

HANNAH M. COTTON – JONAS C. GREENFIELD

BABATHA'S PROPERTY AND THE LAW OF SUCCESSION IN THE
BABATHA ARCHIVE

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On the second of December 127 CE, during the *census* held in Arabia by the governor, Titus Aninius Sextius Florentinus, Babatha made a land declaration of four date-groves which she owned in Maḥoza:¹ 'I, Babatha, daughter of Shimeon, of Maḥoza in the Zoarene district of Petra, domiciled in my own private property in the said Maḥoza, register what I possess' (*P. Yadin* 16).²

How and when did she come to own these properties?

These are not pedantic questions of chronology or family history; rather, as we shall try to show, they touch upon the question of women's capacity to acquire property in a society in which they could not do so by inheriting from their husbands, nor from their parents, when there were descendants of their father's brother.³ These limitations on women's capacity to inherit are reflected in the documents themselves, more specifically in the manner by which women came to own property. Conversely, from the mode of acquisition of property by women as revealed in the documents, one can infer the law of succession then in force in that part of the Roman world.

By 120 CE, when she makes her first appearance in the archive,⁴ Babatha was already married to her first husband, Yeshu'a son of Yeshu'a.⁵ Not long before 124 she was widowed, since sometime between 27 February and 27 June of that year the *boulè* of Petra appointed guardians for her orphaned child (*P. Yadin* 12). One might think that in the land declaration of 127 Babatha was declaring her late husband's property which had since become hers. However, her direct succession into her husband's property upon his death seems to be excluded by the presence of a male child, whose guardians were in charge of capital and property belonging to him, and who provided him with maintenance.⁶ On the other hand Yeshu'a might have bestowed the date-groves declared in *P. Yadin* 16 on Babatha in his lifetime in a deed of gift.⁷ This too is unlikely: it is hard to imagine that Babatha, who

¹ See Fig. 1 (family trees) and Fig. 2 (map) at the end.

² Βαβθα Σίμωνος Μαωζηνῆ τῆς Ζοαρηνῆς περιμέτρου Πέτρας, οἰκοῦσα ἐν ἰδίῳ ἐν αὐτῇ Μαωζα, ἀπογράφομαι ἃ κέκτημαι, *P. Yadin* 16, ll. 13-15 in N. Lewis, *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri*, 1989; henceforth 'Lewis'.

³ Since in the documents we do not encounter a daughter in competition with her brother, we do not mention the obvious fact that his claim would be prior to that of his father's brother or his descendants.

⁴ *P. Yadin* 7, ll. 24-26 = 65-69 (unpublished).

⁵ See Fig. 1 (family trees) at the end.

⁶ *P. Yadin* 15 from 11 or 12 October 125, ll. 20-21 = ll. 5-6: διὰ τὸ ὑμᾶς μὴ δεδωκέναι τῷ υἱῷ [μου ὀρ]φανῶ... [τροφεῖα πρὸς τὴν δύν]αμιν τόκου [ἀ]ργυρίου [αὐ]τοῦ [κ]αὶ [τῶν] λοιπῶ[ν] ὑ[παρ]χόντων αὐτοῦ].

⁷ On deeds of gift see more below.

kept so many other records, should not have kept the one she might well need in case of litigation with the guardians of her son.⁸ We therefore may reject the probability that she came to own the property declared in *P.Yadin* 16 through inheritance or a deed of gift from her first husband.

By 125 Babatha was married to her second husband, Yehudah son of Eleazar Khthousion.⁹ He was dead by 19 June 130.¹⁰ Could he be the source of the properties declared in 127?¹¹

In *P.Yadin* 24 from 130 CE, Besas son of Yeshu'a, the guardian of the nephews of Yehudah son of Eleazar Khthousion, Babatha's second husband, while admitting that her late husband registered in her name (ἀπεγράψατο ... ἐπ' ὀνόματός σου) in the *apographè* (ἐν τῇ ἀπ[ο]γραφῇ), date-groves in Maḥoza (κῆπους φοινικῶνος ἐν Μαωζα),¹² nevertheless demands to know by what right she holds on to them; unless she proves her right to them, he threatens to register them in the *apographè* in the names of the orphans: ἀπογράφο[μαι] αὐτὰ [ἐν τῇ ἀπογραφῇ] ἐπ' ὀνόματος τῶν αὐτῶν [ὀρ]φ[αν]ῶν, ll. 4-12. Lewis (p. 106) translates the crucial phrases given here in Greek as follows: '(Judah son of Eleazar Khthousion) registered the date orchards in your name in the census' and 'I am registering them in the ... census in the names of the orphans'. If the first ἀπογραφή refers to the census of 127, and the κῆπους φοινικῶνος¹³ referred to here are those declared in *P.Yadin* 16, then we must assume that on the occasion of the census Yehudah transferred these properties to Babatha's name. In this case the source of Babatha's property in *P.Yadin* 16 would be her second husband, Yehudah son of Eleazar Khthousion.

There are many objections to this interpretation. First, it must be pointed out that Babatha had property of her own before the census of 127. In *P.Yadin* 15 she offers her son's guardians an arrangement under which they would give her the orphan's money 'on security involving mortgage of my property' (δι' ἀσφαλίας ... περὶ ὑποθήκης τῶν ὑπαρχόντων μου, l. 9 = l. 25). Secondly, it is clear that it was property held by her in her own right that Babatha was declaring and registering in *P.Yadin* 16; Yehudah was acting there merely 'as

⁸ The remote and unlikely possibility exists that he made an *oral* gift to her on his deathbed in the presence of witnesses. Under Jewish law this would make it the 'gift of a person lying gravely ill' (*mattenath shekhiv mera*), which 'took effect only at the donor's death' and 'was revocable or lapsed automatically' if he recovered from his illness, see R. Yaron, 'Acts of last will in Jewish law', *Recueils de la Société Jean Bodin pour l'Histoire Comparative des Institutions* 59, 1992, 34ff.

