husband of the daughter named, it can be assumed that the document concerned a will rather than a 'Mitgift' (however, note the provisions in case the daughter does or does not bear children in lines 39ff.). This relation with inheritance and succession indicates that documents like these were indeed drawn up to ensure that a daughter who could not inherit in the presence of sons could receive a part of her father's estate (albeit under certain conditions).

<sup>490</sup> For views that the sons of a daughter continue a father's family and are thus regarded as heirs via the daughter see the discussion of documents from Nuzi directly below (especially nt. 496).

without having sons. We have seen in the rule in Numbers 36 as well, that the rule there was made to protect the interests of the ‘original’ heirs, the father’s brothers.

c. Neo-Assyrian:

As mentioned above, like the Old-Assyrian period, the Neo-Assyrian period has not left us a collection of laws. Although many excavations were conducted at various sites (of archives and libraries), not even one fragment of a law collection was ever found. Documents from the period do not refer to a law collection either, which is remarkable considering their familiarity with the older collections, of which copies have been found in Neo-Assyrian libraries. This means that documentary evidence (private legal documents, royal decrees and letters) is the most important source for information on legal practice and procedure in this period.

What is in my opinion striking about the evidence regarding inheritance is that the position of sons and daughters seems to have become more defined. Sons divide the inheritance between them, in general in equal shares.<sup>491</sup> If a father wants to deviate from this he can make a gift of the property he wants to bestow on a particular son. The rest of his estate will be divided amongst the other children.<sup>492</sup> This principle of favoring one heir over the others was already known from earlier periods, but probably gained more importance as the shares became, in general, equal. Daughters seem to have been favored by gifts, like wives. Precisely these two categories are found as donees in the Judean Desert documents.

There might have been a development in the position of the wife as the Old-Assyrian evidence seems to show that the widow inherited a house and some money while the Middle Assyrian evidence does not allow her a share in her husband’s estate, but has her sons support her, that is, ‘if her husband has assigned her nothing in writing.’<sup>493</sup> This latter phrase probably referred to a gift. This meant that a wife either received a gift from her husband to maintain herself after his death, or if such a provision was lacking she received maintenance from her sons (the heirs).<sup>494</sup> The phrase referring to assigning one’s wife something may have resulted in an increase of deeds of gift. In any case, it suggests that the wife was not entitled to a share in the inheritance based on succession. The same could go for the daughter.

*Nuzi:*

‘Some seven thousand tablets, from both official and illicit excavations at the sites of Yorghana Tepe (= ancient Nuzi), Kirkuk (= ancient Arraphe/ al ilani), and Tell el-Fahhar (= ancient Kurruhani), in a small region east of the Tigris and south of the lower Zab, provide the major documentary evidence for reconstructing the legal institutions and practice of northern Mesopotamia.’<sup>495</sup> There are official and private

<sup>491</sup> This was obviously a difference with the preceding Middle-Assyrian period, as observed by Radner (in Westbrook, *A History of ...*, 900).

<sup>492</sup> ADD 779, referred to by Radner in Westbrook, *A History of ...*, 900, esp. n. 101.

<sup>493</sup> MAL A 46; Driver and Miles, *Assyrian Laws*, 415.

<sup>494</sup> An interesting connection can be made with Jewish law, where the heirs were obliged to maintain the widow until they had paid her the dowry or until she remarried. This means that the maintenance obligation there was not connected with any provision the husband had made during his lifetime. The obligation was connected with the rights the woman had acquired at the start of her marriage, and thus existed regardless of legal acts by the husband during the marriage. Of course, this did not mean that the husband could not make his wife a gift: we see Babatha’s father doing just that in P. Yadin 7. But this gift was not related with any maintenance obligation for the future. To put it differently, the gift was not directly related with matters of inheritance.

<sup>495</sup> Zaccagnini in Westbrook (ed.), *A History of ...*, 565.

documents, both of which refer to legislation like royal edicts, orders and proclamations. Something like a real code or a collection of law, however, has not been found. The material covers a period of about a century: 1450-1340 BCE.

The bulk of the material consists of private legal documents that cover all kinds of transactions. The documents related to inheritance and succession mainly concern testaments, which means these documents will reveal nothing directly about the order of intestate succession. Nevertheless, they could reveal what persons would not be heir according to that order since the testaments might be aimed at making them heir anyway. It is important to note that the Nuzi system primarily worked via adoption: a testator adopted a person as son and made him heir accordingly. This means that in general, dispositions of property would not be directed at an outsider but at a family member or a person who had become a family member. This is important because in the case of daughters we see that a father adopted a man as his son and then married him to his daughter.<sup>496</sup> The purpose behind this was obviously to continue the family, to keep the family property together, via the children the daughter would bear to the adopted son. A good example of this can be found in a tablet where a man is adopted on the condition that he marries a particular girl, obviously the adopter's daughter, and the children from that match are to inherit all of the adopter's property. It is important to note that it is determined explicitly that this also applies for a daughter born from the match, if there are no sons.<sup>497</sup>

It is fascinating to trace, though, what really happened after this arrangement was made. Other tablets allow us to follow developments concerning the adopter's estate.<sup>498</sup> The daughter born from the match between daughter and adoptee bestows her property upon her father, the adoptee. This means that the property that was to belong to the grandchildren becomes property of the adoptee, a violation of the arrangements made in the adoption document. But it becomes even worse when the adoptee adopts his brother as his son and makes him his sole heir. This means that the property of the original adopter will eventually end up in the adoptee-son-in-law's family!<sup>499</sup> Of course this has never been the intention of the adopter and it is obvious from the arrangements in other tablets that new ways were found to prevent things from taking this unwanted turn. The father adopted his daughter as his son, using the terminology of the son-adoption (previously used for making an outsider son-son-in-law) and then bestows all of his property upon his daughter *in her legal capacity as son*.<sup>500</sup> This development is not encountered elsewhere in Mesopotamia, where as we have seen the daughter could at times inherit, but not as son-heir. A similar instance however, can be found in Emar. There we find the same practice of giving a daughter a status as male, referred to by the words 'I have established my daughter as female and male.' I will discuss the Emar evidence in detail below.<sup>501</sup>

<sup>496</sup> Gadd 51, HSS 19 49 and 19 51; see *A History of ...*, 589 (Adoption of Young Men for Marriage). It is important to note that the father does not marry the adopted son to his daughter in all cases: 'alternatively, the adopter will choose an outsider to become the adoptee's spouse.'

<sup>497</sup> Ben-Barak, *Inheritance by daughters*, 24 and in more detail (relating the text to other texts pertaining to the same or related persons) in *The legal status of the daughter as heir in Nuzi and Emar*, in: Heltzer, M., Lipinski, E. (eds.), *Society and Economy in the Eastern Mediterranean (c. 1500-1000 BC)*, Leuven 1988, 90-91.

<sup>498</sup> See Ben-Barak, *The legal status of the daughter*, 90-91.

<sup>499</sup> Ben-Barak remarks about this: 'We may conclude that in a patrilineal society, the adopted son-in-law continued to regard himself as belonging to his own father's line and was prepared to use any means to return to his original origin' (*Daughter as Heir*, 91).

<sup>500</sup> References to documents in Ben-Barak, *Daughter as heir*, 91-93.

<sup>501</sup> See 158ff. below.

The Nuzi evidence shows that the awareness of the risks involved in having a daughter inherit the paternal estate led to different approaches at different times. At first the daughter was married off to an adopted son but this son could try to transfer the property of his bride's family to his own family. Therefore, the fathers reverted to making their daughters heirs as if they were sons, by giving them the legal status of males. This solution has no parallel in Mesopotamian law but can be compared to instances at Emar. I note that the problem that occurred in Nuzi law was caused by the adoption procedure: the daughter was married off to someone who was only made a family member but who retained a position within another family. This meant that the adopted son could indeed transfer property to his own family. Needless to say that this would not happen when a daughter was married off to a family member. Again we see that marriage is vital for the way in which the family property devolves and consequently for the choices people made in their estate provisions. It was precisely the problem of transfer of family property to another family that caused the legal practice of adoption of an outsider to change. The Nuzi answer to the difficulties was to change the legal status of the daughter: by making her male she could become a real heir. I note, however, that this still did not solve all of the problem. Obviously, the daughter could transfer the property to her own children, as the intention of the original adoption procedure had been as well. However, if the daughter failed to procure children the property might still disappear into another family. The Nuzi documents do not provide an answer to that problem. We will see in the discussion of the comparable Emar tablets that there the testator nominated other heirs if his daughter would not procure the necessary children-heirs.<sup>502</sup>

