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LAND TENURE IN THE DOCUMENTS FROM THE NABATAEAN KINGDOM AND
THE ROMAN PROVINCE OF ARABIA

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LAND TENURE IN THE DOCUMENTS FROM THE NABATAEAN KINGDOM AND THE ROMAN PROVINCE OF ARABIA*

The text and translation of the as-yet unpublished Nabataean P.Yadin 2 and 3 were put at my disposal by Ada Yardeni, who also discussed them with me, and rightly insisted on understanding them literally before trying to interpret them. I am grateful to her for her collaboration in this article as well as in our joint publication of the so-called Seiyâl collection (see note 3).

Land tenure in the documents from the Nabataean kingdom and after 106 from the Roman province of Arabia is a slippery issue. The documents contain indirect and not unambiguous information concerning the status of land in Nabataea/Arabia. What was the exact legal status of land said to be leased from the Nabataean king? Did the transition from independent kingdom to Roman province affect the status of this land? Did such land become private in the transition, or was it now leased from the Roman emperor? Is the payment mentioned in the documents that of rent or of tax?¹

The documents to be discussed here are of different nature: deeds of sale, P.Yadin 2 and 3 (Nabataean, unpublished, 99 CE);² receipts, XHev/Se gr 60 (125 CE) and XHev/Se ar 12 (131 CE); land declarations for the census, XHev/Se gr 62 and P.Yadin 16 (127 CE); and a deed of gift, XHev/Se gr 64 (129 CE).³

P.Yadin 2 and 3 of 99 CE, two Nabataean deeds of sale, were written one month apart from each other by the same scribe. They describe the sale of the same date grove by a Nabataean woman, 'Abi'adan daughter of 'Aftah daughter of Manigros, at first to a man called Archelaus son of 'Abd'amiyu (P.Yadin 2) and a month later to Shim'on – probably to be identified as Shim'on bar Menahem, Babatha's father – (P.Yadin 3).⁴ Both deeds contain a clause about an annual and fixed share to be paid to the Nabataean king. This clause can be reconstructed as follows from the inner and outer texts of the two almost identical contracts (P.Yadin 2 lines 13–14 = lines 37–38; P.Yadin 3 lines 15–16 = lines 41–42):

* Not for the first time I am indebted to Dieter Hagedorn and Werner Eck for improving my arguments and correcting my misconceptions. The imperfections still left are my own responsibility.

¹ I do not take into account here the clauses mentioning a fine to be paid to the king/emperor if the terms of the contract are changed found in P.Yadin 2 (99 CE) lines 13–14 = line 40; P.Yadin 3 (99 CE) line 18 = lines 45–46; XHev/Se nab 2 (ca. 99? unpublished), line 22; P.Yadin 4 (99 CE, unpublished) lines 17–18; P.Yadin 5 (110 CE, frg a, col. ii line 10); on the *Fiskalmult* see A. Berger, *Die Strafklauseln in den Papyrusurkunden*, Leipzig 1911 (reprint 1965), 31ff.; 93ff.

² See A. Yardeni, 'Notes on Two Unpublished Nabataean Deeds from Naḥal Hever – P.Yadin 2 and 3', *Proceedings of the International Congress on The Dead Sea Scrolls – Fifty Years after their Discovery held at The Israel Museum, Jerusalem, July 20–25, 1997*, forthcoming.

³ The papyri cited here as XHev/Se ar or XHev/Se gr are published in H. M. Cotton and A. Yardeni, *Aramaic, Hebrew and Greek Texts from Naḥal Hever and Other Sites with an Appendix Containing Alleged Qumran Texts* [The Seiyâl Collection 2], Discoveries in the Judaean Desert XXVII, Oxford, 1997 (henceforth Cotton and Yardeni); the Greek part of the Babatha archive was published in N. Lewis, *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri* (with Aramaic and Nabatean Signatures and Subscriptions, edited by Y. Yadin and J. C. Greenfield), Jerusalem, 1989 (henceforth Lewis). The Aramaic and Nabataean part of the Babatha archive will be published by Y. Yadin, J. C. Greenfield, A. Yardeni, and B. Levine, *The Documents from the Bar Kokhba Period in the Cave of Letters. Vol. II: Hebrew, Aramaic and Nabatean Documents*. All the papyri found by Yadin in Naḥal Hever, both published and unpublished, are designated P.Yadin.

⁴ I do not have an explanation for the presence of the two deeds of sale in the Babatha archive, since the latter deed must have nullified the first one.

'In such a way this (same) 'Abi'adan divided for this grove the share of our Lord, lease-rent for the year, in like manner ten *se'ah* therein, until there will be a new binding agreement and this grove will become part of this Archelaus' (Shim'on's) property by the present contract'.

⁵yrka anarm qlj ad atng l[ad ^d[yba tqlp hndk
anmttw tdj rsa awhy yd d[⁶hrç[^yas hb twk atnçl
.hnd arfvb hnd (^w[mv] slkra rtab ad atng

By 19 November and 18 December, the respective dates of P.Yadin 2 and 3, the lease-rent (*yrka*) due for the current year has not yet been paid. However, now that the date grove is changing hands, the lease-rent ought to be divided between seller and buyer. 'Abi'adan is saying that she divided the share to the king for the current year, presumably between herself and the buyer (*anarm qlj ... tqlp*). The meaning of the phrase *hrç[^yas hb twk* ('in like manner ten *se'ah* therein') in this context is obscure. Assuming that the *hb* ('therein') refers to the 'share of our Lord', it could be cautiously suggested that the ten *se'ah* constitute 'Abi'adan's part in the 'share of our Lord'; alternatively if it refers to the 'grove', it may stand for the entire yearly share of the king in the grove. Be this as it may, this is to be done until a new agreement is made (*tdj rsa awhy yd d[*), and the date grove bought in the present contract actually becomes the possession of the buyer (*[^w[mv] slkra rtab ad atng anmttw*).