⁹ The marriage contract, *P.Yadin* 10 ('Babatha's Ketubba', Y. Yadin, J.C. Greenfield and Ada Yardeni, forthcoming in *IEJ* 44.1-2, 1994) does not carry a date, but see Lewis, p. 58 on *P.Yadin* 15 from 11 or 12 October 125.

¹⁰ See Lewis, p. 88.

¹¹ This possibility is raised here only because of Lewis' translation of the passage in *P.Yadin* 24 discussed below. He too, despite his translation, rejects this possibility, p. 107.

¹² Ll. 4-6.

¹³ Note, though, that in *P.Yadin* 23, 17 November 130 CE, only one date-grove is mentioned as having been held by Babatha: χάρ[ι]ν κήπου φοινικῶνος ἀνήκου[ι]τα] τοῖς αὐτοῖς ὀρφανοῖς ὃν βία διακρατίς, ll. 16-17.

her guardian and writing for her' (Ἰουδάνης¹⁴ Ἐλαζάρου ἐπιτρόπευ[ς]α καὶ ἔγραψα ὑπὲρ αὐτῆς). Thirdly, it seems most unlikely that property would be transferred on the occasion of the census. Finally, Besas' threat (quoted above), in 130, that he was going to register the properties in the name of the orphans cannot refer to the census of 127, and his urgent tone seems to exclude the possibility that he is referring to the next census. We suggest, therefore, that ἀπογράφομαι and ἀπογραφή are *not* used here in the sense of 'to register in the census' and 'census', but in a looser sense.

Elsewhere one of us has suggested¹⁵ that ἐν τῇ ἀπ[ο]γραφῇ in *P.Yadin* 24 refers to the registration of a mortgage (ὑποθήκη) in favour of Babatha on her second husband's entire registered property. Yehudah might have done this on two occasions, either when he obligated himself under the terms of the *ketubba*,¹⁶ or when he borrowed three hundred *denarii* from her (*P.Yadin* 17 from 21 February 128). On either occasion his entire property would have been put in lien, to guarantee the payment of the *ketubba* money or the loan.¹⁷ Babatha would possess the right of distraint until the *ketubba* money or the loan was paid back. In fact she exercised this right after Yehudah's death on account of both the *ketubba* money and the debt. We learn this from *P.Yadin* 21 and 22 from the 11 September 130, where it is said that she distrained three date-groves of her dead husband in lieu of her *ketubba* money (προίξ) and a debt (ὀφιλῆς): ἃ κατέχεις, ὡς λέγεις, ἀντὶ τῆς κῆς προ(ο)ικὸς καὶ ὀφιλῆς (*P.Yadin* 21, ll. 11-12; cf. *P.Yadin* 22, ll. 9-10).¹⁸ These three date-groves may well be those mentioned by Besas in *P.Yadin* 23 and 24. In view of all this it does not seem likely that her second husband is the source of the property declared in 127.

If the property declared in 127 did not come to her through either one of her marriages, it would seem reasonable to assume that it came to her through her parents. The parents' property is known to us from two unpublished papyri, *P.Yadin* 3 and 7. In *P.Yadin* 3, a

¹⁴ For this form of the name of Yehudah see Lewis, p. 19.

¹⁵ Cotton, 'Rent or tax receipt from Maḥoza', *ZPE* 100, 1994, 549, nn. 14-15; *ead.*, 'A Cancelled Marriage Contract from the Judaean Desert (*XHev.Še Gr. 2*)', *JRS* 84, 1994, forthcoming, App. 6.

¹⁶ I.e. for the sum of four hundred *dinarii* (*zūzīn*) which equals one hundred tetradrachms (*šōrīn*), mentioned in *P.Yadin* 10 (above, n. 9), l. 6, and described in l. 11 there as 'your *ketubba* money'. The liability clause which engaged Yehudah's property as guarantee for the payment of the *ketubba* money came in l. 17, which is very badly preserved. However, the clause is a standing feature of Jewish *ketubba* tradition: see M.A. Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study I*, 1980, 451ff.; E. Koffmahn, *Die Doppelurkunden aus der Wüste Juda*, 1968, 68f. The phrasing is: 'All properties which I have are surety and guarantee for your *ketubba*', *mKetubboth* ('marriage contracts') 4.7, cf. *tKetubboth* 12.1 (see note on Jewish sources at the end). It also features in marriage contracts from Egypt (e.g. *P.Eleph.* 1 = *M.Chr.* 283 = *Sel.Pap.* I.1, 311 BCE, ll. 12-13; *PTebt.* 1052, ll. 19-22; *PRyl.* 154, 66 CE, ll. 33-35; *P.Oxy.* 1273, 260 CE, ll. 35-6; *P.Oxy.* 237, 186 CE).

¹⁷ In Egypt, as we learn from the prefects' edicts cited in the celebrated petition of Dionysia (*P.Oxy.* II 237, col. VIII, ll. 21-43, see also *P.Mert.* III 101), wives were ordered to deposit a copy of their marriage contract in the same public archives in which their husbands' properties were registered in order to warn prospective buyers that these properties were entailed.

¹⁸ Unless we should understand τῆς κῆς προ(ο)ικὸς καὶ ὀφιλῆς as hendiadys: 'the debt of your *ketubba* money'.