Obviously, in the instances where the daughter is established as male, she inherits as son. She is made son, consequently made heir. As Ben-Barak has observed this development probably followed the strict social order at that time, which required the *pater familias* to be a man. Only if the daughter was granted male status could she really become the head of the family, continue the paternal line and keep the paternal property together. This is especially clear in the Emar instances where the daughter who is established as female and male also becomes entitled to perform rites from the ancestral cult, a task otherwise obviously reserved for male descendants. This means that at Emar the nomination as male also enabled the daughter to perform tasks that would normally require male performance. Establishment as female and male therefore served more purposes than solving an inheritance problem alone. Therefore, it is not so surprising that other cultures chose other solutions. Ben-Barak has related the Nuzi and Emar evidence of the Biblical reference to Zelophad's daughters in Numbers 27 and 36, remarking they inherit as daughters. Indeed they do and that is in my opinion reason to rather view the Nuzi and Emar evidence as opposite to the Biblical reference than as possibly revealing a continuing development as Ben-Barak assumes. In the Biblical evidence the daughters are not accepted as sons, as male heirs but they are apparently appointed heir where a male descendant is lacking. By demanding their marriage to men from their father's tribe it is made clear that the daughters are to continue their father's family and estate by way of their descendants, while it is ensured that these descendants are part of the same family! Precisely that latter fact posed the problem in Nuzi society, which probably found its solution in the new adoption of daughter as son. Such a solution is not necessary if the daughter is required to marry someone of her father's lineage. Therefore, I do not think the

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<sup>502</sup> See 158-159 below.

Biblical Jewish legal evidence provides an example of a continuing development but rather of a different solution to the same problem.<sup>503</sup>

*Overview of Sumerian/Babylonian/Assyrian laws (in chronological order) and their arrangements for the daughter with regard to her father's estate:*

Laws of Ur-nammu: 2100 BCE: no arrangements in extant text; documentary evidence shows that in the absence of sons *unmarried* daughters could be their fathers' *heirs*, and that an adopted daughter who was appointed heir was *disinherited at her marriage*;

Laws of Lipit Eshtar: 1930 BCE: *unmarried* daughter who is priestess lives in her father's house as *heir*;

Laws of Eshnunna: 1770 BCE: no arrangements in extant text;

Code of Hammurabi: 1750 BCE: whether daughters are incorporated in the general term, *maru*, heirs, is unclear; specific arrangement: an *unmarried* daughter who is a priestess shares inheritance with her brothers as *heir*;

Documents show that daughters sometimes act as *heirs* (in sharing the estate with their brothers), in all of these cases the daughters are *unmarried*;

Assyrian Laws: 1400-1100: no arrangements in extant text;

Nuzi (1450-1340): no code of law found; documentary evidence shows two phases: adoption of an outsider as son-heir to marry daughter, while grandchildren would inherit; later, adoption of daughter as son, change of legal status from female to male comparable to developments in Emar (to be discussed below);

Neo-Babylonian Laws: 600-500 BCE: arrangement that in case of first and second marriage, children from first marriage take bigger share of inheritance, impression could be that both sons and daughters would inherit but it is not clear whether the word used for heirs could be used for both sons and daughters (see Code of Hammurabi above).

It is obvious that the Nuzi material presents a more or less unique answer to the position of the daughter regarding her father's estate.<sup>504</sup> The general impression of the

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<sup>503</sup> Concerning both Nuzi and Emar Ben-Barak stresses that the daughter needs to be established as *son-heir*. This change of her legal status is vital for the whole of the arrangement. A next step in the development could be that the daughter was established heir as daughter, that is, no longer needing the change of legal status of female to male. Therefore, the instance where a daughter inherits as a daughter could show a further development of the daughter's position towards her father's estate, as Ben-Barak argues. However, I wonder whether the Biblical solution is not comparable to the *earlier* Nuzi adoption answer. The Biblical solution of establishing the daughter as heir on the condition of marrying a member of her father's tribe comes closer to the old Nuzi institution (of securing the paternal estate by way of marriage and (grand)children) than to the later developments of giving the daughter an independent right (by establishing her as son-heir). Therefore, the Biblical evidence does, in my opinion, not present a further development (daughter can inherit as daughter, in contrast with inheriting as son), but a different solution to the problem of securing the paternal estate for the father's family. It was precisely the link with marriage that shows that the daughter is not accepted as heir as such, but only on condition of procuring heirs.

other Mesopotamian material, spanning some seventeen hundred years, is that the daughter could act as heir, even equal to her brothers, if she was unmarried (and would probably remain that way). The obvious link with *seriktum*, dowry, implies that generally the idea was that a daughter received her share in the paternal estate by way of a dowry upon marriage. This suggests that afterwards she did not have any claims based on inheritance. This means that there could have been several situations:

If a man has sons and daughters:

- daughter lives in father's house upon his death and will in the future marry: her brother-heirs are obliged to provide her with a *seriktum*; she is not heir;
- daughter lives in father's house upon his death and will in the future not marry: daughter is heir alongside her brothers;
- daughter is already married: daughter has no claims based on inheritance.

If a man dies without leaving a son:

- his daughter becomes his heir, at first without further conditions (early documentary evidence<sup>505</sup>), later on the condition she is unmarried (later documentary evidence<sup>506</sup> and Code of Hammurabi).

Comparison with the link with marriage in general seems to suggest that the daughter will not become heir to her father's estate if she is married.

In all situations, the idea is that the daughter's share in her father's estate consists of the *seriktum*, dowry, and only if she does not receive a *seriktum* (because she will remain unmarried) can she be an heir (even alongside her brothers). This means that marital status determined whether a daughter could be heir to her father's estate at his death. This clear link with marriage connects the Mesopotamian material with the Biblical evidence, although the notion of granting the unmarried daughter a share in the paternal estate *alongside her brothers* seems to have been alien to Biblical thought. There, only in the case of a man leaving no sons can a daughter become her father's heir.<sup>507</sup>

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<sup>504</sup> It is interesting to compare this with the material from Emar in the Anatolia and Levant sphere, where a same sort of solution is used; see discussion below. The Emar material covers the thirteenth and twelfth century BCE which means it is later than the Nuzi material discussed here.

<sup>505</sup> Gudea (Lagash) 2150 BCE. See 142 above.

<sup>506</sup> Ur III legal texts (on position of daughter and concerning disinheritance of daughter upon marriage); see 142-143 above.

<sup>507</sup> Ben-Barak mentions the daughters of Job, as a possible example of daughters inheriting with their brothers (Inheritance by daughters, 27-28). Regardless of the remarks she herself makes to the usability of this example as showing practices of inheritance law in ancient Israel, I think one can question whether it refers to a case of intestate succession. The very mention of Job giving his daughters inheritance with their brothers suggests that we are here dealing with a case of testate succession. This means that the example of Job's daughters does not tell us anything about intestate succession at the time and does not suggest that daughters could have a right to inherit their father's estate in case they had brothers. It was precisely in the phenomena of dispositions of property by deeds of gift, bequests and wills that we find in ancient near-eastern societies, that suggest that those benefiting from such dispositions would have no rights based on intestate successions in those societies.

*Anatolia and the Levant:**Hittite Laws*<sup>508</sup>

This body of law (c. 1500 BCE<sup>509</sup>) was originally probably preserved on two clay tablets, since scribes refer to two tablets distinguishing them by giving the opening words.<sup>510</sup> A third tablet must have existed but has not been discovered so far.<sup>511</sup> The available text contains numerous rules regarding compensation for bodily injury, stealing, arson etc. The extant text does not contain a specific section on law of inheritance or succession but only three provisions that could be linked with inheritance and are found dispersed through the corpus. HL 27 regulates what happens after the wife dies (who inherits her dowry),<sup>512</sup> HL 192<sup>513</sup> regulates what happens if the husband dies and HL 171 is ‘a obscure provision, apparently concerning the disinheritance of a son by his mother.’<sup>514</sup> None of these rules concern the position of the daughter.

HL 192 is a difficult provision as various versions have different readings. The first and generally accepted reading is: ‘If a man’s wife dies, he may take her sister as his wife. It is not an offence.’<sup>515</sup> Obviously, this rule does not apply to inheritance but to permitted and forbidden unions as discussed in the previous rules. However, another version reads: ‘If a woman’s husband dies, the wife shall take the man’s inheritance share.’<sup>516</sup> This version can also be read to yield: ‘If a woman’s husband dies, the

<sup>508</sup> For the text of the Hittite Laws see Roth, *Law Collections*, 217-240.

