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COURTYARD(S) IN EIN-GEDI: P. YADIN 11, 19 AND 20 OF THE BABATHA
ARCHIVE

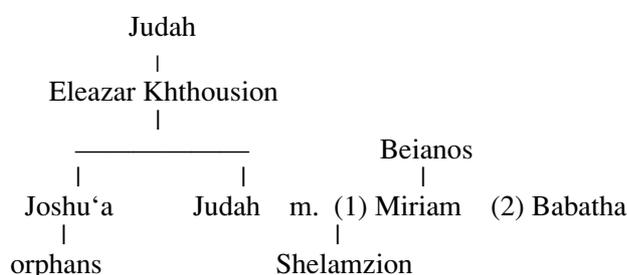
aus: Zeitschrift für Papyrologie und Epigraphik 112 (1996) 197–201

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COURTYARD(S) IN EIN-GEDI: P. YADIN 11, 19 AND 20 OF THE BABATHA ARCHIVE

In three papyri from the Babatha archive a courtyard in Ein-Gedi is described, P.Yadin 11, P.Yadin 19 and P.Yadin 20. The editor, Naphtali Lewis, considered all three documents to be describing one and the same courtyard.¹ Since the owner and neighbours of each courtyard are specified, it should be possible to find out whether or not the same courtyard is the subject of all three papyri. This, as we shall see, touches directly on questions of inheritance and succession. After setting out the evidence, I shall give it in the form of a table. A discussion of the case for and against identification will follow.

The courtyard(s) belong to the family of Babatha's second husband, Judah son of Eleazar Khthousion, whose family tree is given below:



1) P.Yadin 11 (6 May 124, Ein-Gedi):

Judah son of Eleazar Khthousion takes a loan from Magonius Valens, a centurion of a detachment of the *cohors I milliaria Thracum* stationed in Ein-Gedi,² and mortgages a courtyard in Ein-Gedi, which belongs to his father, but which he has the legal right to mortgage and lease out. The neighbours are as follows: east — tents and workshop of Joshu'a son of Mandron; west — tents and workshop of Eleazar Khthousion, Judah's father; south — market and Shimeon son of Mathaios; north — road and *praesidium* (a military post).³

αὐλῆ ἐν Ἐνγαδοῖς Ἐλαζάρῳ Χθουσίῳ πατρί μου ἧς ἔχω ἐπιτροπὴν ὑποτιθέ[ν]αι καὶ ἐγμισθοῖν παρὰ τοῦ αὐτοῦ Ἐλαζάρου ἧς αὐλῆς γείτονες ἀπὸ ἀνατολῶν κληναὶ καὶ Ἰησοῦς Μαυδρῶνος, δύσεος κληναὶ καὶ ἐργαστήριον τοῦ αὐτοῦ Ἐλαζάρου πατρός μου, νότου ἀγορὰ καὶ Κίμων Μαθαίου, βορρᾶ ὁδὸς [καὶ πραισιδίον (Il. 16–19 = Il. 3–6).

2) P.Yadin 19 (16 April 128, Maḥoza):

Judah son of Eleazar Khthousion gives his daughter Shelamzion everything he owns in Ein-Gedi: a courtyard with the rooms in it. Shelamzion is to receive one half immediately, and the other half she will get after his death. The neighbours are as follows: east — Joshu'a son of Madaronas and empty space; west — the donor; south — market; north — road.

[διέθετο Ἰοῦδας Ἐλαζάρου Χθουσίῳ Ἡνγαδηνὸς οἰκῶν ἐν Μαωζακ [Κελλαμψιόυς θυγατ]ῆρ πάντα τὰ ὑπάρχοντα αὐτῷ ἐν Ἡνγαδῆς ἧ[μ]ικ[ε]ν αὐλῆς ... ἧμικ[ε]ν οἰκοιμάτω[ν] καὶ

¹ N. Lewis, *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri*, 1989, 41–2; 83–4; 89; henceforth 'Lewis'.