Nabataean contract written ‘on the second of Tebet, the twenty-eighth year of King Rab’el’, i.e. the 18th of December 99 CE,¹⁹ Babatha’s father, Shimeon son of Menaḥem, buys a date-grove from a Nabataean woman, ’Abi’adan daughter of ’Aftaḥ.²⁰ This grove was abutted (see Fig. 3 at the end):

- 1) on the east by the road;
- 2) on the west by the houses of Ḥnynw²¹ son of Taymilahi and the houses of Ṭḥ’ daughter of ‘Abdḥariṭat;
- 3) on the south by the garden of king Rab’el and
- 4) on the north by the shoals²²

P.Yadin 7 is a deed of gift in Aramaic from Babatha’s father, Shimeon son of Menaḥem, to her mother, Miriam daughter of Yosef. It was written ‘In the consulship of Lucius Catilius Severus for the second time and of M. Aurelius Antoninus, in the third year of the Emperor (Autokrator) Caesar Traianus Hadrianus Augustus, and according to the era of the province on the twenty-fourth of Tammuz year fifteen’,²³ i.e. 13th July 120 CE.²⁴ Shimeon declares that he is giving to Miriam his wife as a ‘gift forever’ (mtnt ‘lm, l. 5) all that he possesses in Maḥoza.²⁵ Then follows a description of four date-groves in Maḥoza (see Fig. 3 at the end):

- 1) a date-grove ‘my excellent date-garden’ abutted:
 - i) on the east by the desert;
 - ii) on the west by the property of the heirs of Yosef son of Dormenes;
 - iii) on the north the by rugged land of the heirs of Menaḥem and others;

¹⁹ Since Tebet is to be identified with the Macedonian month Audanios which began in Arabia on the 17 of December, see A.E. Samuel, *Greek and Roman Chronology, Handbuch der Altertumswissenschaft* I.7, 1972, p. 177.

²⁰ Her name is not Nabataean, but her father’s name, ’Aftaḥ, is. His father’s name, Mnygrs is a Nabataean version of the well known Greek name Meleagros. In this case there was an interchange of *l* and *n* known from Nabataean Maliku written in out texts as MNKW. Note also: ṣnm ‘idol’ for ṣlm; obviously the interchange of liquids in proximity to ‘m’.

²¹ Probably Ḥonainu. Onainos son of Sa’adalo is the name of the scribe in the land declaration from 25 April 127 or 128, *XHev/Se Gr.* 5, l. 4, *ZPE* 85, 1991, 264, Frag. a = *ZPE* 99, 1993, 117: ἐγράφη διὰ τοῦ χειροχρήτου Οὐαίνου Κααδαλλου

²² w’lh ṭḥwmy’ lmdnḥ’ ’rḥ’ wlm’rb’ bty ḥnynw br tym’lhy wby ṭḥ’ brt ’bdḥrtt wlymyn’ gnt mr’n’ rb’l mlk’ mlk nbṭw dy ’ḥyy wšyzb ’mh wšm’l’ rqq’ *P.Yadin* 3, ll. 4-5 = ll. 25-27. The word rqq’ translated here as ‘shoals’ is used elsewhere for the shallow water near the shore of a lake or sea, cf. *bShabbat* 100b; *b’Erubim* 43a.

²³ ‘l hṭyt lyqys qṭwlys swrs tnynt’ wmrqs ’wrls ’nṭwnyt šnt tlt l’wṭqrṭwr qsr ṭryns hdyrys sbṣṣ w’l mnyn hprkyh d’ b’šryn w’rb’h btmwz šnt ’šr wḥmš, ll. 1-2 = ll. 30-32.

²⁴ See A. Degrassi, *I fasti consolari dell’ impero romano*, 1952, p. 35; Samuel (above, n. 19), *ibid.*; cf. *P.Yadin* 27, 19 August 132, where the span of time between the first of Panemos and the thirtieth of Goripaios is equated with that between the first of Tammuz and the thirtieth of Elul.

²⁵ So the inner text; the outer text of this double document does not have ‘all that I possess in Maḥoza’ (kl mh dy ’yty ly bmḥwz’); both inner and outer text, however, say that he is giving her all that is described in this deed, as well as what he owns and does not describe there, and even what he will acquire in the future, ll. 4-5 = 34-3. The last provision ‘all that I will acquire and that I will have’ flatly contradicts Talmudic ‘restriction of a gift to property owned by the donor at the time of the disposition’, Yaron (above, n. 8), 41, cf. 45.

- iv) on the south by the property of the heirs of Yosef son of Baba.²⁶
- 2) a date-grove called Karaba abutted:
- i) on the east by the property of Garamilahi son of 'Arhazu;
 - ii) on the west by the big river and the property of the heirs of [Yo]hanan son of Baba;
 - iii) on the north by the property of Menlas son of 'Awtilahi;²⁷
 - iv) on the south by the property of Menlas son of 'Awtilahi.²⁸
- 3) the new grove of the sons of Tiber(i)os(?), ... from Shimeon Ha-Bagad(?),²⁹ abutted:
- i) on the east by the property of Garamilahi son of 'Arhazu;
 - ii) on the west by the property of Shamu'a son of Menahem and others;
 - iii) on the north by the said river and the road;
 - iv) on the south by the property of Garamilahi son of 'Arhazu.³⁰
- 4) 'the white land and its palm trees', abutted:
- i) on the east by the property of the heirs of Yosef son of Baba;
 - ii) on the west by the property of Shamu'a son of Menahem;
 - iii) on the north by the property of the heirs of Yosef son of 'Arati;
 - iv) on the south by the property of Yoḥana son of Makhuta.³¹

Let us now look closely at the four date-groves in *P.Yadin* 16 and see whether we can identify any of the parents' date-groves with one or more of those declared by Babatha here (see Fig. 3 at the end):

- 1) a date-grove called Algiphiamma, abutted:
 - i) by the road;
 - ii) by the sea.
- 2) a date-grove called Algiphiamma, abutted:
 - i) by the Moschantic estate of the Emperor;³²
 - ii) by the sea.
- 3) a date-grove called Bagalgala, abutted:

²⁶ gnt tmry' dy ly špyr' wkl dy bh tḥwmyh lmdnh' mdr' wlm'rb' yrty ywsf br drms wšpwn' 'r' w'rt dy lyrt' mnhm w'hrnyn wldrwm' yrty ywsf br bb', ll. 5-6 = 36-38.