Haase (in Westbrook, *A History of ...*, 619-620) disputes the use of the word laws for this corpus: ‘HL are not in the nature of a modern statute, in the sense of a juridical text issued by a sovereign body in accordance with the constitution. The “Laws” give no indication that they were issued by a ruler. Nor do they accord systematic treatment to any of the matters that they regulate, although the treaties demonstrate that the Hittites were capable of dealing with specific topics in a comprehensive way.’ Since I do not limit the use of the word law(s) to laws ‘issued by a sovereign body in accordance with the constitution’ I will use the word laws for the Hittite laws as well. It is important, however, to keep in mind that the laws are less structured and comprehensive than, for example, the Babylonian laws. This could indicate that the corpus is really a collection of legal verdicts, and indeed the outcome of individual trials is mentioned in several instances and corrections are made in the text regarding rules (that had probably been outdated by new ones) and the level of fines; see Maase in Westbrook, *A History of ...*, 620.

<sup>509</sup> The corpus seems to consist of texts denoting different stages in the development of the legal system. The fourth and perhaps final stage is attributed to a king who ruled around 1500 BCE. See Haase in Westbrook (ed.), *A History of ...*, 623.

<sup>510</sup> Tablet: If a man and Tablet: If a vine, see Haase in Westbrook, *A history of ...*, 620.

<sup>511</sup> This is known from a label found, *AboT*, 52; see discussion in: Schreiber, *Jewish Law and ...*, 95ff. Also see reference to yet a fourth tablet (KBo IV 4; Haase in Westbrook, *A History of ...*, 621).

<sup>512</sup> The man takes her dowry, but ‘if she dies in her father’s house and there [are] children, the son(s) is/are his, but the man shall not [take] her dowry’ (Roth, 221).

<sup>513</sup> Haase in Westbrook only refers to HL 192, while HL 193 also arranges for a situation where the husband dies. It seems likely both should be read in conjunction: see discussion.

<sup>514</sup> Haase in Westbrook, *A History of ...*, 640. See Roth, 234, the rule seems to pertain both to disinheritance and reinstatement as heir. Read Roth’s notes 54 and 55 (on 239-240) about the obscurities in the text and the most likely interpretation.

Concerning inheritance in the Hittite laws in general, Haase also notes that ‘the land grants ... contain an inheritance element. If claims of ownership may not be made against the donee and his descendants, then it amounts to transfer of the estate; the donee is the equivalent of an heir.’

<sup>515</sup> See Roth, *Law Collections*, 236 and Hoffner, H.A., *The Laws of the Hittites: a critical edition*, Leiden, 1997, 151. Also see Goetze, A., The Hittite Laws, in: Schreiber, A.M. (ed.), *Jewish Law and Decision-Making*, 99: ‘If a man’s wife dies [and] he marries his wife’s sister, there shall be no punishment.’

<sup>516</sup> See Roth, *Law Collections*, 240, n. 62 and Friedrich, J., *Die hethitischen Gesetze*, Leiden, 1971, 85: ‘Wenn einer Frau der Mann stirbt, nimmt des Mannes (Erb-)Teil seine Gattin.’

husband's partner shall take his wife.' 'The rationale for this rule may be for the partner to maintain the enterprise, in that by marrying the widow he receives her inheritance.'<sup>517</sup> The rule would then be related to the next: HL 193 where it is said that 'If a man has a wife, and the man dies, his brother shall take his widow as wife. (If the brother dies,) his father shall take her. When afterwards his father dies, his (i.e., the father's) brother shall take the woman whom he had.' Read in combination, the rules seem to imply that normally when a man died the brother of the man would marry the widow, but if there is a business partner he has the first right to marry the widow. 'In other words, among the Hittites the economic motive of preserving the wife's dowry in the family of her husband (which motive probably lies behind all the levirate laws known in the ancient Near East) was restricted by the prior right of his business partner. This protection of the interests of a business partner is also reflected in other laws, where the exemptions from *luzzi* etc., once covered not only a man but also his business partner(s).'<sup>518</sup>

The institute of levirate marriage is also known from Biblical law. There it is applied to cases of a man dying without an heir and clearly serves the purpose of producing an heir for the deceased, to inherit his property and carry on his name.<sup>519</sup> Here in HL 193 there is no reference to lack of children/heirs.<sup>520</sup> The reason for a brother or other male relative of the deceased to marry the widow will then most likely be property related. Indeed, the sequence described, brother of deceased, after his death father, after his death brother of father, is the usual sequence for succession in Near Eastern law. The implication would be that the wife was heir to her deceased husband's estate, the same implication as conveyed by an interpretation of HL 192 based on a business partner marrying the widow. It is unclear why the wife would have such rights to the estate. It seems more likely that the idea behind the levirate marriage of HL 193 was that the wife would eventually bear a son who would carry on the deceased's family, name and property.<sup>521</sup>

<sup>517</sup> See Haase in Westbrook, *A History of ...*, 640.

<sup>518</sup> Hoffner, *Hittite Laws*, 226. The laws referred to are laws 50-53, where it is determined that the associates of a man who is exempted from *luzzi*-services were formerly exempted as well. Apparently that situation does no longer apply, so that the associates do have to render *luzzi*-services.

<sup>519</sup> See Deuteronomy 25:5-6.

<sup>520</sup> See Bryce, T., *Life and Society in the Hittite World*, Oxford, 2002, 131-132. His suggestion is that the rule did not see to levirate marriage as a means to 'perpetuate the name and family of the dead man, and also to preserve his estate within his family' but 'it seems that the Hittite law's main concern here, as elsewhere, is to ensure that the widow is adequately provided for after her husband's death. Special provisions were made in various Mesopotamian laws for protection by the state of widows and orphans. In Hittite society, such responsibility was largely shifted to the extended family. Here the onus is on the dead husband's family to provide for the widow. Moreover, perhaps the main reason for inserting the clause at this point is to emphasize that this responsibility may be fulfilled without violating the list of prohibited sexual relationships.' True as this may be, I think there is a significance in the fact that 'the onus' is put on the dead husband's family and not, for example, on the family of the widow (return to the father's house). In the latter instance, the widow could marry another man outside her deceased husband's family. By laying down the rule of HL 193, however, it is ensured that the widow will marry a male relative of her deceased husband. The reason behind this must, in my opinion, have had some kind of link with inheritance. This could denote that the widow herself had a share in her husband's estate, or that the children the widow would bear would eventually carry the deceased's name, family and property.

<sup>521</sup> The obligation for the male relatives of the deceased to marry the widow could cause polygamy, as these men could very well be married at the time of death of their brother/son/nephew. This means that whereas the other evidence indicates Hittite society was probably monogamous, this rule could be an exception to that rule. Nevertheless, we are not sure in what way this rule was applied in everyday life and cannot make any definitive statements about monogamy or polygamy in Hittite society (see Bryce, *Life and Society*, 132-133).

*Emar:*

Emar, modern Meskene in Northern Syria, has yielded over five hundred legal documents, in the form of cuneiform tablets, excavated both at structured and illicit excavations. The texts date to the thirteenth and twelfth century BCE. Most of them concern private legal transactions, although there are also some royal orders and a few records of litigation. ‘Our knowledge of inheritance law comes entirely from testamentary documents’<sup>522</sup>, which means we do not have direct evidence pertaining to intestate succession. The law governing inheritance can only be inferred from the documents: we see that grandsons inherit in the absence of sons, while in the absence of direct descendants the deceased’s brothers inherit. For my argument here it is important to note that Westbrook regards brothers as incorporating more distant family members, ‘possibly members of the same clan.’<sup>523</sup> This clan idea is at the heart of the Biblical arrangements for inheritance as contained in Numbers 27 and 36.

Testate succession obviously served to appoint those heirs who could not be heirs by intestate succession. In this group we find both wives and daughters. Without a testament, a daughter was considered to have received part of her father’s property when she received her dowry. This means that the married daughter did not have a share in her father’s estate. That a testament could change this can be seen in the case where two daughters, one married, the other unmarried, are to divide their father’s estate.<sup>524</sup> It is important to note what happened to the property after the daughter had received it. It is seen in documents that the daughter could ‘pass on the inheritance to her offspring or dispose of it like a son.’ Westbrook gives three documents as reference: ‘Emar 32 and 128 – sole heir; 185.’ I note that Emar 32 and 128 are different in this respect in that in both cases the testator says that there is no other natural heir but that in 128 there is another daughter mentioned.<sup>525</sup> This means that in both cases a daughter is indeed designated sole heir but that does not necessarily mean that she is the only descendant. In Emar 128, the testator leaves two girls, of whom the first mentioned is made heir while the other is to receive a defined part of the inheritance. This means that Emar 128 actually comes closer to Emar 185, where the testator also decides what shares his children are to have in his inheritance. In the case of 185, however, there is no mention of a designation as sole heir. It is important to note, however, that although none of the daughters is designated as sole heir, it is clear that the testator means one of them to inherit and the other not. He determines that if daughter X dies without offspring, daughter Y will inherit, but if daughter X

<sup>522</sup> See Westbrook in Westbrook, *A History of ...*, 657.