What is meant by a 'new binding agreement' (*tdj rsa*)? It could refer to an individual private contract between the king and the new owner (Archelaus or Shim'on) which would change or confirm the current terms of leasing and the rates. It seems more likely though that what is meant by a 'new binding agreement' is 'a new order', i.e. a periodic reorganization of all land leased from the king which was likely to be accompanied by a readjustment of the terms of lease. If this latter suggestion is accepted, it follows that 'Abi'adan will go on paying her share to the king for as long as the 'old order' is still in force. The new order will confirm new owners in their possession; only then will the present contract take its final effect.⁷ Unfortunately, in the absence of further information, neither suggestion can be considered more than a working hypothesis.

The status of this date grove, leased from the Nabataean king, must have been different – although we do not in what way – from that piece of land designated in the description of the abutters as 'the land (the garden) of our Lord, king Rab'el' (*aklm labr anarm [tng] [ra*, P.Yadin 2 line 4 = line 24; P.Yadin 3 line 5 = lines 26–27). What we know from these two documents is that Nabataean legal practice allowed for land leased from the king to be alienated and sold (twice) on the open market, and transmitted to heirs (P.Yadin 2 line 9 = line 31; P.Yadin 3 line 10 = line 33). If the explanation suggested above for the 'new binding agreement' is accepted, then leased land could be alienated during the 'present order' – even if it takes its legal effect only when 'a new order' is established.

Was all land in the Nabataean kingdom, unless said to belong to the king (*anarm [tng] [ra*), conceived to be on lease from him? If so, then lease-rent could be considered as equivalent to tax.

What happened after 106 with the advent of the Romans? Did the status of the land undergo any changes?

⁵ *yrka* is Yardeni's new reading. It is crucial of course for the interpretation offered here, but see already Cotton and Yardeni, 222. The Arabic term *yrka* ('*akry*) to describe a lease is attested in early Arabic legal documents, see G. Khan, 'The Pre-Islamic Background of Muslim Legal Formularies', *Aram*, forthcoming; Yardeni (n. 2); see also B. Levine, 'The Various Working of the Aramaic Legal Tradition at Naḥal Ḥever: Jews and Nabataeans', *Proceedings of the International Congress on The Dead Sea Scrolls – Fifty Years after their Discovery – held at The Israel Museum, Jerusalem, July 20–25, 1997*, forthcoming.

⁶ Note *hrç[* and not *rç[*: for the gender of *se'ah* see Yardeni (n. 2).

⁷ One is reminded of the periodic redistribution (*diamisthosis*) of public land in Egypt, see J. L. Rowlandson, *Land-owners and Tenants in Roman Egypt*, Oxford, 1996, 81ff. The expression μέχρι τῆς ἐκομῆτης κοινῆς γεωργῶν διαμεθεώσεως, P.Tebt. II 376 (162 CE) lines 14–15 recalls *tdj rsa awhy yd d[* of P.Yadin 2 and 3; cf. D. Hagedorn, 'Flurbereinigung in Theadelphia?', *ZPE* 65, 1986, 93–100.

The date grove of P.Yadin 2 and 3, as has been argued elsewhere, was given to Babatha by her father probably in 120 CE, and is to be identified with one of the two Algiphiammas described in Babatha's land declaration during the census conducted in the Roman province of Arabia in 127 (P.Yadin 16 lines 17–24):⁸

1) κήπον φοινικῶνος ἐν ὀρίοις Μαωζῶν λεγόμενον Αλγιφιαμμα ἐπόρου κρειθῆς κάτου ἐνὸς κάβων τριῶν τελούντα φοίνικος κυρίου καὶ μείγματος κάτα δεκαπέντε πατητοῦ κάτα δέκα στεφανικου⁹ μέλαν ἐν λεπτά¹⁰ τριάκοντα γείτονες ὁδὸς καὶ θάλασσα; 2) κήπον φοινικῶνος ἐν ὀρίοις Μαωζῶν λεγόμενον Αλγιφιαμμα ἐπόρου κρειθῆς κάβου ἐνὸς<ς> τελούντα τῶν γεινομένων καθ' ἔτος καρπῶν μέρος ἡμῶν γείτονες μοσχαιτική κυρίου Καίσαρος καὶ θάλασσα

'1) A date grove within the boundaries of Maḥoza called Algiphiamma, the area of sowing one *se'ah* and three *qab* of barley, paying fifteen *se'ah* of mixed and Syrian dates, ten *se'ah* of 'splits' and as *stephanikon* one 'black' and thirty *lepta*, abutted by the road and the sea; 2) a date grove within the boundaries of Maḥoza called Algiphiamma, the area of sowing one *qab* of barley, paying a half share of the crops produced every year, abutted by the Moschantic estate of the emperor and by the sea.'

The abutters of the date grove in P.Yadin 2 and 3 are 'to the east the road, and to the west the houses of *Tḥa* daughter of 'Abdḥaratat and to the south the land of our Lord, king Rab'el, who maintained life and brought deliverance to his people, and to the north the swamp': trb ajt ytb abr[mlw ajra ajndml aqqr alamçlw hm[bzyçw yyja yd akIm labr anarm [ra anymylw trjdb[(P.Yadin 2 lines 4–5 = lines 23–24; P.Yadin 3 lines 4–5 = lines 25–27).¹¹ Thus this date grove (whose name cannot be recovered in P.Yadin 3 line 3 = line 24), can be identified either as the first Algiphiamma abutted by the road and the sea (ὁδὸς καὶ θάλασσα), or as the second Algiphiamma abutted by the Moschantic estate of the emperor and the sea (μοσχαιτική κυρίου Καίσαρος καὶ θάλασσα), assuming that the Nabataean king's property to the south of the date grove mentioned in P.Yadin 2 and 3 was transformed into imperial property after the creation of the province,¹² and the 'shoals' to the north of that date grove are to be equated with the sea in P.Yadin 16. The ten *se'ah* of P.Yadin 2 and 3 do not favour one or the other of the two Algiphiammas. As was suggested above the ten *se'ah* may represent only the seller's ('Abi'adan's) part in the yearly rent; as such they could be part of the φοίνικος κυρίου καὶ μείγματος κάτα δεκαπέντε πατητοῦ κάτα δέκα στεφανικου μέλαν ἐν λεπτά τριάκοντα of the first Algiphiamma, or part of τῶν γεινομένων καθ' ἔτος καρπῶν μέρος ἡμῶν of the second Algiphiamma. Alternatively, the annual payment in P.Yadin 16 may represent the 'new binding agreement' (tdj rsa) of P.Yadin 2 and 3, which may have changed the terms of the lease when the date grove was sold to Shim'on, Babatha's father.