²⁷ Should be Gawtilahi.

²⁸ 'tr' dy mtqr' krb' nšyb tmryn tḥwmyh lmdnh' grm'lh br 'rhzw wlm'rb' nhr' rb' wyrty ywḥnn br bb' ldrwm' wšpwn' mnl br 'wt'lh, ll. 7-8 = 39-40. For clarity-sake we divided what text combines: 'on the south and the north by Menlas son of 'Awtilahi'.

²⁹ The reading Ha-Bagar is also possible.

³⁰ gnt' ḥdt' dy bny tḥyrws wšhr ly mn šm'wn hbgd (?) tḥwmyh] lmdnh' wldrwm' grm'lh br 'rhzw wlm'rb' šmw' br mnhm w'hrnyn wšpwn' nhr' dkr' w'rh', ll. 8-9 = 41-43. Again we divide what the text has as: 'on the east and south by Garamilahi son of 'Arhazu etc.'.

³¹ 'r' ḥwrt' wtmry' <dy bh> tḥwmyh lmdnh' yrty ywsf br bb' wlm'rb' šmw' br mnhm wšpwn' yrty ywsf br 'rty wldrwm' ywḥnh br>t< mkwt', ll. 10-12 = ll. 44-46. The *brt* (daughter of) must be a mistake. We know that he is a male from *P.Yadin* 14, l. 45; 16, l. 42; 20, l. 52 — in all of which he signs as a witness. In *P.Yadin* 22, l. 34, 11 September 130, he is Babatha's guardian ('adon = κύριος).

³² G. W. Bowersock, 'The Babatha Papyri, Masada and Rome', *Journal of Roman Archaeology* 4, 1991, 341, has suggested that Μοσχαντική means an imperial estate in 'Aglatain, since the μοσχ- element translates the element 'Aglā (calf) in the place-name 'Aglatain, see below n. 41.

- i) by the property of the heirs of Thesaios son of Sabakas;
 - ii) by the property of Iamit son(?) of Manthanthos.
- 4) a date-grove called Bethphaaraia, abutted:
- i) by the property of Tamar daughter of Thamous;
 - ii) by the road.³³

It is evident that *none* of the four date-groves which Babatha possessed in Maḥoza overlaps with any of the four described in the deed of gift, *P.Yadin 7*, since none of the marks which distinguish the four date-groves mentioned in *P.Yadin 7* is to be found in the description of the four-date groves declared in *P.Yadin 16*. It is true that we do not have all four abutters of the date-groves in the land declaration; in fact only two neighbours are mentioned in it,³⁴ which is as many as are required by the ‘census form’.³⁵ Furthermore, it could be argued that abutters (that is human abutters) could have changed between 120 and 127, and thus one or more of the date-groves given in gift in 120 may be identical with one of the properties declared in 127. But in this case we should have to assume that all the human abutters had changed between 120 and 127 CE, which is unlikely. Moreover, the two first date-groves in *P.Yadin 16*, unlike any of those in *P.Yadin 7*, are located on the shores of the Dead Sea, as their name ‘Algiphiamma, i.e. ‘*al gif yamma*, ‘on the sea shore’, demonstrates. Babatha’s third date-grove called ‘Bagalgala’ is located, as its name suggests, in Galgala (see Lewis, p. 70), which is a part of Maḥoza.³⁶ One gets the impression that the location of Babatha’s date-groves is different from that of those described in *P.Yadin 7*.

On the other hand it seems very likely that either one of the first two date-groves, both called Algiphiamma, declared in *P.Yadin 16* can be identified with the date-grove bought by Babatha’s father in 99 CE from ‘Abi‘adan, daughter of ‘Aftaḥ: the first Algiphiamma is abutted by the road and the sea (ὁδὸς καὶ θάλασσα), which are the ‘neighbours’ to the east and the north of the property bought in 99; the second Algiphiamma is abutted by the Moschantic estate of the Emperor and the sea (μοσχαντική κυρίου Καίσαρος καὶ θάλασσα). Assuming that the Nabataean kings’ property to the south of the date-grove mentioned in *P.Yadin 3* was transformed into imperial property after the creation of the province,³⁷ and the ‘shoals’ to the north of that date-grove are to be equated with the sea in *P.Yadin 16*,³⁸ the

33 (1) κῆπον φοινικῶνος ἐν ὁρίοις Μαωζων λεγόμενον Αλγιφιαμμα ... γείτονες ὁδὸς καὶ θάλασσα, (2) κῆπον φοινικῶνος ἐν ὁρίοις Μαωζων λεγόμενον Αλγιφιαμμα ... γείτονες μοσχαντική κυρίου Καίσαρος καὶ θάλασσα, (3) κῆπον φοινικῶνος ἐν ὁρίοις Μαωζων λεγόμενον Βαγαλγαλά ... γείτονε[ς κληρονόμοι Θεραίου Καβακα καὶ Ἰαμίτ Μανθανθου, (4) κῆπον φοινικῶνος ἐν ὁρίοις Μαωζων λεγόμενον Βηθφααραια ... γείτονες Θαμαρή Θαμοῦ καὶ ὁδός.

34 Cf. N. Lewis, ‘A Jewish Landowner from the Province of Arabia’, *Scripta Classica Israelica* 8-9, 1985/88, 134, l. 17: γείτ[ον]ες Μαναῆς Μαναῆ καὶ θάλασσα.

35 *Dig.* 50.15.4: ‘Forma censuali cavetur, ut agri sic in censum referantur. nomen fundi cuiusque: et in qua civitate et in quo pago sit: et quos duos vicinos proximos habeat’.