<sup>523</sup> See Westbrook in Westbrook, *A History of ...*, 676-677.

<sup>524</sup> Emar 31, referred to by Westbrook in Westbrook, *A History of ...*, 679, also referring to TBR 80 which ‘records such a division (in equal shares).’ Beckman concluded that ‘it is significant that a married daughter could still inherit property from the family fund,’ giving this text, Emar 31, as an example (in: Chavales, M.W., *Emar. The History, Religion and Culture of a Syrian Town in the Late Bronze Age*, Bethesda (MD) 1996, 73). Of course ‘inherit’ here does not necessarily mean ‘inherit based on the law of succession.’ When a share is granted to a person in a will it is unclear whether the person would have inherited without the will: it might be that the person would have been heir based on the law of succession but for another share, or that the testator wanted to bestow certain property unto a certain heir. This means that wills in themselves do not prove that the person concerned would have been heir based on the law of succession. Nevertheless, the fact that daughters are usually granted shares either by gift or by a will suggests that their position based on the law of succession was less secure than that of sons.

<sup>525</sup> See 32 and 128 in: Arnaud, D., *Recherches au Pays d’Astata Emar VI.3. Textes sumériens et accadiens*, Paris 1985-1986. In 32 a mother names her daughter as sole heir (lines 9-10). There are no other children mentioned in the extant text. In 128 a mother names her daughter as sole heir (line 7), but another daughter is mentioned in line 8.

dies while she has offspring, daughter Y will not have any right to the paternal estate.<sup>526</sup> This implies that daughter X is heir to the exclusion of daughter Y while daughter Y can only inherit if daughter X has died and left no descendants. The most important thing about this is that daughter X is not designated in the document as heir. The only arrangement regarding her position is that if she dies childless, her share will pass to her sister. Since daughter Y obviously has no inheritance rights as long as her sister (or offspring of this sister) is alive, we can hardly assume that this text shows that daughters could inherit by way of intestate succession: X is obviously heir but Y is not. The question is, of course, why X is and Y is not. One could assume that the arrangement in itself implies that X is sole heir, while Y can only take her place under certain conditions, that is, that by the arrangement the testator implicitly made X his sole heir. However, this is not said in so many words, as happens in, for example, Emar 128, where there are also several daughters of whom one is made sole heir. The explicit designation found there is lacking here. This could imply that X is heir for another reason, namely by way of intestate succession. If we assume that X was unmarried she might have had a right to inherit a share alongside her brothers. Three brothers are mentioned in the text, none of them is explicitly designated as heir. Of all of them the testator says that ‘they are my sons’ or ‘he is my son.’<sup>527</sup> This could be taken to mean that they are his heirs as well. In that case, the unmarried daughter might have a share alongside them. If we assume that daughter X was unmarried and Y married, this would mean that X was heir but Y was not. Therefore, Y has no rights based on inheritance, while X does. Nevertheless, it is odd that the arrangement is made that Y can inherit if X dies *without offspring*. One would assume X’s share to go to her brothers in that case.<sup>528</sup> It is also odd that offspring would be mentioned at all if X was indeed unmarried and thought to stay that way (compare the case of the priestess in Babylonian law). Therefore, it is not clear why X is given inheritance rights while Y is not and why Y is made heir in X’s place if she dies childless.<sup>529</sup> A different institution found in the documents from Emar is that of giving the daughter the legal status of a male. The father is then ‘said to establish her as “female and male” (*munus u nita*). In most cases she is called upon to “invoke my gods and my dead.” Male status is therefore granted to enable a daughter to perform the

<sup>526</sup> See 185 in Arnaud, *Recherches*, 198, lines 9-18.

<sup>527</sup> Lines 7-8 and 19-20.

<sup>528</sup> I refer to the requirement for a qadistu priestess to bequeath her share to one of her brothers (see ASJ 13:23; Westbrook in Westbrook, *A History of ...*, 680).

<sup>529</sup> It is important to note that this document does not make it clear what position the daughters would hold if there had been no document at all, i.e. if intestate succession had applied. If a daughter could indeed have a share alongside her brothers, this would indicate a different situation from what we find in other systems (for example in Babylonian law). But I stress that the daughter’s status, married or unmarried, is not clear and therefore we do not know whether the situation did resemble Babylonian law (where the unmarried daughter could inherit alongside her brothers). I have noted above, however, that it would be odd to discuss the instance of there being no offspring in case a daughter was meant who was unmarried and thought to stay that way (like the Babylonian daughter-priestess). Therefore, it seems likelier that the daughter concerned (X) was a married daughter. In that case, the testator obviously favored one of his daughters over the other, making her heir, while the other daughter could only inherit in case the chosen daughter died (without leaving any offspring). The reason for favoring one daughter over the other could be that X was the eldest: it was common practice to give the eldest son a preferential share in the inheritance. However, here we clearly find an instance where the supposedly eldest daughter is not granted with an extra share but with all of the inheritance. It is, in any case, not possible to deduce from the text why the arrangement was made this way.

ancestral cult – a task otherwise reserved for the eldest son, and one that is closely linked to his inheritance of the family estate.<sup>530</sup>

I think there is a difference between the cases where the father makes a will to give his daughter part of his estate and these instances where the daughter is almost put in the place of a son-heir. In the first instance the daughter is enabled to share in the inheritance while in the second she will become heir by virtue of assuming the identity of the eldest son. This was obviously done in cases where there was no son to perform the ancestral cult, or there was a fear of him dying before his father. One of the documents is even made out under the condition that the brother of the girl-donee will not survive his father. If he does, he will be obliged to marry her off. This arrangement assumes that in that case, the son will have the position of heir and only be obliged to perform the task of a brother to his sister in marrying her off. This means that the daughter is only appointed male (thus heir) on the condition that there will be no male offspring at the time of her father's death. This is important because it shows an awareness of the need to have a child, even if it is a girl, inherit the paternal estate and perform the duties that are connected with that. The importance of that latter aspect, the performance of duties, can be seen in a document where a girl is designated both male and the mother of her three younger brothers, to ensure that she can undertake duties they cannot undertake because of their age.<sup>531</sup> In yet another instance the daughter is required to marry off her younger brothers while she inherits a share alongside them. This means that the daughter is effectively made co-heir alongside her brothers, assuming the responsibility of the eldest son. In this instance, she is not specifically instituted as a male but accepted as heir by the arrangements the father makes in the will. Her duty to marry off her brothers is obviously a duty normally resting on the eldest son.<sup>532</sup>

In all cases it seems clear that in the absence of a son a daughter is preferred as heir and undertaker of religious duties over other possible heirs (such as more distant family members). This resembles the preference for the daughter over the brothers of the deceased we find in other laws as well. The important difference here is that the daughter is not assumed to be heir in the absence of sons (no preference of offspring, whether male or female, over more distant family members) but has to be appointed as such by her father during his lifetime. If this happened, the daughter could undertake all obligations that normally rested on the eldest son (including marrying off her brothers). It is interesting to note that this happened even if there were sons. The daughter then received a share alongside them.<sup>533</sup>

<sup>530</sup> Westbrook in Westbrook, *A History of ...*, 680. Also see Kämmerer, Th., Zur sozialen Stellung der Frau in Emar und Ekalte, in Dietrich, M., Loretz, O. (eds.), *Ugarit-Forschungen, Internationales Jahrbuch für die Altertumskunde Syrien-Palästinas*, Neukirchen-Vluyn, (26) 1994, 173 for all formulas found concerning the position of the daughter named as 'father and mother' of the family, son or both 'woman and man.'

<sup>531</sup> ASJ 13:25; see Westbrook in Westbrook, *A History of ...*, 680.

<sup>532</sup> Emar 181; see Westbrook in Westbrook, *A History of ...*, 680. See text and translation in Arnaud, *Recherches*, 194-195. This is an interesting instance as there are two sons and one daughter. A son is mentioned first, then the daughter, then the other son. For each of them a share in the inheritance is determined. This means that the daughter is effectively made heir (apparently as if she were a second son).