The participle of τελεῖν ('paying') applied to date groves in P.Yadin 16 (lines 19, 22–23, 26, 30–31) as in the other land declaration from Arabia, XḤev/Se gr 62 (frg. a line 16; frg. b line 3; frgs. c–m lines 8, 12, 16), is taken to refer to the annual tax paid by the provincial population.¹³ But does it?

⁸ H. M. Cotton and J. C. Greenfield, 'Babatha's Property and the Law of Succession in the Babatha Archive', *ZPE* 104, 1994, 211–8.

⁹ For the *stephanikon* see H. M. Cotton, 'Rent or Tax Receipt from Maoza', *ZPE* 100, 1994, 553 and n. 23 there.

¹⁰ For the money units see 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, 1997, 237–87.

¹¹ In P.Yadin 3, a Ḥaninu son of Taim'alahi is added on the west side, see Yardeni (n. 2).

¹² Cf. B. Isaac, 'The Babatha Archive', *IEJ* 42, 1992, 70–71.

¹³ And so it is translated by Lewis: 'paying as tax', p. 68; it is used wrongly as an argument for postulating that the annual payment mentioned in XḤev/Se gr 64 lines 28–30 is that of tax and not of rent, see Cotton and Yardeni, 223; see more below.

In fact two locutions in XHev/Se gr 62 favour an annual lease. Twice the participle τελοῦν comes together with φόρου (e.g. μέρος ἡμῶν χώρας ... τελοῦν φόρου μέλαν ἐν, etc. frg. a lines 16–17; cf. frgs. c–m line 8). Φόρος, even if it may stand for tax, is the usual term for rent.¹⁴ Even more cogent is the presence of the term [ἐ]νιαύσιον to describe the field declared in XHev/Se gr 62:

<p>ἀπογράφομαι ἑμαυτὸν ἐτῶν τριάκοντα [.]ηλιον [ἐ]νιαύσιον μέρος ἡμῶν χώρας ἐν ὀρίοις Μαωζων τῆς προγεγραμμένης λεγομένης Αρενοαραθα μετοχῆς τῆς πρὸς Ἰωναθην Σιμωνος ὁ μέρος ἡμῶν ἐστιν σπόρου κρειθῆς κάτου ἐ[ν]ὸς κάβων τριῶν τελοῦν φόρου μέλαν ἐν λεπτά τεσσαράκοντα πέντε.</p>	<p>‘I register myself, thirty years old, [as owner of?] a yearly half share of a field, called Arenoaratha, within the boundaries of the aforesaid Maḥoza, in partnership with Ionathes son of Shim’on, which half share is (the area) of sowing one <i>se’ah</i> three <i>qab</i> of barley, paying as tax one ‘black’ and forty-five <i>lepta</i>.’</p>
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Unfortunately it is impossible to restore the word before [ἐ]νιαύσιον μέρος ἡμῶν χώρας, but the [ἐ]νιαύσιον strongly suggests ‘a yearly lease’, or rather ‘a lease for one year’.

If the date groves declared in P.Yadin 16 and XHev/Se gr 62 were on lease from the emperor, then the payments mentioned in them are of rents and not of taxes, though it may seem odd at first sight that rent rather than tax is declared at the census. Nevertheless, the status of the land declared must have been different from that described in P.Yadin 16 as ‘the Moschantic estate of the emperor’ (μοσχαντική κυρίου Καίσαρος), in the same way that the land sold by ‘Abi‘adan daughter of ‘Aftah to Shim’on bar Menahem, Babatha’s father, although it paid lease-rent to the Nabataean king (see above on yrka) is likely to have been of a different status from the piece of land designated in P.Yadin 2 and 3 as ‘the land (the garden) of our Lord, king Rab‘el’ (aklm labr anarm [tng] [ra]).¹⁵

Similarly, it is hard to decide whether tax or rent is the subject of two very similar receipts from the archive of Salome Komaise daughter of Levi: one is in Greek from 29 January 125 (XHev/Se gr 60) and the other one, in Aramaic, was written exactly six years later, on 30 January 131 (XHev/Se ar 12). The text and a translation of both follow:

XHev/Se gr 60:

<p>1. .θ.[] 2.]ετ[] 3. α[...].ς Ιουδα καὶ ἐτα[ίροι Μ[α]να[ημω] 4. Ιωαβ[ου χαίρι]ν. Ἀπέσ[χ]λαμεν π[α]ρὰ σοῦ 5. τειμήν φοίνικος οὗ ὀφείλεις Κ[ί]ν[ι]ρίω 6. Καίσαρι ἐν Μαώζα ἔτους ὀκτωκαί- 7. δεκάτου, ἐξ ὧν ἀπειλήσαμεν παρὰ 8. σοῦ ἐκ χερὸς Σαμμούου Σίμωνος μέ- λεπτά πενήκοντα ὀκτώ 9. λανες τέσσαρες. Ἐγράφη ἐν Μαώζα ἐπὶ 10. [ύ]πάτων τῶν μετὰ ὑπατίαν Γλαβρίωνος 11 [κ]αὶ Θηβανιανού, ἔτο[υ]ς ἐννεακαί- δε[κάτ]ου 12. μηνὸς [Π]εριτίου τεσσα[ρε]σκα[ίδε]κάτῃ 13. כְּתִיבָה בְּיַד רֵישָׁא</p>	<p>[Names and patronyms] [] son of Judah and colleagues to Menahem son of Iohannes greetings. We received from you the amount due for dates, which you owe to our Lord the Emperor in Maḥoza for the eighteenth year (of the province). On account of which we have now received from you through Sammouos son of Shim’on four blacks (and) fifty-eight <i>lepta</i>-units. Written in Maḥoza in the year of the consulate which comes after that of Glabrio and Thebanianus, the nineteenth year (of the province), the fourteenth day in the month of Peritios. Reisha wrote this.</p>
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¹⁴ Cf. S. L. Wallace, *Taxation in Egypt from Augustus to Diocletian*, New York 1938, 71–2; H. C. Youtie, *Scriptiunculae II*, Amsterdam 1973, 751 (reprint of a review of Wallace’s book); cf. H. A. Rupprecht, *Studien zur Quittung im Recht der Graeco-Aegyptischen Papyri*, Munich 1971, 30.