36 See *P.Yadin 16*, ll. 24-25: κῆπον φοινικῶνος ἐν ὁρίοις Μαωζων λεγόμενον Βαγαλγαλά.

37 Cf. B. Isaac, ‘The Babatha Archive’, *IEJ* 42, 1992, 70-71.

38 Contra Lewis (above, n. 34), 137, who conjectures that the abutters when only two neighbours are given ‘are probably those on the east and the west, which were stated first in the traditional Semitic practice’.

second Algiphiamma too could be identified with the date-grove bought in 99.³⁹ Unfortunately no human abutters are mentioned for either one of the two Algiphiammas.⁴⁰

Finally we may point out that the date-grove of *P.Yadin 3* was located in Galgala⁴¹ This puts it in the same part of Maḥoza as the third date-grove declared by Babatha, called 'Bagalgala' (see above at n. 36). Since the date-grove of *P.Yadin 3* has with great probability been identified with one of the two Algiphiammas, we can conclude that at least one of them was in Galgala. Furthermore, since the two Algiphiammas are likely to be located near each other, probably three of Babatha's date-groves are located there. This strengthens the impression that all four date-groves declared by Babatha were located near each other. This in turn suggests, as we shall try to show below, that they were bestowed on Babatha at the same time.

To resume. The property bought in 99 CE — absent from *P.Yadin 7*, the deed of gift to Babatha's mother of 120 — re-emerges in *P.Yadin 16* of 127 as part of Babatha's estate in Maḥoza. On what occasion did she acquire it? Is it likely that she received all four date-groves on the same occasion?

At the time that the deed of gift was drawn up, 120 CE, Babatha was already married to her first husband. We know this from the deed of gift itself, where her father sets a condition that should their daughter, Babatha, become a widow, she could live in a shack/hut in one of the courtyards given to her mother in the deed of gift; but she may not live there if she remarries.⁴² The absence of the property bought in 99 CE from the deed of gift of 120 and its re-emergence in the land declaration of 127 suggests that it became Babatha's property in 120 CE or before. We suggest that it was given to Babatha on the occasion of her first marriage in a deed of gift.⁴³ In fact the other three date-groves declared in 127 are likely to

³⁹ The name of the date-grove in *P.Yadin 3* cannot be recovered. The sentence reads: 'A date-grove which belongs to 'Abi'adan called Gh..a' in the Galgala' (gnt tmry' dy l'by'dn d' dy mtqry' gh..' dy bglgl'), ll. 2-3 = l. 23-24. Dr. Ada Yardeni informs us that 'lgfym' or 'gfym' cannot be read in the lacuna.

⁴⁰ And therefore there is no evidence that between 99 and 120 Jews replaced Nabataeans as neighbours to the date-grove bought by Babatha's father in *P.Yadin 3* as Bowersock suggests in *Roman Arabia*, 1983, 77-8. Bowersock was misled by Yadin's statement in *IEJ* 12, 1962, 240 that the grove bought in *P.Yadin 3* was 'bestowed as a gift on her (i.e. Babatha's) mother'. As we shall see, it was not among the property bestowed there.

⁴¹ *P.Yadin 3*, ll. 2-3 = ll. 23-24 (unpublished): 'A date-grove which belongs to 'Abi'adan called Gh..a in the Galgala in Maḥoz Aglatain' (gnt tmry' dy l'by'dn d' dy mtqry' gh..' dy bglgl' dy bm[ḥw]z 'gltyn). It seems that Maḥoza and Aglatain are identical, since both are said to contain the Galgala. Could Maḥoza be short for Maḥoz Aglatain, an expression found several times in the Nabataean and Aramaic documents?

⁴² blḥwd dy qym yhw hbbt' brtnh dy hn tt'rml wl' yhw' lh b'l dy thw' 'mrh bbyt 'wry' dy mn qst 'try mtnt' d', *P.Yadin 7*, ll. 24-26 = ll. 65-68; for 'house of widowhood' see *tKet.* 11.6-7 and R. Yaron, *Gifts in Contemplation of Death in Jewish and Roman Law*, 1960, 217ff.

⁴³ There is no evidence that immovables were included as part of the dowry in marriage contracts from Judaea and Arabia. The deed of gift, which is distinct from the dowry and grants immovables to the daughter, recalls the institution of *προσφορά* (or *πρόδοσις*) in Egyptian papyri, see E. Gernet, *Beiträge zum Recht der Parapherna, Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 38, 1954, 19-32; G. Häge, *Ehegüterrechtliche Verhältnisse in den griechischen Papyri Ägyptens bis Dio-*

have been given to her at the same time. At least they could not have been inherited directly from her father after 120, if he died between 120 and 127, since in *P.Yadin 7* he says explicitly that he is giving his wife in gift everything he owns in Maḥoza (kl mh dy 'yty ly bmḥwz', l. 3). Thus after 120 he had no more date-groves in Maḥoza to bequeath.

Although neither Babatha's marriage contract to her first husband, nor a deed of gift bestowing one or all four of the properties declared in 127 were found in the Babatha archive, we do find in the archive a deed of gift following upon a daughter's marriage: eleven days after the marriage of his daughter Shelamzion to Yehudah son of Ḥananiah, Babatha's second husband, Yehudah son of Eleazar Khthousion, gave Shelamzion a gift of half a courtyard including half of the rooms and the upper-storey rooms therein in En-Gedi; and she is to receive the second half after his death.⁴⁴ The same procedure could have accompanied Babatha's marriage to her first husband, even if no record of it has survived. It should be emphasized that *P.Yadin 5* is the only document preserved in the archive in connection with her first marriage.

We wish to go further though and suggest that the occasion for the drawing up of the deed of gift in favour of the wife (*P.Yadin 7*) was none other than Babatha's marriage to her first husband and the grant of the property to her then in the form of a gift. Having provided for his daughter, Babatha — quite handsomely, if all four date-groves declared in *P.Yadin 16* were given to her then — her father, Shimeon son of Menaḥem, wanted to make sure that in the event of his death, his widow, Miriam daughter of Yosef would keep the rest of his property. This can be best explained if we assume that had he not done so, in the event of his death, the entire property would have devolved on the *suus heres* designated by the rules of succession (see below), and his widow, Miriam daughter of Yosef, would have been left with nothing. Thus the deed of gift in *P.Yadin 7* was written in the interest of the wife.