<sup>533</sup> Arrangements were obviously made to prevent strangers from getting their hands on the family property. We find examples of testators determining that their wives had to be supported by their sons and that when the sons do not do that, the wife is to seek help from a relative of her late husband (see Beckman in: Chavales, M.W., *Emar. The History, Religion and Culture of a Syrian Town in the Late bronze Age*, Bethesda (MD), 1996, 74-75). This prevents the widow from undertaking another marriage

*Alalakh:*

‘Alalakh, modern Tell Atchana, lies on the direct road between Aleppo and the Mediterranean, in the Amuq plain, which today occupies the major part of the Turkish province of the Hatay.’<sup>534</sup> The evidence consists of cuneiform tablets, most of them written in Akkadian, which come from two archives, dated to two different periods. Consequently, the evidence is designated as Alalakh level VII and Alalakh level IV, dating to the seventeenth (contemporary with the Old Babylonian Period) and fifteenth century BCE.<sup>535</sup>

Concerning the material from level VII, it is said that ‘these documents leave no doubt that sons as well as daughters were entitled to inherit the paternal estate.’<sup>536</sup> This remark could cause confusion as it could be read to mean that sons and daughters were entitled to inherit the paternal estate *on the basis of law, by way of intestate succession*. I think, however, that the documents point to exactly the opposite conclusion: they testify to arrangements of testate succession, of a division of shares by the father during his lifetime. See, for example, AT 9, which refers to ‘my father’s will.’<sup>537</sup> In AT 95, it is not clear whether the share referred to concerns a share in an inheritance based on law of succession or on a testamentary division.<sup>538</sup> Two other documents clearly refer to disputes over divisions made by the testator during his lifetime.

For example, in text AT 11, a sister brings a lawsuit against her brother claiming that her father assigned a certain share in the inheritance to her. The term used for assignation seems to have denoted ‘the disposition of one’s property to take effect after death.’<sup>539</sup> That a father could assign a share to a daughter does not mean that she is entitled to inherit. On the contrary, it could denote that she was not and that the disposition was used to grant her a share anyway. In this respect it is important to note that a significant number of the cases concerns suits between brothers and sisters. This could mean that the daughters’ right to inherit was disputed. This is, however, difficult to determine as the text is often damaged. For example, in AT 7 a brother and sister bring a legal case.<sup>540</sup> The brother’s point of view is given first, implying that he instituted the case against his sister claiming that ‘Bittatti has nothing to do with this house.’<sup>541</sup> Bittatti disputes this, but unfortunately her words are damaged and it is unclear why she claims to be entitled to the property. She speaks about ‘a portion

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which could endanger the family property. In this respect it is important to note that a wife’s dowry was to be inherited by her sons after her death. Another marriage could prevent this and that was obviously unwanted.

<sup>534</sup> Ignacio Marquez Rowe in Westbrook, *A History of ...*, 693.

<sup>535</sup> Edition: Wiseman, D.J., *The Alalakh Tablets*, London, 1953. Not all the material has been published yet, see Hess, R., A preliminary list of the published Alalakh texts, *Ugarit-Forschungen* 20 (1988) 69-87.

<sup>536</sup> See Marquez Rowe in Westbrook, *A History of ...*, 699.

<sup>537</sup> Wiseman, 37.

<sup>538</sup> Wiseman, 55. *Bel zittim*, line 21, means ‘owner of a portion.’

<sup>539</sup> *Idem*, 700. See for comparison AT 6, a will, where the same term is used.

AT 6 should probably be related to AT 86 and 96, two gifts, used to transfer parts of the paternal property. It is possible there is also a link with AT 95, a dispute about property, already referred to above. Gifts were used to divide paternal property during the lifetime of the donor. Since the royal family is concerned here, we are dealing with ‘hereditary transmission of royal inheritance shares’ (that, I add, may differ from succession practices among ordinary people). The shares concern land and cities, of the latter it is sometimes determined that they will be transferred ‘exempted from services’ (Marquez Rowe in Westbrook, *A History of ...*, 701).

<sup>540</sup> Lines 3-4: ‘Abban with Bittatti his sister brought a legal case.’ See Wiseman, 34.

<sup>541</sup> Lines 5-6.

which is over ...', then suggests that they will share 'the house of our father' together. Bittatti thus does not claim the entire house but wants to share the house (presumably) equally. A certain Abiadu whose part in the entire deal is not clear gives witness that 'Bittatti had a share in the bequeathed property' but he does not state why. The king then judges that the son is entitled to choose first what part of the house he wants to have and the daughter is obliged to take what is left.

I think it is most likely that Bittatti was entitled to a share on the basis of some disposition her father made, although this is not stated in so many words in the extant text. The fact is that both the daughter and the witness testify to her right to a share in the property of her deceased father. Bittatti interprets this right as a right to share in the property with her brother, while he states that she has no right whatsoever. I emphasize that the son-brother does not support his claim but makes a mere statement his sister is not entitled to the property. Despite the lack of any evidence of his right to the property, this right is acknowledged and obviously preferred over the daughter's right. She gets something of the property but only after her brother has made a first choice. This suggests that the law secured the son-brother's position, i.e. that he was sole heir on the basis of intestate succession. Only because the daughter could prove that she was entitled to a share too, could she get part of the property. Obviously, her right depended on some kind of disposition.

This example shows that a dispute like this one does not show that daughters had inheritance rights comparable to sons. On the contrary, it seems to show that they did not.<sup>542</sup>

I will not discuss the level IV documents in detail as there are a number of difficulties with the interpretations of this material. For instance, I do not believe that AT 87 concerns a division of an inheritance, as Marquez Rowe argues.<sup>543</sup> It seems to me it is rather a transfer of property in which several persons and their property seem to be included. It is not clear either whether a female person mentioned in this text was a daughter or a daughter-in-law. Marquez Rowe notes 'Indeed, the marriage documents attest to the fact that daughters and daughters-in-law could also receive a share of the estate of the head of the family, namely through dowry.'<sup>544</sup> If this is true, the daughter or daughter-in-law would receive the share through the dowry and would not have a right to inheritance later on. Therefore, when understanding AT 87 as a division of inheritance, like Marquez Rowe does, it is not likely that a share will be granted to a (married) daughter or daughter-in-law there, but to an unmarried daughter. I refer to Wiseman's original interpretation of the text, in which he took this female person to

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<sup>542</sup> See Ben-Barak, *Inheritance by daughters*, 30, who concludes concerning this text that 'the fact that at Alalakh daughters could inherit part of the family patrimony, even when there were male heirs, may not have been considered a natural right but could have been made possible by a special legal injunction by the head of the family.'

I do not agree with her conclusion though that 'there does seem to have been a more progressive attitude to the inheriting daughter although she had not yet attained a fully equal position in the inheritance.' (31) I do not think that a text like this shows 'a more progressive attitude.' Ben-Barak probably stated this because she reads the text like a case of 'daughters inheriting after sons.' This category can be interpreted in two ways: as a case of a daughter inheriting while there is a son, and I think this is what Ben-Barak means (even though there is a male heir the daughter still receives a share) or it could also be understood as 'daughters inheriting in a position after sons, but still based on the law of succession,' thus equality not fully attained. This notion is conjured up by Ben-Barak's conclusion about 'a more progressive attitude towards the inheriting daughter' and 'not yet attained a fully equal position in the inheritance.' I think, however, that what this text shows is nothing new. After all we have a brother who flatly denies his sister any rights to the inheritance (which suggests, as stated above, that he was the sole heir based on the law) and a sister who can only claim something with an appeal to an arrangement or disposition by the deceased. This means that the daughter still has no claims (not even inferior ones!) *based on the law of succession*.

<sup>543</sup> See Marquez Rowe in Westbrook, *A History of ...*, 712.

<sup>544</sup> See Marquez Rowe, 712.

be ‘the eldest of the marriageable daughters.’ The idea that the daughter is not yet married and therefore qualifies to receive a share in the paternal estate fits with the evidence found in other laws and legal documents discussed above.

Marquez Rowe further mentions a marriage contract in which a clause seems to determine what will happen to the property of the wife ‘there being no son and no daughter.’ As Marquez Rowe notes, ‘this suggests a right of inheritance in daughters, perhaps in the absence of sons.’ (712).