² On the unit see M.P. Speidel, *A tile stamp of Cohors I Thracum Milliaria from Hebron/Palestine*, ZPE 35, 1979, 170–2; B. Isaac takes him to be the commander of the detachment, *The Limits of Empire: The Roman Army in the East*, 1990, 137, 174, 430.

³ Not 'headquarters' as translated by Lewis on p. 44.

ὑπερώαις ἐνοσίχθισι χωρὶς αὐλῆς μικκῆς παλαιὰν ἐγγυὸς τῆς αὐτῆς αὐλῆς, καὶ τὸ ἄλλο ἡμεῖς τῆς αὐλῆς καὶ οἰκοιμάτων διέθετο ..Ι. Ἰούδας τῆ αὐτῆς [Cελλαμψιοῦ] μετὰ τὸ αὐτὸν τελευτῆσαι, ὧν γείτωνες [τῆς αὐλῆς καὶ οἰκοιμάτων ἀνατολῶν] Ἰησοῦ Μαδδαρωνα καὶ αὐρίχωρον, δυσμῶν ὁ διεθετῶν, νότου ἀγορά, βορρᾶ ὁδός (Il. 11–18).

3) P.Yadin 20 (19 June 130, Maḥoza):

The guardians of the nephews of Judah son of Eleazar Khthousion (i.e. the guardians of the sons of his brother Joshu‘a) are conceding a courtyard in Ein-Gedi with the rights attached to it to Shelamzion daughter of Judah. This courtyard belonged to her grandfather, Eleazar Khthousion. The neighbours of this courtyard are as follows: east — market; west — Mathetos son of Zabbaios; south — market; north — lane of Aristion.

ὁμολογοῦμεν ἵπαρα]συνκεχωρηκέναι σοι ἐξ ὑπαρχόντων Ἐλεαζάρου τοῦ καὶ Χθουσίωνος τοῦ Ἰούδο[υ π]άππου σου αὐλὴν ἐν παντὶ δικαίῳ αὐτῆς ἐν(ν) Ἡνγαδοῖς καὶ τοὺς ἐν αὐτῆς οἰκίαι ... γίτονες ἀνατολῆς ἀγορά, δυσμῶν Μαθη[θ]ο[υ]ς Ζαββα[ί]ου, βορρᾶ ἀμφόδιον Ἀριστίωνος, νότου ἀγορὰ δημοσία (Il. 27–34 ≈ Il. 6–11).

Papyrus	<i>P.Yadin 11</i>	<i>P.Yadin 19</i>	<i>P.Yadin 20</i>
Date	6 May 124 CE	16 April 128 CE	19 June 130 CE
Owner	Eleazar Khthousion, Judah’s father	Judah son of Eleazar	Eleazar Khthousion, Judah’s father
East	tents and Joshu‘a Mandron	Joshu‘a Madaronas and empty space	market
West	tents and workshop of Eleazar, Judah’s father	Judah son of Eleazar	Mathetos son of Zabbaios
South	market and Shimeon son of Mathaios	market	market
North	road and <i>praesidium</i>	road	lane of Aristion

Not only do the owners of the courtyard change from one papyrus to another, but so do the abutters.

I shall start with the discrepancies between the abutters and the owners in P.Yadin 11 and P.Yadin 19.

Between 6 May 124 CE, the date of P.Yadin 11, and 16 April 128 CE, the date of P.Yadin 19, four changes took place: 1) the tents disappeared from the east and west. In the east they were replaced by an empty space; 2) Judah son of Eleazar Khthousion, the donor (ὁ διεθετῶν) replaced his father, Eleazar Khthousion, in the west; 3) Shimeon son of Mathaios disappeared from the south (but the market remained); 4) the *praesidium* disappeared from the north.

If the tents — σκηναί — were, as Lewis and others believe, soldiers’ quarters,⁴ then the first and the fourth change are in fact one: that detachment of the milliary unit which was stationed in Ein-Gedi moved out between the two dates.