¹⁵ P.Yadin 2 line 4 = line 24; P.Yadin 3 line 5 = lines 26–27.

XHev/Se ar 12:

- | | |
|--|-----------------------|
| 1. <i>Šlm</i> , daughter of Levi; your brother | 1. שלם ברת לוי אחודך |
| 2. <i>Yh</i> . . . son of <i>Th</i> , and my friend | 2. יחם בר תשה וחברך |
| 3. <i>Šm</i> [. . . ,]we received from you the value in money of | 3. שמן [קבלן מנדך דמי |
| 4. dates – <i>se'ah</i> ten | 4. תמרין סאין עשר |
| 5. and nine and a <i>qab</i> and a half, | 5. ותשע וקב ופלג |
| 6. which is with you(?), from . . . Levi | 6. עמך מן בב לוי |
| 7. your father, in the year | 7. אבוך בשנת |
| 8. twenty four (or: And as such) | 8. עשרין] ו כזא |
| 9. in the day ten and fi- | 9. ביום עשרה וח |
| 10. ve of Shevat, | 10. משה בשבט |
| 11. year twenty- | 11. שנת עשרין |
| 12. fi[v]e of the Eparch[y.] | 12. וח[מ]ש להפרכ[יה] |
| 13. <i>Td/h</i> [. . .] wrote it. | 13. ת ד ח כתבה |

In both receipts we find more than one tax or rent collector described as ‘colleagues’; the dates, 29 and 30 January respectively, imply that the tax or rent was collected at that time of year. The doubtful word דמי in line 3 of the Aramaic receipt is the construct-state of the word דמין (price, money, value), which is here the exact equivalent of τιμή of the Greek receipt.¹⁶ Thus lines 3–5 of the Aramaic receipt ‘We received from you the value in money (דמי) for nineteen and a quarter *se'ah* of dates’, are the exact equivalent of Ἀπέε[χ]λαμεν π[α]ρὰ σοῦ τιμηῶν φοίνικος of lines 4–5 of the Greek receipt. The expression דמי תמרין suggests that an *adaeratio* took place, i.e. the nineteen and a quarter *se'ah* of dates were paid in cash – like the procedure in the Greek receipt – rather than in kind, even though the sum in money is not specified. It is very tempting to interpret the three vertical strokes with a horizontal stroke going through them, following the ‘twenty’ (עשרין) and the *waw* in line 8 of the Aramaic receipt as standing for the digit 4 (rather than for the doubtful azOkOw) – thus ‘in the twenty-fourth year’. The parallel with the Greek receipt will then be complete: just as in the Greek receipt, where the tax or rent due for ‘the eighteenth year of the province’ is paid in the ‘nineteenth year of the province’, in the Aramaic receipt the tax or rent for ‘the twenty-fourth year’ is paid in the ‘twenty-fifth year of the province’ (lines 11–12). Finally, the date in both receipts comes at the end. This is unlike all other Aramaic deeds from the Judaean Desert; it seems to follow the conventions of receipts in Greek.

The striking resemblance between the two receipts suggests that the land for which tax or rent was paid was of the same status. The apparent presence of more than one revenue collector might suggest that both receipts deal with a body of *conductores* on an imperial estate.¹⁷ In Egypt, however, ordinary taxes were often collected by a group of people.¹⁸ We have no information about the system of taxation which operated in Arabia before or after 106. The crucial question seems to be whether *ὀφείλειε*

¹⁶ Τιμή is sometimes transliterated as טימי in Aramaic; see M. Sokoloff, *A Dictionary of Jewish Palestinian Aramaic*, Ramat Gan 1990, 223.

¹⁷ On the three-tiered administration of imperial estates in Egypt see G. M. Parássoglou, *Imperial Estates in Roman Egypt*, *American Studies in Papyrology* 18, 1978, 52; 57; D. P. Kehoe, *Management and Investment on Estates in Roman Egypt during the Early Empire*, Bonn 1992, 16ff.; for Africa see D. P. Kehoe, *The Economics of Agriculture on Roman Imperial Estates in North Africa*, Göttingen 1988, 117–53. A general survey in D. J. Crawford-Thompson, ‘Imperial Estates’, *Studies in Roman Property*, ed. M. I. Finley, Cambridge 1976, 57–70.

¹⁸ See Wallace (n. 14), 286ff.

Κ[υ]ρίω Καίσαρι in lines 5–6 of the Greek receipt could be used to describe the public purse, i.e. the ordinary taxes, or whether it signifies exclusively the emperor’s private property, i.e. the lease-rent.

