

Living Under Different Laws: The Babatha and Salome Komaise Archives

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Abstract

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The Babatha and Salome Komaise archives contain the legal documents of two Jewish women and their families, dating mostly from c. 94 C.E. to 132 C.E. The community that they attest lived in a small village which was first part of the Nabataean Kingdom but was later incorporated into the province of Roman Arabia in 106 C.E. The documents consequently provide invaluable information about a community's experience before and after the creation of the province.

The laws and traditions in evidence in the two archives are remarkable for their diversity, exhibiting elements of Jewish, Nabataean, Roman and Hellenistic law. This thesis examines this complex legal situation and consider the ways in which people coped with the array of legal options available to them. A 'ground-up' approach is adopted, focusing on the people involved in the documents' creation and use in order to detail how different parties affected the working of law in the area.

An overview of the individual documents is provided in *The Survey of the Documents*. The rest of the thesis is then structured according to the various groups that influenced their formulation and use: *The Scribes*, *Legal Advisors*, *The Parties*, *The Alternatives to the Assizes* and *The Roman Officials*. These various contributions are then brought together in the *Conclusion* to model how law operated in this particular community. The primary contributions of this study are therefore to Roman provincial and legal history, as well as the history of the Jewish people in the inter-revolt period.

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Abbreviations

Papyri

All abbreviations follow Oates, J. F. et al. 2001. *Checklist of Editions of Greek, Latin, Demotic and Coptic Papyri, Ostraca and Tablets*. Fifth Edition. Bulletin of the American Society of Papyrologists Supplement 9. Oakville: American Society of Papyrologists. The following additions and exceptions should be noted:

- CPJ Tcherikover, V., Fuks, A., Stern, M. and Lewis, D. M. 1957-1964. *Corpus papyrorum Judaicarum*. Three volumes. Cambridge, M.A.: published for the Magnes Press, Hebrew University by Harvard University Press.
- P. Avroman Minns, E. H. 1915. Parchments from the Parthian Period from Avroman in Kurdistan. *The Journal of Hellenic Studies* 35, pp. 22-65.
- P. Yadin Lewis, N. ed. 1989. *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri*. Jerusalem: The Hebrew University of Jerusalem; The Israel Exploration Society; The Shrine of the Book.
- Yadin, Y., Greenfield, J. C., Yardeni, A., Levine, B. A. eds. 2002. *The Documents from the Bar Kokhba Period in the Cave of Letters. Hebrew, Aramaic and Nabataean-Aramaic Papyri*. Jerusalem: The Israel Exploration Society.
- X Hev Cotton H. M. and Yardeni, A. eds. 1997. *Aramaic, Hebrew and Greek Documentary Texts from Naḥal Ḥever and Other Sites: with an appendix containing alleged Qumran texts (The Seiyâl Collection II)*. Discoveries in the Judaean Desert 27. Oxford: Clarendon Press.

Rabbinic sources

<i>b.</i>	Babylonian Talmud	<i>B. Bat</i>	<i>Baba Batra</i>
<i>m.</i>	Mishnah	<i>B. Meši'a</i>	<i>Baba Meši'a</i>
<i>t.</i>	Tosefta	<i>Giṭ.</i>	<i>Giṭṭin</i>
<i>y.</i>	Jerusalem Talmud	<i>Ketub.</i>	<i>Ketubbot</i>
		<i>Kid.</i>	<i>Kiddushin</i>
		<i>Meg.</i>	<i>Megillah</i>
		<i>Mo'ed</i>	<i>Mo'ed</i>
		<i>Sanh.</i>	<i>Sanhedrin</i>

Other sources

CGL	Goetz, G. ed. 1965. <i>Corpus glossariorum latinorum: a Gustavo Loewe inchoatum</i> . Seven volumes. Reprinted edition. Amsterdam: Hakkert.
FIRA	Riccobono, S. et al. eds. 1968-1969. <i>Fontes iuris romani antejustiniani</i> . Three volumes. Revised and emended edition. Florentiae: S. a. G. Barbèra.
IGLSyr XIII. 1	Sartre, M. ed. 1982. <i>Inscriptions grecques et latines de la Syrie, XIII.1. Bostra</i> . Paris: Librairie Orientaliste Paul Geuthner.
ILS	Dessau, H. ed. 1892-1916. <i>Inscriptiones latinae selectae</i> . Three volumes in five parts. Berlin: <i>apud</i> Weidmannos.
IRT	Reynolds, J. M., and Ward Perkins, J. B. eds. 1952. <i>The Inscriptions of Roman Tripolitania</i> . Rome and London: British School at Rome.
PG	Migne, J. P. ed. 1857-1886. <i>Patrologia Graeca</i> . 162 volumes. Paris: Migne.
SEG LIV	Chaniotis, A., Corsten, T., Stroud, R. S. and Tybout, R. A. eds. 2004. <i>Supplementum Epigraphicum Graecum. Volume LIV</i> . Leiden: Boston.