*Ugarit.*<sup>545</sup>

Ugarit was the capital of a North Syrian Kingdom that flourished around 1500 BCE. No codes of law are found, only legal documents both for domestic and international use. Of the first group two-thirds are royal deeds. Some types of document are conspicuously lacking, for example, the marriage contract. The documents that concern inheritance do not present univocal evidence with regard to the position of the daughter. On the one hand, daughters are not mentioned as co-heirs in divisions of paternal estates, but at the same time there is an instance of co-ownership of a daughter and her adopted brother.<sup>546</sup> The document is discussed by Miller in his dissertation about the juridical texts from Ugarit, where he concludes that ‘it is a woman ... who owns the estate to which the adoptee brings numerous properties which they are to share. Line 5 suggests that they are legally to be considered equals. However, just as in text #8 [RS 16.344] the adopted brother loses his right to the estate if he breaks contract. On the other hand, if the adopter [the woman] initiates the dissolution, she is liable for a sum of money paid to her “brother”, plus she must split their common possessions between them.’<sup>547</sup> The question is in my opinion whether this co-ownership that concerns the adoption the document records has anything to do with (intestate) succession. I get the impression that it is the daughter who is (or would be) sole heir, while the adoption ensures that she has to share the estate with her adopted brother. Therefore, I think that the document supports the idea conveyed by the other documents that daughters do not inherit alongside brothers. In this case, however, the daughter obviously did not have a brother. The idea behind the document is that in that case the daughter was heir to the entire estate. The adoption arrangement in the document changes this to a situation where the daughter has to share the estate with the adopted brother. But this does not mean that a daughter inherited alongside brothers. In the case concerned the daughter-only child is sole heir, while she has to share the estate with someone who is appointed her brother in a later instance. This means that RS 21.230 does not show that daughters could inherit alongside sons but just the opposite: that daughters inherited if there were no sons, i.e. no male heirs. If a male heir was added later by way of adoption, the daughter maintained a claim to her father’s estate, which comes down to half of what she was originally entitled to. Consequently, the document does not show that a daughter gets a share, but that she actually loses half of the estate to her new adopted brother.

In his discussion of inheritance law in Ugarit, Westbrook states about daughters that ‘they possibly could have rights on intestacy in the absence of brothers (cf. the provision in the gift of paternal property RS 15.138+/109+).’<sup>548</sup> This could support my conclusion about RS 21.230 that the daughter was the original sole heir (instead of heir alongside the adopted brother). However, I do not see how the documents

<sup>545</sup> For a discussion of all the material see Marquez Rowe, I., *The Legal Texts from Ugarit in: Watson, W.G.E. and Wyatt, N. (eds.), Handbook of Ugaritic Studies*, Leiden 1999, 390-422.

<sup>546</sup> RS (Ras Shamra) 21.230, mentioned by Ignacio Marquez Rowe in Westbrook, *A History of ...*, 730.

<sup>547</sup> Miller, G.I., *Studies in the juridical texts from Ugarit*, Baltimore (MD) 1980, 243-244. Additions in square brackets are mine.

<sup>548</sup> Westbrook in Westbrook (ed.), *The History of ...*, 730.

Westbrook mentions support his assumption. In RS 15.138 a father bestows his property unto one of his sons, saying that no son or daughter has a claim to it. In RS 15.109 the only mention that refers to inheritance is in the mention of sons and daughters in line 6.<sup>549</sup> This line is broken and relationship with the issue at hand is unclear. Of course it is significant that daughters are mentioned alongside sons, probably to express that they either did or did not have a claim, comparable to the phrase in 15.138. However, I think such an instance does not necessarily imply that daughters had a right to inherit *in the absence of brothers*. This would only be true if the testator made a disposition in favor of an outsider and declared that sons nor daughters had a claim to his property. Then we could assume he might have meant to say ‘sons or daughters in the absence of sons.’ In the documents referred to by Westbrook however, the father bestows his property unto a son. This means that it is certain he has a son and this would exclude daughters from inheriting all together. Since the document also mentions the sons of the favored son it could be that the testator meant that if the favored son dies, his male offspring will inherit and not the brother or sister of the deceased favored son. However, this does not show that daughters could inherit *in the absence of sons*, since the male offspring of the son would take his place by way of substitution and strictly speaking we would not have a case of a daughter inheriting in the absence of sons. This means that what the document seems to convey is that when one son is favored over the other children, those children, whether male or female, cannot come up against the division their father made. This suggests that daughters could have claims to the paternal estate alongside sons. Consequently, it seems that the documents referred to by Westbrook sooner suggest that daughters had certain claims to their father’s estate, or in any case possible claims were warded off in documents than that they imply that daughters inherited in the absence of sons.

In *Handbook of Ugaritic Studies* it is said that ‘the position of the woman as heiress of the paternal goods is not so clear, although it can be supposed that, as in other Near Eastern societies and under certain conditions, she could be named as heiress by her father.’ This observation does not concern the issue of intestate succession, as naming by the father implies testate succession. Indeed, in all Near Eastern societies cases can be found of daughters inheriting paternal goods by way of a legal document. This does not mean, however, that the daughter could also inherit where such a document was lacking, or that she could inherit in case there were no sons. It is important to keep this in mind as the references given, of the other Near Eastern societies referred to, do concern, at times, discussion of cases of intestate succession, for example, in the articles of Ben-Barak.<sup>550</sup>

That the position of women regarding inheritance law is not clear can be seen in instances where a man dies without any legitimate descendants. In RS 15.89, the property passes to the daughter of the deceased’s brother.<sup>551</sup> This is interesting, because this could suggest that daughters took the place of their fathers in inheriting what would have been their (the brothers’) share in their brother’s estate. We do not know whether the daughter concerned had brothers or not, thus whether she can be heir in the absence of sons. In any case, the instance clarifies that women could inherit

<sup>549</sup> See text in Miller, *Studies*, 119.

<sup>550</sup> Since Ben-Barak investigates the position of the daughter she discusses both references to intestate succession (for example in early Mesopotamia, see 142-143 above) and documents that give provisions for testate succession (for example in Nuzi and Emar, see 151 and 158 above respectively).

<sup>551</sup> Referred to by Westbrook in Westbrook (ed.), *The History of ...*, 731 and discussed by Miller, *Studies*, 85-86. Miller regards this type of document as a confirmation of ownership ‘in which the king “grants” title and privileges to certain patrimonial estates’ (85).

even an entire estate, possibly in the absence of other heirs.<sup>552</sup> Because the document concerns an act by the king, we cannot be sure that the disposition follows law of succession, i.e. that the niece was the legal heir according to the law of intestate succession, or whether the king decided to what relative the estate was to go. It seems likely that the order of succession was followed. The position of the niece towards her uncle's property suggests that daughters could inherit in the absence of sons.

Regarding the position of the married daughter it is worthwhile to look at RS 17.149.<sup>553</sup> In this text a man purchases a field which formerly belonged to the father of his wife: 'Formerly this field belonged to Izaldu, the father of Pidda, and now the field returns to Pidda and ....'<sup>554</sup> Ben-Barak suggested this could indicate that the act of the husband in buying the field was actually 'an act of restoration.'<sup>555</sup> The daughter might have been an only child, that is, rightful heir of Izaldu and the purchase of the property could have been a restoration of property to the daughter in that capacity. Although the emphasis in the text on the return of the field to the daughter of the former owner is obvious, this need not denote that there was any real right of the daughter to this field. Even though people might have felt it was right that the field returned to the daughter of the man who originally owned it, this need not imply that any legal right of the daughter to own the field was underlying the transaction. In fact I would think that the purchase by the husband indicates that this was not the case. If the daughter had a right, this would have come into being at the death of her father and would not require any further legal act. Therefore, I tend to agree with Vita, who would rather understand the text as a sale unrelated to inheritance issues.<sup>556</sup> This means that the fact that the daughter is married need not affect our understanding of inheritance and succession in Ugarit.

Gifts mainly concern royal grants of real estate. 'As for the non royal gifts, women appear relatively regularly as recipients, from the husband (e.g., RS 16.253) or from the father-in-law (RS 15.85), perhaps as a means to compensate them for their secondary status in intestate succession.'<sup>557</sup> The gift from the husband of course concerns the position of the wife towards her husband's estate and will not be discussed here. RS 15.85, however, does not concern a gift from a father-in-law but from a brother: 'This transfer grant was likely a marriage gift from Niqmaddu to his sister, Dalaptu.'<sup>558</sup> The link with marriage is interesting in that the gifts from the

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<sup>552</sup> Miller, *Studies*, 144 n. 142: 'The property is being transferred from an uncle to his niece. The uncle, Ili-salimu, is identified as a *nayyalu*. It may well be that Ili-salimu did not have any legal heirs, and the king was now transferring his estate to his niece.' On the term *nayyalu* (possibly denoting a person who died without legitimate descendants), see Westbrook in Westbrook, *A History of ...*, 731, especially n. 35.