⁴ See Lewis, p. 45 ad ll. 5 and 18, especially the reference to B. Kramer and D. Hagedorn, Zwei ptolemäische Texte aus der Hamburger Papyrussammlung, Archiv für Papyrusforschung 33, 1987, p. 13, ad l. 5.; Isaac (n. 2), 430; idem, The Babatha archive, IEJ 42, 1992, 62–3; H. J. Polotsky, The Greek papyri from the Cave of Letters, IEJ 12, 1962, 259 is cautious: ‘flanked by (presumably military) tents’. I think that it is remarkable to find a private courtyard almost inside a Roman military camp.

A Roman bathhouse, dated by the coins to the period between 79 and 117/8, was excavated in Ein-Gedi in 1964 (see B. Mazar and I. Dunayevsky, Ein-Gedi. Third season of Excavations. Preliminary Report, IEJ 14, 1964, 128–130). It is thus almost contemporary with the Roman military presence in Ein-Gedi as attested in P.Yadin 11 of 6 May 124. Renewed

Lewis (p. 83) assumed that Judah stepped into his father's property in the west (P.Yadin 19, l. 18), namely the 'workshop' of P.Yadin 11, l. 5 = l. 18.⁵ How can this be reconciled with Judah's declaration that he is giving Shelamzion everything he owns in Ein-Gedi (πάβι[τα τὰ ὑ]πάριχον[τα ἀ]ύ[τ]ῳ [ἐ]ν Ἡνγαδοῖς, P.Yadin 19, l. 12)? Two solutions suggest themselves: 1) Judah's possession in the west is the small old courtyard excluded from the gift (χωρὶς ἀλλῆς μικκῆς παλεὰν ἐν γυς τῆς ἀύ[τ]ῆς ἀλλῆς, ll. 14–15); perhaps we should identify it as the 'workshop' of P.Yadin 11; 2) Judah abuts on the courtyard because until his death he owns its other half. In other words the list of neighbours in P.Yadin 19 does not represent the neighbours of the entire courtyard but only of the half which Shelamzion is getting now.⁶ This is very difficult in view of the fact that the abutters are said to be those of the 'courtyard' and not just of its half: ὧν γείτωνες [τ]ῆς ἀλλῆς καὶ οἰκημά[των] κτλ. (ll. 16–17). I prefer, therefore, the first solution.

However this may be, it seems that only one significant change took place in as far as the abutters are concerned in the time which elapsed between P.Yadin 11 and P.Yadin 19: the Roman army has left. In view of the overall identity of the abutters, it is very likely that we are dealing with the same courtyard. How then are we to account for the discrepancy between the owners? The courtyard in P.Yadin 11 belongs to Eleazar Khthousion, Judah's father (although Judah could mortgage and lease it), whereas the courtyard in P.Yadin 19 belongs to Judah himself, as he himself declares. And there is no good reason to doubt Judah's statement in P.Yadin 19, ll. 11ff. that he is giving his daughter his own property in Ein-Gedi. The discrepancy as to the owners can be solved by the possibility that Judah may have received the courtyard during the span of four years separating the two papyri either as a gift from his father, Eleazar Khthousion, or as part of an inheritance upon the latter's death.

In discussing the discrepancies between P.Yadin 19 and P.Yadin 20, I shall start with the owners and then pass on to the abutters.

The courtyard in P.Yadin 19 belongs to Judah son of Eleazar Khthousion whereas the courtyard in P.Yadin 20 belongs to his father, Eleazar Khthousion. The only way to resolve the discrepancy, and uphold the identity of the courtyard, is to say that the sons of Eleazar Khthousion, Joshu'a (the orphans' father) and Judah (Shelamzion's father), had not divided their father's property between them after their father's death. This was common practice as we learn from the papyri; it has left its mark in the frequency of the locution κληρονόμοι τοῦ δεῖνος to refer to joint owners of real property.⁷ Such a situation might last for years.⁸ If this were the case, the courtyard had never been registered in Judah's

excavations in Ein-Gedi, directed by Y. Hirschfeld, under the auspices of the Institute of Archaeology of the Hebrew University and University of Hartford, Connecticut, have so far reached only the late Roman and Byzantine village. It is to be hoped that when the excavations, planned for the next ten years, reach the Roman bathhouse the area referred to in the Babatha Archive will be uncovered.