The same doubts are raised by the payment mentioned in XḤev/Se gr 64, a deed of gift from 129 CE, which belongs to the same archive.¹⁹ In this document written in singularly ungrammatical and non-idiomatic Greek the mother Salome Gropte (or Grapte)²⁰ makes an immediate gift of a date grove in Maḥoza to her daughter Salome Komaiṣe:

Inner text: lines 6–11

ὁμολογῶ ἐνενοχί[ε]ναι σοι εἰς δόσιν ἀπὸ
τῆς σήμερον δόσιν αἰωνίου τὰ ὑπάρχοντά
μοι ἐν Μαωζακ ἃ εἶδη ὑποτεταγμένα
κῆπον φοινεικῶν καλούμενον Γανναθ
Ασαδαία σὺν ὕδατος αὐτῆς ἐφ’ ἡμερῶν
ἑπτὰ εἰς ἑπτὰ ἡμέρας τετάρτη
ἡ[μ]ι[ω]κίαν μίαν ἢς γείτωνες ἀνατολῶν
κῆπον κυριακὸν καλούμενον Γανναθ
Αββαιδαία δυσμῶν κληρονόμοι Αρετας
νότου ὁδοῦ βορρά κληρονόμοι Ἰωσηπος
Βαβα

Outer text: lines 26–33

τὰ ὑπάρχοντα αὐτῆς ἃ εἶδη ἐν [Μ]αωζακ
ὑποτεταγμέν>α κῆπον φοινεικῶν
καλούμενον Γανναθ Ασαδαία σὺν ὕδατος τοῦ
αὐτοῦ κῆπου ἐφ’ [ἡ]μερῶν ἑπτὰ εἰς ἑπτὰ
ἡμέρας τετάρτη ἡμιωκίαν> μίαν <ἡ> τελέσει
καθ’ ἔτος εἰς λόγον κυριακοῦ φύσκου καθ’ ἔτος
φοινεικος πατητοῦ κάτα δέκα καὶ κυροῦ καὶ
νααρου κάτα ἕξ, ἢς γείτωνες ἀνατολῶν κῆπον
κυριακὸν καλούμενον Γανναθ Αββαιδαία δυσμῶν
κληρονόμοι Αρετας νότου ὁδοῦ βορρά
[κ]ληρονομοι Ἰωσηπος Βαβα

(In the translation the inner text is written in Roman font; the outer text is written in italics; when the texts coincide, it is written in bold): ‘I acknowledge that I have given you as a gift from this day and for ever my (*her*) **property in Maḥoza, which items are listed as follows: a date orchard called the Garden of Asadaia with its [the] water [allowance] (of that orchard), once a week on the fourth day, for one half-hour which will pay every year to the account of the fiscus of our Lord ten se’ah of ‘splits’, and six se’ah of the Syrian and the na’aran dates. The abutters on the east the orchard of our Lord [the emperor] called the Garden of ‘Abbaidaia, on the west the heirs of Aretas, on the south a road and on the north the heirs of Yosef son of Baba.**

The crucial lines appear only in the outer text (lines 28–30):

<p><ἡ> τελέσει καθ’ ἔτος εἰς λόγον κυριακοῦ φύσκου φοινεικος πατητοῦ κάτα δέκα καὶ κυροῦ καὶ νααρου κάτα ἕξ;</p>	<p>‘It (i.e. the date grove) will pay every year to the account of the <i>fiscus</i> of our Lord ten <i>se’ah</i> of ‘splits’, and six <i>se’ah</i> of the Syrian and the na’aran dates.’</p>
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Does the annual payment in kind ‘to the account of the *fiscus* of our Lord’ imply that the date grove given in gift was on lease from the emperor?

Several expressions suggest at first sight that we are dealing in XḤev/Se gr 64 with private property: first, the use of the term τὰ ὑπάρχοντα, and, more particularly, τὰ ὑπάρχοντά μοι (αὐτῆς) ἐν Μαωζακ (lines 7 and 25), to describe the property given in gift.²¹ Secondly, the fact that the date grove is said to be given as a gift forever – εἰς δόσιν ἀπὸ τῆς σήμερον δόσιν αἰωνίου (lines 6–7) – repeated in different terms in the concluding declaration – ἔχειν τὴν προ[γ]εγραμμένην Κομαῖ[σ]ην τὴν προγεγραμμένην δόσι[ν] κυρίως καὶ βεβ[α]ίως εἰς τὸν ἀπαν[τ]α χρόνον (lines 39–41) – also seems to point to private ownership.

However, these objections to the lease theory can easily be met. The verb ὑπάρχειν, i.e. ‘possess’, is used by tenants on the *ge basilike* in Egypt to refer to the land they are cultivating; people came to think

¹⁹ The Excursus on these lines in Cotton and Yardeni, 221–3, has some misconceptions which I have tried to correct here.

²⁰ It is Gropte in XḤev/Se gr 64 line 3, but Grapte in XḤev/Se gr 63 line 9 – a deed of renunciation by the daughter, Salome Komaiṣe, to her mother.

²¹ See Preisigke, *Wörterbuch*, s.v. ὑπάρχω.

of land held for many generations in their families as their own. Nor should the assertions that the land is given forever be taken too literally. Similar expressions (e.g. ἀπὸ τοῦ νῦν ἐπὶ τὸν ἅπαντα χρόνον) occur in Egypt in division of ‘public land’ (βασιλικὴ γῆ) between brothers (e.g. P.Mich. IX 556–7); presumably no more is meant than ‘as long as we lease the land’, which *de facto* might well be forever.

Finally the presence of an imperial orchard as one of the abutters of the date grove given in gift could be taken to imply that this date grove is not a κῆπος κυριακός.²² But this reasoning too is not compelling. We may be witnessing here a wholesale transfer of Nabataean terms of ownership. The Roman emperor stepped into the Nabataean king’s possessions without altering the terms of ownership: the expression κῆπος κυριακός describes what used to be an arm [tng] [ra – of which it is a literal translation – under the Nabataean king, whereas the date grove given in gift was of the same status as the land sold by ‘Abi’adan on the open market in 99 CE (P.Yadin 2 and 3 discussed above), i.e. on lease from the emperor.