<sup>553</sup> The sole example from Ugarit mentioned by Ben-Barak in her article *Inheritance by daughters*, 22-33.

<sup>554</sup> Lines 24-27.

<sup>555</sup> Ben-Barak, *Inheritance by daughters ...*, 24.

<sup>556</sup> Vita, J.P., *The society of Ugarit*, in Watson, W.G.E., Wyatt, N. (eds.), *Handbook of Ugaritic Studies*, Leiden 1999, 481, n. 184. He speaks of a more moderate view on Ben Barak's part in a later article (*The legal status of the daughter as heir in Nuzi and Emar* in Helzer, M., Lipinski, E. (eds.) *Society and Economy in the Eastern Mediterranean (c. 1500-1000 BC)*, Leuven, 1988, 88), where she states that a woman 'was given first option in the purchase of a certain field, for the reason that the said field had previously been part of her father's patrimony.' Like I argued above this course of action is not linked with matters of inheritance as the daughter does not act based on any right she holds on the basis of intestate succession.

<sup>557</sup> Westbrook in Westbrook (ed.), *A History of ...*, 731-732.

<sup>558</sup> Miller, *Studies*, #15, 45, see 132, n. 67.

Judean Desert papyri can also be linked with marriage. This means that it might not be the case in general that gifts were 'a means to compensate them for their secondary status in intestate succession' but that gifts were used at specific occasions (like marriage) to compensate consequences of the marriage for intestate succession. A brother might bestow a gift on his sister, because she could not inherit in any case (alongside a brother), but it might also be that she could not inherit anymore once she was married. The ambiguous evidence provided by the documents discussed above obviously does not allow for any final conclusion to this point.

*Overview in chronological order:*

Law of Alalakh: Level VII: 17<sup>th</sup> century: documents seem to show that daughters could receive a share through a disposition by the testator, apparently no right to inherit based on the law of succession

Level IV: 15<sup>th</sup> century: documents seem to indicate that daughter received a share in the paternal estate through dowry; an arrangement in a marriage contract determining what would happen if there is no son or daughter born from the marriage, could indicate that daughters were entitled to inherit the paternal estate, probably if there were no sons.

Hittite laws (c. 1500): no arrangements concerning position of daughters in extant text

Law of Ugarit (c. 1500): daughters can inherit on the basis of arrangements in legal documents, no univocal evidence as to intestate inheritance (regarding the obvious choice for arrangements by way of documents the daughter did probably not have inheritance rights based on intestate succession)

Law of Emar (1300-1100): daughter can be appointed heir, or even made 'female and male' giving her the status of a son-heir, this could be due to the consequences of having a daughter inherit (son-in-law can have property transferred into his family, see discussion above); compare Mesopotamian Nuzi discussed above

Canaan: no arrangements of inheritance law

Israel: a daughter can inherit from her father if there are no sons, provided she marries someone from her father's tribe

*Conclusions*

It is obvious that the evidence does not paint the same picture as in the case of Mesopotamia where the solution for the position of the daughter is found in most cases in denying her claims to her father's inheritance once she is married (Nuzi is the only obvious exception). Only unmarried daughters (often also priestesses) can inherit a share in their father's estate. The evidence from Alalakh seems to come closest to this picture as it could be interpreted to relate inheritance to dowry. The support for this interpretation obviously comes from marriage contracts sooner than from documents related to succession. One of the marriage documents even seems to suggest a right for the daughter to inherit if there were no sons.

Here we see that various solutions were offered, of a different nature, like granting the daughter a share in the inheritance alongside her brothers, granting her a certain defined object of her father's estate or instituting her as 'male and female' (which also gave her rights to perform certain duties normally performed by the eldest son). What these various solutions have in common is that they were effected by arrangements in legal documents. From this area we do not have arrangements for the position of the daughter in rules of law, that is, with the exception of the Jewish evidence. Numbers 36 can be regarded as an addition to Numbers 28, which is clearly a rule of law of succession. Therefore, the Jewish evidence is the only evidence in this area that presents a general rule that was applicable without the intervention of legal documents.

## III. CONCLUSIONS

*Overview combining both Mesopotamia and Anatolia/Levant in chronological order:*

Laws of Ur-nammu: 2100 BCE: no arrangements in extant text; documentary evidence shows that in the absence of sons *unmarried* daughters could be their fathers' *heir*, and that an adopted daughter who was appointed heir was *disinherited at her marriage*;

Laws of Eshnunna: 2000 BCE: no arrangements in extant text;

Laws of Lipit Eshtar: 1930 BCE: *unmarried* daughter who is priestess lives in her father's house as *heir*;

Code of Hammurabi: 1792-1750 BCE: whether daughters are incorporated in the general term, *maru*, heirs, is unclear; specific arrangement: *unmarried* daughter who is priestess, shares inheritance with her brothers as *heir*;

Documents show that daughters sometimes act as *heirs* (in sharing the estate with their brothers), in all of these cases the daughters are *unmarried*;

Law of Alalakh: Level VII: 17<sup>th</sup> century: documents seem to show that daughters could receive a share through a disposition by the testator, apparently no right to inherit based on the law of succession

Level IV: 15<sup>th</sup> century: documents seem to indicate that daughter received a share in the paternal estate through dowry; an arrangement in a marriage contract determining what would happen if there is no son or daughter born from the marriage, could indicate that daughters were entitled to inherit the paternal estate, probably if there were no sons.

Canaan: dispersed evidence: late Old Babylonian, 15<sup>th</sup> century, 14<sup>th</sup> century BCE: no arrangements concerning law of inheritance in extant text;

Hittite laws: c. 1500 BCE: no arrangements concerning position of daughters in extant text;

Law of Ugarit: c. 1500 BCE: daughters can inherit on the basis of arrangements in legal documents, no univocal evidence as to intestate inheritance (regarding the obvious choice for arrangements by way of documents the daughter did probably not have inheritance rights based on intestate succession);

Assyrian Laws: 1400-1100 BCE: no arrangements in extant text;

Nuzi: 1450-1340 BCE: no law code found; documentary evidence shows two phases: adoption of outsider as son-heir, to marry daughter, while grandchildren would inherit, later on adoption of daughter as son, change of legal status from female to male comparable to developments in Emar (to be discussed below);

Law of Emar: 1300-1100 BCE: daughter can be appointed heir, or even made 'female and male' giving her the status of a son-heir, this could be due to the consequences of

having a daughter inherit (son-in-law can have property transferred into his family, see discussion above); compare Mesopotamian Nuzi discussed above;

Israel: 1000 BCE: a daughter can inherit from her father if there are no sons, provided she marries someone from her father's tribe;

Neo-Babylonian Laws: 600-500 BCE: arrangement that in case of first and second marriage children from first marriage take bigger share of inheritance, impression could be that both sons and daughters would inherit, but it is not clear whether the word used for heirs could be used for both sons and daughters (see Code of Hammurabi above).

### *Conclusions*

The position of daughters regarding their father's estate in ancient oriental law seems to have been determined by their marital status: before marriage the daughter held another position than after. This is suggested by material in law codes which only designate the unmarried daughter (who will remain that way) heir alongside her brothers and supported by evidence from documents (for example Babylonian ones) where the daughters who do share the inheritance with their brothers are all unmarried. Married daughters probably had no share in their father's estate. If we look at the documents from the Babatha and Salome Komaise archives, we see that the daughters are at the time of death of their father's death married. This would exclude them as heirs and indeed we do not get the impression that they were heirs. In the case of Judah's daughter Shelamzion it is clear that the sons of her father's brother were considered her father's heirs. The best way to ensure that a daughter did receive part of her father's property seems to have been a gift. The time of providing the gift, closely following the daughter's marriage, is logical as this marriage changed the daughter's position towards her father's estate.

The relationship observed in other laws, especially Babylonian law, between dowry and rights of inheritance could suggest that a dowry was considered a share in the father's estate. This could raise the question of why one would still want to use a gift to provide the daughter with part of the estate. In this respect it is interesting to note that the dowry never consists of real estate, while the gifts do. This could mean that there was a sort of system where a daughter received money, items of clothing and adornment by way of a dowry, while a part of the real estate of their family was given to them by way of gift. The difference between the objects concerned in the dowry and the gift suggests that dowry and gift were used in combination to provide the daughter with a share of her father's estate she could obviously not inherit at his death.