⁵ ἔργαστήριον τοῦ αὐτοῦ Ἐλαζάρου πατρός μου.

⁶ Unfortunately another deed of gift of half a courtyard cannot help us decide whether the neighbours of the whole or of the half are usually given, see XHev/Se Gr 1 in H.M. Cotton, *The archive of Salome Komaïse daughter of Levi: another archive from the "Cave of Letters"*, ZPE 105, 1995, Doc. IV, pp. 186–7, ll. 13–15 = ll. 33–36. It is true that the neighbours there do not include the donor, but this does not prove that the neighbours of the entire courtyard are given; possibly the mother did not own more than half a courtyard which she is now bestowing on her daughter. In the unpublished P.Yadin 47b (Jan./Feb. 134) the seller is one of the abutters to half a garden sold in Ein-Gedi (l. 8); again we cannot know whether by virtue of owning the other half or of owning another property there.

⁷ E. g. P. Yadin 16, l. 28: γείτωνες κληρονόμοι Θεσαίου Καβακα; cf. H. Kreller, *Erbrechtliche Untersuchungen auf Grund der graeco-ägyptischen Papyrusurkunden*, 1919, 63ff.; Cotton (n. 6), 198; in XHev/Se Gr 7 (= N. Lewis, *A Jewish Landowner from the Province of Arabia, Scripta Classica Israelica* 8–9, 1985/88, 134–7), the declarant, X son of Simon, is one of two brothers holding properties in partnership (μετοχή) in Maḥoza (Lewis, *ibid.* p. 135, ll. 15 and 19). I suppose that as neighbours they could be described as κληρονόμοι Σιμωνος, although they do not make a joint declaration.

⁸ Kreller (n. 7), 65. The heirs of Joseph son of Baba, found in the as yet unpublished Aramaic P.Yadin 7 from 120 CE (yrty ywshf br bb', ll. 6, 11 = ll. 38, 45) as neighbours to two pieces of land owned by Babatha's father, reappear nine years

name. Presumably, though, the two brothers had agreed between them that the courtyard under discussion belonged to Judah's share of the inheritance. Judah was less than precise when he referred to the courtyard in the deed of gift (P.Yadin 19) as his own. However, since it was earmarked as his part of the as yet undivided inheritance in the consensual agreement between himself and his brother, Joshu'a, he certainly had a reason to assume that this was so. We may recall that in 124 CE this courtyard was his to lease and mortgage. After Judah's death Judah's daughter Shelamzion, relying on the deed of gift, claimed her property. The nephews in P.Yadin 20, through their guardians, had *not* been disputing the validity of the gift, but Judah's legal right to bestow the courtyard, since it was not formally his but belonged to both brothers. P.Yadin 20 demonstrates that the nephews had at last agreed to accept the consensual agreement between the brothers, Joshu'a and Judah, that in the final division of property the courtyard belonged to Judah's share, and he had the right to give it to his daughter: ὁμολογοῦμεν Ἰππαραῖσι κεχωρηκέναι εἰς ἐξ ὑπαρχόντων Ἐλεαζάρου τοῦ καὶ Χθουσίωνος τοῦ Ἰούδου πλάπτου σου αὐτὴν ἐν παντὶ δικαίῳ αὐτῆς ἐν(ν) Ἡνγαδοῖς καὶ τοὺς ἐν αὐτῆς οἰκίαι (ll. 27–30 ≈ ll. 6–10).

Thus the change in the owner's name does not necessarily cast doubt on the identity of the courtyard described in the two papyri. The guardians' proposal to register the courtyard with the authorities (P.Yadin 20, ll. 12–12 = ll. 35–36) can be reconciled with Judah's promise in P.Yadin 19, ll. 25–27 to do so whenever Shlemazion would summon him to do so:⁹ father and daughter might not have got around to doing so before Judah's death.

But if the discrepancy as to the owners in P.Yadin 19 and P.Yadin 20 can be resolved in this way, is it possible to get around the discrepancies between the abutters in the two papyri?