Pieces of land which belonged to what is commonly and vaguely called the ‘imperial estate’ may well have possessed different statuses, thereby faithfully reflecting their pre-Roman status. It is a fact that land owned by the *fiscus* was exploited in different ways: between land leased to tenants and land worked by slaves under a *vilicus*, ‘there was still an infinite range of local variations’.²³ It is possible, therefore, that a date grove described as κῆπος κυριακός would be cultivated directly by the *fiscus*, whereas others would be leased to tenants – probably to hereditary tenants who would speak of it as their own property. There are examples of ‘perpetual leaseholds’ from other parts of the empire: in Egypt the lease of οὐσιακὴ γῆ could be transmitted to heirs.²⁴ An inscription attests hereditary leaseholds on an imperial estate in Lydia.²⁵ We also have the evidence of the North African inscriptions for ‘perpetual leaseholds’ held under the terms of the Lex Manciana: ‘[Qui in f(undo) Vill<a>e Magn<a>e Varia]n<a>e siv<e> Mappali<a>e Sig[<a>e ficetum olivetum vineas se]verunt severin[t, eis eam superficiem heredibus], qui e legitim[is matrimoniis nati sunt eruntve], testamento relinquere permittitur’, *CIL* VIII 25902 (the Henchir–Mettich inscription), col. IV lines 2–6.²⁶ The *Tablettes Albertini* (*FIRA* III² 139) prove that this was still true many years later, when private landlords replaced the emperor as the owner of these lands. Thus, the fact that the date grove is spoken of as privately owned and given as ‘a gift forever’ does not, in itself, force us to regard it as private property *stricto sensu*.

The fact that the annual payment is in kind rather than in cash could have been adduced as further support for the view that this deed involves the lease of imperial land and the annual payment of rent for it – but the argument is not unassailable. It is certainly true that, in Egypt, taxes on vineyard and gardenland (which includes date groves) were converted into money terms (*adaeratio*),²⁷ whereas in leases of

²² κῆπον κυριακὸν καλούμενον Γαιναθ Αββαιδαα, lines 10 and 31–32.

²³ Crawford-Thompson (n. 17); cf. D. Flach, *Römische Agrargeschichte*, Munich 1990, 82ff. For complexity of land tenure see for example K. T. M. Atkinson, ‘A Hellenistic Land-Conveyance: The Estate of Mnesimachus’, *Historia* 21, 1972, 45–74 (I am grateful to I. Shatzman for pointing this out to me).

²⁴ On *Erbpacht*, see H. Chr. Kuhnke, *Οὐσιακὴ γῆ. Domänenland in den Papyri der Prinzipatszeit*. Ph. D. dissertation, Universität zu Köln, 1971, 99: ‘Nach allem gibt es bei . . . οὐσιακὴ γῆ keine Eigentumsübertragung. Sie sind res extra commercium. Möglich ist allein eine Vergabe in Erbpacht’, and see nn. 2 and 3 there; cf. O. Eger, *Zum ägyptischen Grundbuchwesen in römischer Zeit*, Leipzig and Berlin 1909, 32.

²⁵ F. F. Abbott and A. Ch. Johnson, *Municipal Administration in the Roman Empire*, Princeton 1926, no. 142, 200–250 CE.

²⁶ The quotation follows D. Flach’s text, ‘Inschriftenuntersuchungen zum römischen Kolonat in Nordafrika’, *Chiron* 8, 1978, 480 (This paragraph defines the *usus proprius* of col. I, lines 9–10 of the Lex Manciana, cf. Flach, *ibid.*, 445–6); cf. ‘<i>isque qui occupaverint possidendi ac fru<en>di{i} eredique suo relinquendi id ius datur quod e<s>t lege Ha<drian>a comprehensum de rudibus agris et iis, qui per X an<n>os continuos inculti sunt’, *CIL* VIII 25943 (Ain Wassel inscription), col. I, lines 7–13 (Flach, *ibid.*, 487); see D. P. Kehoe, ‘Lease Regulations for Imperial Estates in North Africa. Part 2’, *ZPE* 59, 1985, 156–9; *idem*, *The Economics of Agriculture* (n. 17), 39; *idem*, *Management and Investment* (n. 17), 50.

²⁷ Wallace (n. 14), 47ff.

date groves one finds both kinds of payment.²⁸ However, the Romans may have inherited the evaluation, and perhaps also the payment, of taxes in kind from the Nabataean kings, just as they seem to have inherited from them the payment designated *stephanikon*, whatever this term represented.²⁹ Furthermore, taxes in the Roman empire were sometimes paid in kind.³⁰ Alternatively, an *adaeratio* might have followed later, as is likely to have happened for the rent or tax for dates (יִרְמֵה וְדָד) mentioned in the Aramaic receipt (XHev/Se ar, lines 3–4): the φοίνεικος πατητοῦ κάτα δέκα καὶ κυροῦ καὶ νααρου κάτα ἕξ may have been converted into cash when actual payment took place. Thus we cannot use the payment in kind to buttress the suggestion that the land in question was on lease from the emperor.

Nor can the straightforward implication of the text that the yearly payment went into the imperial *fiscus* (εἰς λόγον κυριακοῦ φίσκου) determine incontrovertibly whether the date grove given in gift is private property or on lease from the emperor. Even those who claim that in the first two centuries the annual taxes (even from the imperial provinces) did not go into the imperial *fiscus*,³¹ and consequently that the date grove must be part of the imperial estate, i.e. part of the *patrimonium*, would concede that in εἰς λόγον κυριακοῦ φίσκου as well as in the ὀφείλεις Κ[λ]υρίω Καίσαρι in the receipt from 125 CE (XHev/Se gr 60 lines 5–6) we have a case of ‘loose terminology’:³² whoever wrote the deed of gift or the receipt was convinced that the monies belonged to the emperor. In other words, the fact that the yearly payment is said to go to the *fiscus* cannot be used to support the claim that the date grove is on lease from the emperor; nor, if the date grove was private property on which there was an annual tax in kind, can we use this text to record a stage in the process of the development of the imperial *fiscus* into the public chest any more than we can use for this purpose the evidence of the New Testament, where people speak about the annual taxes, κῆνκος and φόρος, as being paid ‘to the emperor’.³³

This last point gains force from the following considerations: the imperial procurator in Arabia, whose seat was in faraway Gerasa,³⁴ was in charge of both the annual tax and the rent from the imperial estates; both tax and rent are likely to have been collected by the same local tax collectors. Neither the tax collectors of XHev/Se gr 60 nor the scribe of XHev/Se gr 64 were necessarily aware of the division between private and public monies which may well have taken place in the office of the procurator in Gerasa, or later on in Rome.