Introduction

Among the Judaeen desert documents are the archives of two Jewish women, Babatha and Salome Komaise. These women lived in Maoza, a small village located in an area that was first the Nabataean Kingdom and then, from 106 C.E., the province of Roman Arabia. The documents are legal in nature and were written both before and after the annexation. They are thus a valuable window into how people coped with the process of ‘provincialization’ in their everyday transactions.

The archives exhibit astonishing levels of legal diversity, including elements of or direct references to Jewish, Nabataean, Roman and Hellenistic law. Indeed, the multitude of legal traditions evidenced in the archives has attracted a large amount of attention from across the scholarly community: from papyrologists and Roman, Jewish and legal historians alike. In particular, the operative law of this community has become something of a burning question: in a situation where multiple legal traditions appear to have co-existed for a long time, establishing that which prevailed in particular documents is far from straightforward. Indeed, this remains a matter of contention in much of the scholarship on this subject.

It is this complexity that makes the study of these documents such a fruitful and rewarding endeavour. Yet this thesis will take a slightly different approach from that previously adopted towards the functioning of law in the community that these documents attest. Instead of trying to identify the operative law of the archives, I shall take advantage of the opportunity that evidence of this nature offers us: that is, the chance to undertake a very specific case study of the way that these two women, their families and their contacts

conducted their legal transactions in a period that was probably characterised for them by a general uncertainty about their position. From these documents, I shall begin to build up a picture of how these people handled their new situation and how law functioned at ground level in this new province.

While the circumstances that surrounded this annexation were undoubtedly similar to those experienced by others when areas were brought under direct Roman rule, it is vital that we do not lose sight of the specifics. The documents serve as a window into a specific period, area and community. The question that will be addressed in this thesis is therefore how these particular people coped with their particular situation at this particular time. That being said, the value of such a case study should not be overlooked in considerations of the process of ‘provincialization’ and the functioning of law(s) within the Roman Empire more generally: there is no reason to think that Roman Arabia was an exceptional case that cannot be used as a source of comparison.

Nevertheless, we must begin with a brief introduction to the context of the present study and the papyri that will provide its focus. First, then, a word on the province in which they were used.

The annexation of the Nabataean Kingdom

“Accordingly, when Augustus added to his realm the former kingdom of Judaea as a province under equestrian procurators, there remained in the circuit of imperial provinces along the desert’s edge only the space extending across the Sinai from Egypt into and encompassing the Negev, together with the entire territory of Transjordan, from the Syrian Ḥawrān to the Gulf of ‘Aqaba. It was this substantial tract that Trajan annexed in A.D. 106 under the name of the province of Arabia.”¹

In 106 C.E., the area described above, which had been the Nabataean kingdom, was incorporated into the Roman Empire. It was thereby placed under direct Roman rule. Nevertheless, the Nabataean Kingdom had hardly been isolated from Rome in the years leading up to its annexation. It became a client kingdom in 63 B.C.E., at the time of Pompey’s conquest of the remains of the Seleucid Kingdom, and indeed was the last part of Syria to be formally annexed in the early second century C.E. We know very little about how the kingdom was organised internally during this period,² but its architecture shows a distinct Hellenistic-Roman influence that suggest some form of cultural contact.³ Furthermore, Strabo indicates that Petra was a fairly cosmopolitan city in the late first century B.C.E. or early first century C.E.:

γενόμενος γοῦν παρὰ τοῖς Πετραίοις Ἀθηνόδωρος, ἀνὴρ φιλόσοφος καὶ ἡμῖν ἑταῖρος, διηγείτο θαυμάζων· εὐρεῖν γὰρ ἐπιδημοῦντας ἔφη πολλοὺς μὲν Ῥωμαίων, πολλοὺς δὲ καὶ τῶν ἄλλων ξένων· τοὺς μὲν οὖν ξένους ὄραν κρινομένους πολλακίς καὶ πρὸς ἀλλήλους καὶ πρὸς τοὺς ἐπιχωρίους, τῶν δ’ ἐπιχωρίων οὐδένας ἀλλήλοις ἐγκαλοῦντας, ἀλλὰ τὴν πᾶσαν εἰρήνην ἄγοντας πρὸς ἑαυτούς.