I am assuming that the neighbours of the entire courtyard are given in P.Yadin 19, and that Judah was one of the abutters — not because he owned the other half — but because he owned other property there, namely the small old courtyard he excluded from the deed of gift (P.Yadin 19, ll. 14–15). This assumption brings the number of changes in the abutters between P.Yadin 19 and P.Yadin 20 to three: three out of four abutters have changed between 16 April 128 and 19 June 130: 1) in the east a market replaced the property of Joshu'a Madaronas (Mandron in P.Yadin 11, l. 1. 5 = l. 18); 2) in the west Mathetos son of Zabbaios replaced Judah son of Eleazar; 3) in the north Aristion's lane replaced the road. The one abutter which did not change is the market in the south — an abutter which might well have bordered on more than one courtyard.

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. Hence there are two different courtyards in the three papyri under discussion: one in P.Yadin 11 and 19 and the other in P.Yadin 20.

The fact that the courtyard described in P.Yadin 11 and the one described in P.Yadin 20 share the same owner (Eleazar Khthousion) is not an argument for the identity of the courtyards described in them, since P.Yadin 11 and P.Yadin 19 describe an identical courtyard whereas P.Yadin 19 and P.Yadin 20 describe two different courtyards.

The courtyard in P.Yadin 20 is, therefore, not the subject of the deed of gift of Judah son of Eleazar Khthousion to his daughter Shelamzion (P.Yadin 19). We no longer need to say that the courtyard in P.Yadin 20 passed to Shelamzion's hands through the mediation of a deed of gift by her father. She could have got it directly from her grandfather, either in her father's lifetime or after his death.¹⁰ It is possible that the grandfather, Eleazar Khthousion, outlived his son, Judah. In addition Shelamzion re-

later in XH_{ev}/Se Gr 1, ll. 11 (= ll. 32–33) dated to 129 (Cotton, n. 6, pp. 186–7), still as a single body of owners: κληρονόμοι Ἰωσηπος Βαβα, i.e. the property remained undivided for at least nine years.

⁹ ὅταν δὲ παραγγείλει Σελαμψιόυς τῷ αὐτῷ Ἰούδατι, τευχίσει αὐτὴν διὰ δημοσίων.

¹⁰ P.Yadin 20 was written on 19 June 130; by the 11 September of that year Judah was dead, see P.Yadin 21, ll. 8–9: Ἰούδου Χθουσίωνος ἀνδρός σου ἀπογενομένου; cf. P.Yadin 22, ll. 8–9.

ceived in a deed of gift from her father (P.Yadin 19), half of another courtyard in Ein-Gedi during her father's lifetime, and after his death she was going to get the other half. It should be noticed that although Shelamzion is married at the time of both P.Yadin 19 and P.Yadin 20,¹¹ this real estate bestowed on her does not pass into the husband's hands, but is treated as her own.¹²

On the other hand it is possible that Shelamzion came into the possession of her grandfather's courtyard due to her father's recent death (see n.10). The fact that Judah's nephews appear to have disputed Shelamzion's ownership may suggest that in the prevailing legal system, the granddaughter did not automatically acquire her father's right to the inheritance. I suspect in view of other indications in this archive as well as in that of Salome Komaïse daughter of Levi (above, n. 6) that the daughter was not even the *suus heres* of her own father, even in the absence of sons. The only way to transfer property to a daughter was through a deed of gift. Perhaps this is what her grandfather, Eleazar Khthousion, had done.¹³

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¹¹ P.Yadin 19 is written eleven days after her marriage and in P.Yadin 20 her husband represents her (ll. 5–6 = ll. 25–26).

¹² For the wider context see H.M. Cotton, Deeds of gift and the law of succession in the documents from the Judaean Desert, Akten des 21. Internationalen Papyrologenkongresses, 13–19 August 1995, Archiv für Papyrusforschung Beiheft (forthcoming).

¹³ See H. M. Cotton and J.C. Greenfield, Babatha's Property and the Law of Succession in the Babatha Archive, ZPE 104, 1994, 211–224 and Cotton (n. 12).