Can the evidence concerning land tenure found in the papyri from the Judaeen Desert gain from a comparison with the situation in Egypt?

Roman Egypt was divided into two principal land categories – public and private. Both categories were administered by the *dioikesis*.³⁵ The private property of the emperor, the imperial estates, ‘began

²⁸ N. Hohlwein, ‘Palmiers et Palmeraies dans l’Égypte romaine’, *Études de Papyrologie* 5, 1939, 65–74.

²⁹ See above n. 8.

³⁰ E.g. the *frumentum mancipale* in Sicily; cf. also the *Lex Portorii Asiae* from 62 CE which attests the payment of the *decuma* in kind: H. Engelmann and D. Knibbe, ‘Das Zollgesetz der Provinz Asia’, *Epigraphica Anatolica* 14, 1989, 25, lines 72–73 (*AE* 1989 681). See the general survey of taxation in money and kind in the Roman Empire in R. Duncan Jones, *Structure and Scale in the Roman Economy*. Cambridge, 1991, 187–98.

³¹ F. Millar, ‘The *fiscus* in the first two centuries’, *JRS* 53, 1963, 29ff. Millar mentions possible exceptions to his claim on pp. 40–41 and in *The Emperor in the Roman World*, London 1977, 623ff.; see M. Alpers. *Das nachrepublikanische Finanzsystem. Fiscus und Fiscii in der frühen Kaiserzeit*, Berlin and New York 1995, 1–20 for a survey of opinions. A brief and lucid discussion in W. Eck, A. Caballos and F. Fernández, *Das senatus consultum de Cn. Pisone patre*, *Vestigia* Bd. 48, München 1996, 179–80.

³² Millar, *Emperor* (n. 31), 625.

³³ To the question ἕξεστι δοῦναι κῆνκον Καίσαρι; ἢ οὐ; (Matt 22:17) Jesus answers with the famous: Ἀπόδοτε οὖν τὰ Καίσαρος Καίσαρι (Matt 22:21; cf. Mark 12:14; 12:17; φόρος replaces κῆνκος in Luke 20:22: ἕξεστι ὑμᾶς Καίσαρι φόρον δοῦναι). See also Luke 23:2, where Jesus is charged with obstructing the payment of the tribute: κωλύοντα Καίσαρι φόρου διδόναι.

³⁴ Cf. B. Isaac, *The Limits of Empire: The Roman Army in the East*, Oxford 1990, 2d rev. ed. Oxford 1992, 345f.

³⁵ See Rowlandson (n. 7), 29ff. I shall be using her lucid distinctions in what follows.

to be administered as a category of the public land' when the Flavians formed the *ousiakos logos*.³⁶ All public land paid rent; private land paid tax. In addition private land could be freely disposed of through sale, gift or inheritance.³⁷ The rates of rent on public land were significantly higher than tax rates on private land.³⁸

Certain locutions found in the papyri from the Judaeen Desert imply that land once leased from the Nabataean kings was now leased from the Roman emperor. Such expressions and practices as seem to imply that the land in question was privately owned, i.e. the alienation of such land through sale, gift or succession, can be reconciled, albeit uncomfortably, with hereditary tenancy. The wholesale adaptation of modes of Nabataean land tenure by the Romans is not uncharacteristic. Far more disturbing are the declarations of leased land, if that is what it was, in the census of 127. That the land declaration was part of a provincial census is made clear in the two declarations which use almost identical language to describe it:

P.Yadin 16 lines 11–15

ἀποτιμήσεως Ἀραβίας ἀγομένης ὑπὸ Τίτου
Ἀνεινίου Σεξτίου Φλωρεντείνου πρεσβευτοῦ
Σεβαστοῦ ἀντιστρατήγου, Βαβθα Σίμωνος
Μαωζηνῆ τῆς Ζοαρηνῆς περιμέτρου Πέτρας,
οἰκοῦσα ἐν ἰδίῳ ἐν αὐτῇ Μαωζα,
ἀπογράφομαι ἃ κέκτημαι.

XḤev/Se gr 62 frg. a lines 10–13

ἀποτιμήσεως Ἀραβίας ἀγομένης ὑπὸ Τίτῳ
Ἀνεινίου Σεξτίου Φλωρεντείνου πρεσβευτοῦ
Σεβαστοῦ ἀντιστρατήγου Σαμμοῦς Σιμωνίδη
Μαωζηνῆ τῆς Ζοαρηνῆς περιμέτρου Πέτρας
οἰκῶν [ἐ]ν ἰδίῳ ἐν αὐτῇ Μαωζα,
ἀπογράφομαι ἑμαυτὸν ... etc.

No other land declarations from the Roman world have survived. The Egyptian fourteen-year cycle census declarations³⁹ involve only people and house property, never agricultural land. Thus no comparison is to hand. Is it possible that land on lease from the emperor and the rents paid on it were declared in the provincial census? Or is the declaration itself a good enough reason to postulate that we are dealing here with taxes on private land? If the latter is the case, then those expressions which suggest lease and rent are in fact fossilized juristic terms inherited from the Nabataeans but now stripped of all meaning.

Appendix: Land Units and their Taxes or Rents

The table below is an update of a table which appeared 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, 1997, p. 238. It is based on data found in five papyri from the Province of Arabia: P.Yadin 16 and XḤev/Se gr 60, 62, 64 and XḤev/Se ar 12. It attempts to convey the relations between size of land and the amount of tax or rent, both in kind and in cash, on them. Only for the two land declarations, P.Yadin 16 and XḤev/Se gr 62, do we have both size of land and rates of tax or rent.

It seems that the land declared in XḤev/Se gr 62 was made up of small plots. Babatha's plots, declared in P.Yadin 16, were generally much larger. The fact that each piece of land, in P.Yadin 16 as

³⁶ Rowlandson, *ibid.* 30.