We have already mentioned *P.Yadin 19*, a deed of gift written by Yehudah son of Eleazar in the interest of his daughter, Shelamzion.⁴⁵ The gift apparently did not go undisputed by the guardians of Yehudah's nephews, the orphaned sons of his brother Yesu'a, since in *P.Yadin 20*, 19 June 130, they say that they are *conceding* to Shelamzion the courtyard with

kletian, 1968, 250-289; J. Modrzejewski, 'Zum hellenistischen Ehegüterrecht im griechischen und römischen Ägypten', *ZRG RA* 87, 1970, 69.

44 *P.Yadin 19*, 16 April 128: [δι]έθετο [ο] 'Ιο]ύδακ 'Ελ[αζά]ρου Χθουσι[ίω]νοκ 'Ηνγαδη[νο];ο οικῶν ἐν Μαωζακ [Σελ]αμψιοῦκ θυ[γατ]ῆρ πάν[τα τὰ ὑ]πάρ[χον]τα ἀύ[τ]ῆ [ἐ]ν 'Ηνγαδη'ο ἥ[μικ]υ ἀ[ύ]ληκ ... ἥμικυ οἰκομάτων καὶ ὑπερφακ ἐνο[ύ]κι χωρικ ἀύληκ μικκῆκ παλεα;ν ἐνγὺκ τῆκ ἀύτ[ῆ]κ ἀύληκ, καὶ τ[ὸ] ἄλλο ἥμικυ τῆκ ἀύληκ καὶ οἰκομάτων διέθετο ..[.]'Ιούδακ τῆ ἀύτ[ῆ]κ [Κελ]αμψιοῦ[κ] μετὰ τὸ ἀύτ[ὸ]ν τε(λε)υτήκακ, ll. 11-16. The marriage contract is *P.Yadin 18* of 5 April 128. See A. Wasserstein, 'A Marriage Contract from the Province of Arabia Nova: Notes on Papyrus Yadin 18', *Jewish Quarterly Review* 80 (1989), 110-113 for the of eleven days delay between the execution of the marriage contract and the drawing up of the deed of gift.

45 Above at n. 44. See R. Katzoff, 'P. Yadin 19: A gift after death from the Judaean Desert', *Proceedings of the Tenth World Congress of Jewish Studies, Jerusalem 1989* Div. C, Vol. I, 1990, 1-8, Hebrew; 'An Interpretation of P. Yadin 19: A Jewish gift after death', *Proc. of the 20th Int. Congr. of Pap. Copenhagen, 23-29 August, 1992*, collected by A. Bülow-Jacobsen, 1994, 562-565.

all its rights.⁴⁶ This property used to belong to the grandfather, Eleazar Khthousion.⁴⁷ Although in his deed of gift to his daughter Yehudah claims that it is his (τὰ ὑ]πάρ[χον]τα ἀὐ[τ]ῷ [ἐ]ν Ἡνγαδοῖς, *P.Yadin* 19, l. 12), it is possible that it was not the deed of gift but Yehuda's exclusive ownership of the courtyard which was disputed by the guardians of the orphans of his brother.⁴⁸ At any rate, Shelamzion did not inherit it from her father, but received it in gift: one half as a simple gift and the other half as a gift after death.⁴⁹

The very drawing up of a deed of gift to ensure that the daughter would come to possess her father's property after his death strongly suggests that this property would not have become hers automatically upon intestate succession. In other words, the daughter in the legal system reflected here is not the *suus heres* of her father.⁵⁰ This impression is strengthened by *P.Yadin* 24 quoted above, where Besas threatens that unless Babatha proves her right to the date-groves held by her, he would register them in the name of her late husband's nephews (the sons of Yehudah's dead brother, Joshu'a). Even if the grandfather's estate remained undivided and was the property of both brothers (see below, n. 47), one would still expect Shelamzion to be mentioned as heir to half the property. Unless both Shelamzion and her husband had died between 128 and 130, the exclusive claim of the father's brother's sons cannot be explained if the system was one in which the daughter was the *suus heres* of her father in the absence of a son.

Another (unpublished) deed of gift comes from the archive of Salome Komaise daughter of Levi (*XHev/Se Gr.* 1).⁵¹ It was written in Maḥoza on the 9th of November 129 CE by a Jewish mother, Salome Gropte, who is bestowing on her daughter, Salome Komaise, a date-grove and half a courtyard including half of the rooms and the upper-storey rooms therein.

46 ὁμολογοῦμεν [[παρα]] συνκεχωρηκέναι ε[ο]ι ἐξ ὑ]παρχόντων Ἐλεαζάρου τοῦ καὶ Χθουσίωνος Ἰουδο[υ] π[ά]ππου σου ἀύλην σὺν παντὶ δικαίοις αὐτῆς ἐν Ἡνγαδοῖς καὶ τοὺς σὺν αὐτῆς οἰκίαι κτλ., ll. 27-30 = ll. 6-8, and see Lewis, pp. 92-3 on the verb συνκεχωρηκέναι.

47 Cf. *P.Yadin* 11, ll. 14-16 = ll. 2-4: ὁμολογῶ ἔχειν καὶ ὀφείλειν σοι ἐν δάνει ἀργυρίου Τυρίου δηνάρια ἐξήκοντα ... ἐπὶ ὑποθήκη τῇ ὑπαρχούσῃ αὐλῇ ἐν Ἡνγαδοῖς Ἐλαζάρῳ Χθουσίωνος πατρί μου ἧς ἔχω ἐπιτροπὴν ὑποτιθέ[ν]ται καὶ ἐγμιεθοῖν παρὰ τοῦ αὐτοῦ Ἐλα[ζάρου].