That a gift was apparently used to transfer other objects than a dowry did might have been related to the power the husband could have over the object: the objects in a dowry were in a way subjected to the power of the husband (the extent of this can vary<sup>559</sup>) while the objects of a gift to the daughter were not (the husband has nothing

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<sup>559</sup> It could be debated in whose ownership the dowry is *during marriage*. If the husband is not entitled to sell, I would suggest he does not have ownership since he does not have power of disposal. It would also depend on what we take to be returned at dissolution of the marriage. If original property should be returned, this suggests the husband cannot dispose of this property and that implies he is not owner (at least not in the usual sense of ownership). It would in such a case be better to say the property is entrusted to him or he is holder of the property. However, if we take the sum of money determined in the contract to denote what has to be returned, it would be easier for the husband to really use the property during marriage (and perhaps even sell it) since he would always be able to return the agreed sum in money. I do not think the discussion is of much importance for the instances in the Babatha archive, though, since we are there not concerned with a situation during marriage, but after the marriage has ended (after the husband has died; this applies to P. Yadin 5 and for 21-22). Even if the husband had to be considered as owner during his lifetime, the property would not become part of his inheritance: the husband's power over the property based on his position as husband ended at his death and the wife could claim the property (or a sum of money equal to the dowry) as her own property. A further indication for this is that the claims of the wife are not based on the law of succession (or on a will or gift), but on the marriage arrangements. P. Yadin 5, where the dowry obligation is mentioned separately from the debt the business owes the heir, supports this view.

A distinction has to be made between the property the wife brought in, the actual dowry, and anything the husband added to that in the marriage contract. In Jewish law it was usual that the husband promised something to the wife on top of her actual dowry. The so-called *kethubbah* (or marriage settlement) determined the total sum of money that had to be paid to the wife on dissolution of the

to do with private property of his wife). I point, for example, to P. Yadin 16, where Babatha obviously registers her own property. It has been discussed how she obtained this property and it was plausibly argued that she obtained it by way of a gift, perhaps upon her marriage.<sup>560</sup>

It is in any case clear that the daughter could become owner of various items in various ways: of movables like money and adornment by way of her dowry and of immovables like orchards or courtyards by way of gift following her marriage.

A comparable case can be found in the Elephantine papyri of the fifth century BCE, where a father disposes of a house by three related deeds of gift to his daughter. The daughter is at first granted with a share in the house, this happens some three months before her marriage. Sixteen years later, another deed of gift is made up that explicitly relates the gift of part of the house to the donor's death (and support in his old age). The same clause might have been contained in the first document of which the end is missing. Porten argued that: 'the first document acknowledged Jehoishma's claim as heir to a share in her father's estate. It is quite clear from the several no-suit claims that daughters might inherit from their fathers at Elephantine. Such acknowledgment was made when Jehoishma married (cf. C 8) because at that time she left her father's household to join that of her husband.'<sup>561</sup> This latter remark suggests a link between marriage and law of succession in this sense that apparently it was deemed necessary to determine at the time of marriage that the daughter would be entitled to part of her father's estate. I wonder, however, whether this could be called a claim based on the law of succession, i.e. whether Porten is right to call Jehoishma's right a 'claim as heir.' He refers to Yaron's discussion of inheritance law in the Aramaic papyri, apparently to support his claims that 'daughters might inherit from their fathers at Elephantine' but Yaron is in fact obviously inclined to believe they did not. Admittedly, Yaron says that the 'small number of documents available demands caution in our conclusions' but continues to remark that it seems that a daughter

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marriage. After the death of the husband the property the wife brought in, the actual dowry, reverted to her as her own property, while what the deceased husband owed her on top (the *ketubba*) had to be paid by the heirs. Therefore, one could say that we have two things: the wife can reclaim her own property, while she is at the same time entitled to the amount of money based on the *ketubba*, which is part of her husband's estate and needs to be paid by the heirs.

It does not seem to be clear whether the marriage contracts drawn up at the time dealt with a dowry as such (and possible addition by the husband) or with a *ketubba* obligation (for the return of a value in money). For example in P. Yadin 10 the value of the dowry is determined (four hundred denarii or zuzin), while no actual property is mentioned (like silver, gold, female adornment, household utensils etc.). The Commentary mentions: 'his [the husband's] obligation for the amount of the dowry that the wife is bringing with her in marriage' (*Documents II*, 133). For an explanation of *ketubba* as designation of marriage contract and of the sum of money due to the wife on dissolution of the marriage, see Cotton, H.M., Marriage contracts from the Judaean Desert, *Materia Giudaica* 6 (2000), 2. She also explains that the Greek Judaean Desert documents do not refer to a *ketubba* payment, they all mention the dowry. We do not know whether the four hundred denarii Judah mentions represented the value of the dowry the bride brought in (the items are not mentioned) or if there was an addition in some form. Consequently, it is difficult to determine whether 'silver of your *ketubba*' simply refers to return of the dowry or to payment of the *ketubba* (marriage settlement) encompassing an additional sum of money as well.

A completely different matter is the difference between dowry and bride price (Jewish *mohar*), discussed by Cotton, Cancelled Marriage Contract, 81-82. See my discussion of marriage contracts and marriage related documents below, nt. 374.

<sup>560</sup> See Cotton/Greenfield, Babatha's Property ..., 211ff.

<sup>561</sup> See Porten, B., *Archives from Elephantine. The life of an ancient Jewish military colony*, Berkeley, 1968, 229.

would not be able to compete with the claims of a son or a brother of the deceased.<sup>562</sup> This conclusion is prompted on the one hand by the Biblical evidence, on the other by ‘the relatively frequent occurrence of gift in Elephantine, and it is always women who are the donees. This does suggest an inferiority in intestate succession which it was sought to overcome by resort to gifts.’<sup>563</sup> This means that one cannot start from the assumption that a daughter would have inherited when in competition with a son or a brother of the deceased. I think the fact that a gift is made, i.e. a legal act to transfer property, shows that Jehoishma was in any case not heir based on the law of succession, i.e. following a rule of law. However, it is important to note when this situation occurs. If a gift was indeed required to ensure Jehoishma’s right to part of her father’s estate *after her marriage* (the transfer to her husband’s household Porten mentions), this suggests that Jehoishma did not have a right based on the law of succession *after her marriage* but she might have had one before. To put it differently, the gift suggests that her position towards her father’s estate changed upon marriage and a legal act was needed to counterbalance this, to make sure that she would receive part of her father’s estate anyway. This means that the right a daughter had to her father’s estate might have based on the law before she married, but afterwards it apparently required a legal act (deed of gift). Consequently, it would be wrong to maintain that daughters did not have a right to inherit their father’s estate, if in fact they might have had that very right as long as they were unmarried.

In general we can say that it appears that a daughter would inherit in the absence of a son and probably even in the presence of a son where she was unmarried and would remain that way. This latter rule is explicitly determined for Babylonian and Assyrian law; whether it would apply to Jews is doubtful: the Biblical rule clearly refers to a situation where there is no son. This would mean that in the presence of a son a daughter, whether unmarried or not, would not inherit. However, the link with marriage seems to be important for the case where the daughter might have a claim, thus in the absence of a son. Apparently she had her claim until her marriage, but after that not anymore. A deed of gift closely following (or in Elephantine shortly preceding) marriage sought to counterbalance this by ensuring the daughter would receive some part of her father’s estate anyway. This disposition, however, does not concern the order of succession: the daughter is not heir. The deed of gift can be seen as inheritance related because it explicitly seeks to counterbalance the effect of a rule that determines the order of succession.

This was already the case in Elephantine and we see the same practice in the Judean Desert documents. The gifts are written at the time of a daughter’s marriage which strongly suggests that this was the moment when the daughter’s position towards her father’s estate changed. Indeed, this is what logically follows from the evidence in the law codes and related documents from Mesopotamia discussed above, as well as from the instances of deed of gift in the Elephantine papyri. This means that it would be wrong to say that the daughter does not have a right to inherit her father’s estate: this depended on her marital status.

This interpretation could shed another light on the evidence found in the papyri from the Judean desert, as it implies that the position of the daughter in the absence of sons as portrayed there does not necessarily deviate from what one would expect on the basis of Jewish law. To make such an assessment, it is not sufficient to look at

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<sup>562</sup> See Yaron, R., *An Introduction to the Law of the Aramaic Papyri*, Oxford, 1961, 68, 67 resp.

<sup>563</sup> See Yaron, 68.

Numbers 28 alone and the later Mishnaic evidence, but it is essential to take into account the relationship between marriage and inheritance, as it is found in Numbers 36 (in addition to Numbers 28) and represented in the more general oriental context of laws and legal documents both from Mesopotamia and Anatolia/Levant.