³⁷ Rowlandson, *ibid.* 29.

³⁸ Rowlandson, *ibid.* 71ff.

³⁹ The basic study on which is still M. Hombert and Cl. Préaux, *Recherches sur le recensement dans l'Égypte Romaine* (P. Bruxelles Inv. E. 7616). *Papyrologica Lugduno-Batava* 5, 1952; see R. S. Bagnall and B. W. Frier, *The Demography of Roman Egypt*, Princeton 1994. Egyptian property returns, ἀπογραφαί, even if required by an official order, were not intended for the purpose of taxation, see A. M. Harmon, 'Egyptian Property>Returns', *YCIS* 4, 1934, 135–234 with H. C. Youtie, *AJA* 40, 1936, 282–4, and Cl. Préaux, 'Déclarations de propriété foncière dans l'Égypte romaine', *Chronique d'Égypte* 10, 1935, 393–6.

well as in XH_{ev}/Se gr 62 and 64, has its own name (and thus, presumably, its own history), suggests that land was accumulated by one family over time.⁴⁰

The size of land is conveyed in the documents in *bet se'ah*, i.e. the size of land sown by a *se'ah* of wheat. The tax or rent, when paid in kind, is conveyed in units of volume, i.e. the *se'ah*, translated in Greek as *κάτων*. There is disagreement about the area corresponding to *bet se'ah* and the capacity of the *se'ah*.

There does not seem to be any constant ratio between the rate of tax and the size of land, in as far as we have these. The rates are in *Αλγιφιαμμα* (P.Yadin 16 lines 17ff.): 1:10; 1:6.66; and 1:0.86; *Βαγαλγαλα* (P.Yadin 16 lines 24ff.): 1:10; 1:10; and 1:1.1; *Βηθφααραια* (P.Yadin 16 lines 29ff.): 1:4.5; 1:3; and 1:0.42; *Αρενοαραθα* (XH_{ev}/Se gr 62 frg. a lines 14ff.): 1:0.96; *Χαφφουρα* (XH_{ev}/Se gr 62 frgs. c–m lines 7ff.): 1:1.1; and *Χαφφουρα* (XH_{ev}/Se gr 62 frgs. c–m lines 14ff.): 1:3.12; 1:3.12.

The only remarkable fact is the low rates paid by *Βηθφααραια* (P.Yadin 16 lines 30ff.) in contrast with the high rates paid by *Χαφφουρα* (XH_{ev}/Se gr 62 frgs. c–m lines 14ff.), which may be due to the quality of the soil and the resultant yields.⁴¹ The monetary tax or rent is variously described as *τειμή φοίνικος* (XH_{ev}/Se gr 60 line 5), *φόρος*⁴² (XH_{ev}/Se gr 62 frg. a line 16, frgs. c–m line 8), and sometimes *στεφανικόν* (e.g. P.Yadin 16 lines 20, 27, 32; XH_{ev}/Se gr 62 frgs. c–m lines 17–18).⁴³ The monetary tax or rent seems to be loosely related to the size of land and the tax or rent in kind. Our estimation of the rate is further hampered by our ignorance of the respective value of ‘blacks’ and *lepta*: how many *lepta* make up one ‘black’?⁴⁴

Jerusalem

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⁴⁰ See M. Broshi, ‘Agriculture and Economy in Roman Palestine: Seven Notes on the Babatha Archive’, *IEJ* 42, 1992, 240.

⁴¹ Cf. Hyginus, *Constitutio limitum*, p. 168f. (Thulin).

⁴² Indicated in the table by #.

⁴³ Indicated in the table by *; on the *stephanikon*, see note 9 above.

⁴⁴ See note 10 above.

	Name of Grove	Size (<i>Bet Se'ah</i>)	Tax or Rent in <i>Se'ah</i> on Dates ¹	Tax or Rent in <i>Se'ah</i> on 'Splits' ²	Monetary Tax or Rent * = στεφανικόν # = φόρος	Other Kind of Tax or Rent
XḤev/Se gr 60	—	—	—	—	4 blacks; 58 lepta	
P.Yadin 16	Αλγιφιαμμα	1.5 <i>bet se'ah</i>	15 <i>se'ah</i>	10 <i>se'ah</i>	* 1 black; 30 lepta	
	Αλγιφιαμμα	1/6 <i>bet se'ah</i>			none	half-share of the crops
	Βαγαλαλα	3 <i>bet se'ah</i>	30 <i>se'ah</i>	30 <i>se'ah</i>	* 3 blacks; 30 lepta	
	Βηθφαραια	20 <i>bet se'ah</i>	90 <i>se'ah</i>	60 <i>se'ah</i>	* 8 blacks; 45 lepta	
XḤev/Se gr 62 frg. a	Αρενοαραθα	1.5 <i>bet se'ah</i>	none	none	# 1 black; 45 lepta	
	Χαφφουρα	—	—	—	—	
XḤev/Se gr 62 frg. b	?	0.125 <i>bet se'ah</i>	—	—	—	
	Γανναθ ...χ.βασα	less than 1 <i>bet se'ah</i>	—	—	—	
XḤev/Se gr 62, frgs. c–m	Χαφφουρα	1 <i>bet se'ah</i>	none	none	# 1 black; 10 lepta	
	Γανναθ ..οραθ	—	unknown amount of Syrian dates	—	—	
	Χαφφουρα	0.08 <i>bet se'ah</i>	2.5 <i>se'ah</i>	2.5 <i>se'ah</i>	* unknown amount	
XḤev/Se gr 64	Γανναθ 'Ασαδαια	—	6 <i>se'ah</i>	10 <i>se'ah</i>	none	
XḤev/Se ar 12	—	—	none	none	none	19.25 <i>se'ah</i> of dates, kind not specified

¹ This category includes Syian, mixed, and/or na'aran dates which are taxed together in the documents. For na'aran dates see Broshi (n. 40), 233.

² Πατητός in Greek. This is a particularly juicy variety of dates which bursts open on the tree itself; see Hohlwein (n. 28) 18–22.