48 The frequent occurrence of the locution 'heirs of' as abutters in the papyri here discussed gives the clear impression that estates remained undivided; see Lewis, p. 35 on *P.Yadin* 5 from 2 June 110, where the two brothers, seem to have held property in common until one of them died; cf. H. Kreller, *Erbrechtliche Untersuchungen auf Grund graeco-ägyptischer Papyrusurkunden*, 1919, 63-75 on 'Die Erbgemeinschaft' in Egyptian papyri.

49 See Yaron (above, n. 42), 1 for a definition of the latter.

50 It could be argued, though, that Yehudah protected the interests of his daughter from his first marriage against the possibility that his second marriage with Babatha will produce a son.

51 This papyrus, which belongs to the archive of Salome daughter of Levi, will be published shortly with the rest of the archive. It belongs to the so-called *P.Še'elim* group, on which see J.C. Greenfield, 'The Texts from Naḥal Še'elim (Wadi Seiyal)', *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid 18-21 March, 1991*, eds. J. Treballe Barrera and L. Vegas Montaner, Leiden 1992 ('There can ... be little doubt that Naḥal Ḥever is the source for the so-called Še'elim texts. However, for convenience and because the plates are so labeled in the Rockefeller Museum, the designation Še'elim will be maintained', 662).

The mother is represented in the deed by her second husband,⁵² Yosef son of Shimeon. It is conceivable that the purpose of the deed of gift was to ensure that her daughter would get this date-grove in the event that the second marriage would result in a male issue, or if the mother died suddenly.⁵³ Perhaps it was given in anticipation of the daughter's marriage.⁵⁴ Again the writing of a deed of gift in favour of a daughter suggests that she was not the *suus heres* of her mother.

The presence of two deeds of gift in the Babatha archive and one in the archive of Salome daughter of Levi — all designed to advance the financial interests of daughters and wives — suggests that the law of succession in force at that time (at least among the Jews) in the province of Arabia did not automatically grant a wife the right to inherit from her husband nor a daughter the right to inherit from her parents, when in competition with sons of her father's brother. In denying the claims of the wife to her husband's property this law seems to have been not unlike the Jewish law of succession.⁵⁵ It differs from Jewish law in preferring the claims of the man's brother or his brother's children to those of the daughter: Jewish law prefers the claims of children, whatever their sex, to those of the man's brother or his brother's children.⁵⁶ Like Jewish law, moreover, 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.⁵⁷

Property which was bestowed on a woman in a deed of gift seems to have remained hers even when she got married: Babatha declares the four date-groves in *P.Yadin* 16 as her own property, although by then she was married to her second husband; Besas and Iulia Crispina promise to register Shelamzion's property in En-Gedi with the public authorities and clear it for her from any counterclaims:⁵⁸ nothing implies that her husband, who represents her in this

⁵² Levi was dead by 125 or 127, as we learn from another document from the same archive, *XHev/Se Gr.* 5, a legal renunciation of claims, unpublished; see Fig. 1 (family trees) at the end.

⁵³ In which case, at least according to Jewish law, her husband would be the heir, see *mBB* 8.1.

⁵⁴ Salome Komaise does not seem to be married at the time that the deed of gift was drawn up. Since she is to be identified with the Salmoe Komais(e) of *P.Yadin* 37 in which we are told that she lived with her husband, in an unwritten marriage, before the written contract was drawn up in 7 August 131: *συμβιώσαι τ[ὸν] Ἰησοῦν μετ' αὐτῆς ὡ[ς] καὶ πρὸ τούτου τοῦ χρόνου* (ll. 5-6), her marriage must have taken place after November 129 and sometime before August 131. See now T. Ilan, 'Premarital cohabitation in ancient Judaea: the evidence of the Babatha Archive and the *Mishnah* (*Ketubbot* 1:4)', *HTHR* 86, 1993, 247-264. It is of course inaccurate to describe the *ἄγραφος γάμος* which preceded *P.Yadin* 37 as 'premarital cohabitation'.

⁵⁵ A. Gulak, *Principles (Institutions) of Jewish Law III: Family Law*, 1922, ch. 5, §§37; 42, Hebrew; Z. Falk, *Introduction to Jewish Law of the Second Commonwealth II*, 1978, 335ff.

⁵⁶ Numbers 27: 8: 'When a man dies leaving no son, his patrimony shall pass to his daughter. If he has no daughter, you shall give it to his brothers'; and see *mBaba Bathra* 8.2: 'The son precedes the daughter, and all the son's offspring precede the daughter; the daughter precedes the brothers (of the deceased)', Danby's translation.

⁵⁷ Yaron (above, n. 42), 153-160; *id.* (above, n. 8), 29-45.

⁵⁸ *P.Yadin* 20, ll. 12-16 = ll. 35-40: *ταύτην δὲ τὴν ἀλλήν ὅπου ἂν βουληθῆς τευχίω σο[ι] διὰ δημοσίων, σοῦ διδούσης τὸ ἀνάλωμα. εἰάν δέ τις ἀντιπο[ι]ήσῃ τῆς προγεγραμμένης αὐλῆς, σταθωντες ἐκδική-*

document, has any claim to this property. Finally Salome Groppe was married to her second husband when she bestowed property on her daughter, Salome Komaise. She must have kept her own property even after her marriage. We do not know though that she acquired it in a deed of gift.⁵⁹

Jerusalem

Hannah M. Cotton
Jonas C. Greenfield

Appendix:

1) A note on the Jewish sources:

In the course of this article we drew on Jewish sources, some of which may be unfamiliar to readers of the Journal. It may, therefore, be helpful to say a few words of explanation as well as indicate the method of citation:

The *Mishnah* is the authoritative collection of religious law which had been formulated in the rabbinic schools in Palestine for several centuries until its final redaction by Judah the Prince (R. Yehudah *ha-Nasi*) c. 200 CE. It is written in what is commonly called Mishnaic Hebrew: see H.L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash*, Edinburgh 1991, 111-166. The *Tosefta* — ‘addition, supplement’ — is a collection of rabbinic teachings and sayings outside the *Mishnah* but from approximately the same period. It is much more extensive than the *Mishnah*; the relationship between the two is still far from clear (Strack-Stemberger, 168-177). Both the *Mishnah* and the *Tosefta* as we now have them consist of six main divisions or orders (*sedarim*), each of which consists of tractates, subdivided into chapters and paragraphs. The method of citation is by work (*m* or *t*), tractate, chapter and paragraph, but the ‘order’ is omitted. The Talmuds are later commentaries on mishnaic material. The two Talmuds are also cited by work (*y* for *Yerushalmi*, i.e. the Palestinian Talmud and *b* for the Babylonian Talmud), and respective mishnaic tractate. For the Babylonian Talmud tractate is followed by page-number, with the front and back of each leaf counted as a and b; for the Palestinian Talmud (the Venice edition) the tractate is followed by page-number with each page having four columns (a-d).

2) We may now add a few facts to Babatha's biography: she married her first husband ca. 120, and not later; her son was less than four years old in 124 when the *boulè* of Petra nominated two guardians to look after him. Since none of the estates in the deed of gift of 120 can be identified with those declared in 127, there is no sign that Babatha had by 127 inherited — but her mother may still have been alive then, so the matter of an inheritance would not have arisen. Thus we cannot use this fact to buttress our suggestion that a daughter

σωμεν καὶ καθαροποιήσομέν σοι ἀπὸ παντὸς ἀντιποιουμένου ταῖς εἰδίαις ἀναλώμασιν κατὰ μηδὲν ἀντιλεωγῶν.

⁵⁹ Jewish law recognized varying degrees of control of the married woman's property by her husband, see Yaron (above, 42), 138ff.

Fig. 2: The Locations mentioned in the Documents
(Reproduced from N. Lewis, *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri*, 1989 by permission of the publishers)

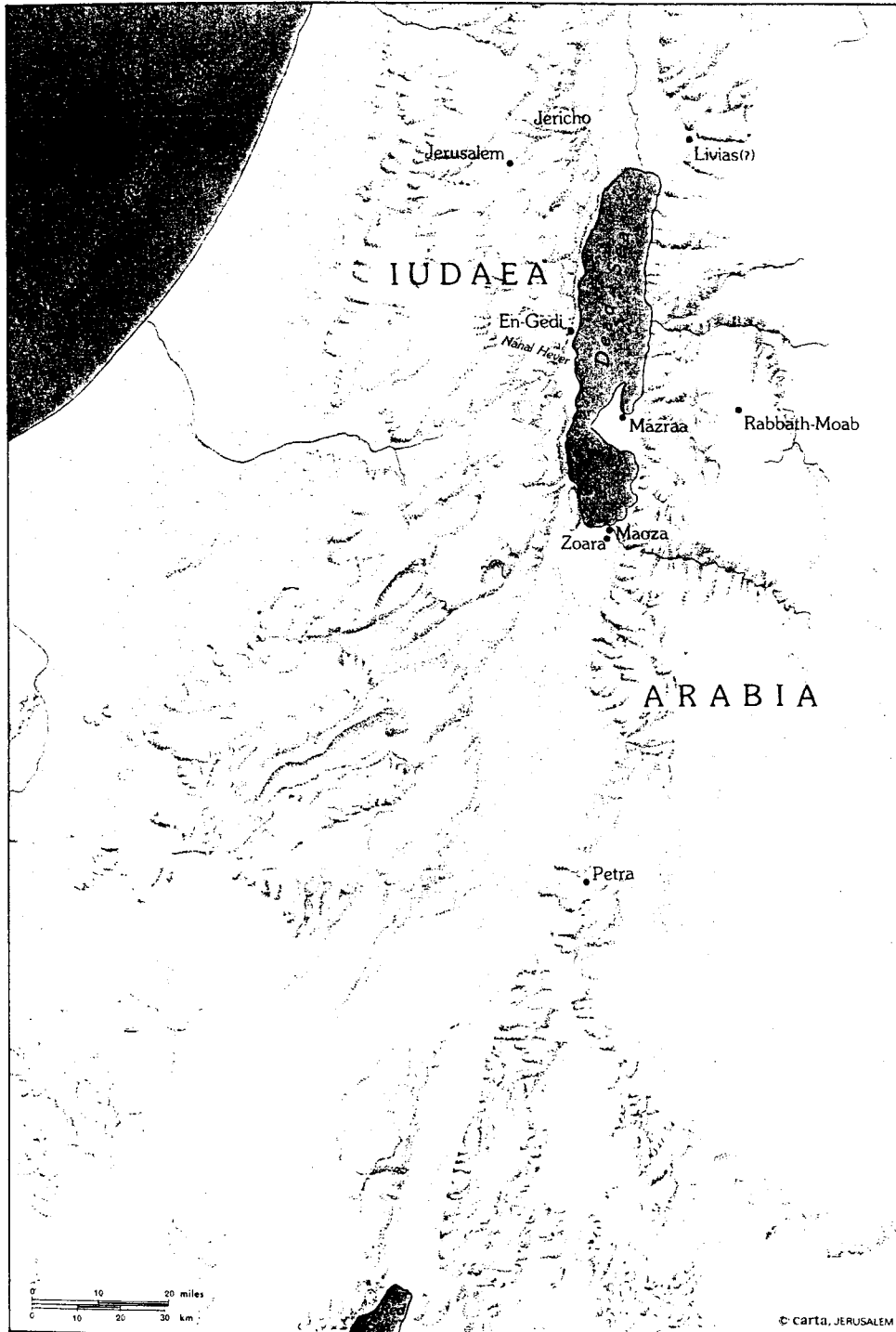


Fig. 3: The Date-Groves mentioned in *P.Yadin* 3, 7 and 16 and their abutters