At any rate, Athenodorus, a philosopher and companion of mine, who had been in the city of the Petraeans, used to describe their government with admiration, for he said that he found both many Romans and many other foreigners sojourning there, and that he saw that the foreigners often engaged in lawsuits, both with one another and with the natives, but that none of the natives prosecuted one another, and that they in every way kept peace with one another.⁴

¹ Bowersock (1983: 2).

² See Jones (1971: 291) for the little we do know.

³ See the comments by Bowersock (1983: 61).

⁴ Strabo, *Geographica* XVI. 4. 21. The text and translation of Strabo throughout this thesis are from the LOEB.

Strabo, however, throws up something of a puzzle. In the same passage, he adds:

πρῶτοι δ' ὑπὲρ τῆς Συρίας Ναβαταῖοι καὶ Σαβαῖοι τὴν εὐδαίμονα Ἀραβίαν νέμονται, καὶ πολλάκις κατέτρεχον αὐτῆς, πρὶν ἢ Ῥωμαίων γενέσθαι· νῦν δὲ κάκεῖνοι Ῥωμαίοις εἰσὶν ὑπήκοοι καὶ Σύροι.

The first people who dwell in Arabia Felix are the Nabataeans and the Sabaeans. They often overran Syria before they became subject to the Romans; but at present both they and the Syrians are subject to the Romans.⁵

The νῦν δὲ has caused some concern, since it means that Strabo here appears to suggest that the Nabataeans were under direct Roman rule at the time of his writing. We know, however, of three Nabataean kings who flourished during and after this time: Aretas IV, Malichus II and Rabbel II. Is Strabo simply incorrect? Glen Bowersock has suggested that the Nabataean Kingdom might have briefly been annexed in Strabo's time, before being handed back into the native king's hands as a client kingdom once again.⁶ We should perhaps bear in mind this possibility. Nevertheless, the period of annexation, if it occurred, must have been brief and there is no reason to think that it had any substantial effect on the way the province was administered when it was annexed at the time of Trajan, a century later.

While we know that the province came under direct Roman rule in 106 C.E., we can say little else about the circumstances of its annexation. The theory that it was incorporated into the Roman Empire after the death of Rabbel II has won considerable, if often tentative, support.⁷ Under such circumstances, we might expect the annexation process to have been relatively peaceful. There is, however, the possibility that the takeover was somewhat less

⁵ Strabo, *Geographica* XVI. 4. 21.

⁶ Bowersock (1983: 54).

⁷ See, for example, Starcky (1966: 920), Peters (1977: 275), Bowersock (1983: 79-82) and Ball (2000: 63-64). MacAdam (1983: 107) states somewhat more neutrally that the increasing loss of control by the Nabataeans over internal and external affairs was a contributing factor in the kingdom's annexation.

straightforward and rather more violent.⁸ Unfortunately, the state of the evidence does not allow us to pick conclusively between these options.

Nevertheless, in spite of our lack of information about the circumstances of the annexation, the Babatha and Salome Komaise archives provide invaluable evidence of daily life, at least in the legal realm, both before and after the area's incorporation into the Roman Empire. Consequently, we are actually fairly well informed about the legal aspects of life in this newly created province.

The documents and the people

Though Babatha and Salome Komaise lived on the southern coast of the Dead Sea, in a village that was within Roman Arabia, the two archives were found over the border in what would have been Judaea and thus form part of the Judaeian desert documentary corpus. Indeed, various sites in the Judaeian desert have yielded something of a wealth of documentary material, which has served to supplement our knowledge of the region in antiquity. These also constitute a valuable body of papyri outside of Egypt, where the majority of such evidence originates.⁹

The caves at Naḥal Ḥever and Wadi Murabba'ât were the main sites of the documentary finds. Some of the papyri in our possession were found during a series of controlled excavations conducted by Yigael Yadin and his team in 1960-1961; for these, at least, we have a definite find-spot. Indeed, it was during these excavations that Babatha's archive

⁸ See Al-Otaibi (2011: 63-85) for a more sceptical view about the peacefulness of the annexation; cf. Wenning (2007: 40), who includes directions to further bibliography.

⁹ See Cotton, Cockle and Millar (1995) for a survey of the Near Eastern papyrological finds.

was uncovered in the Cave of Letters in Naḥal Ḥever, on the western coast of the Dead Sea, still held in the leather purse in which she had so carefully wrapped it. In the same cave as Babatha's documents were found those of various members of the Bar Kokhba regime, including letters of Shimon bar Kosiba himself, along with plentiful archaeological finds that presumably belonged to those people who had come to be residing in this cave.

The unity of find for the Babatha archive is particularly valuable in light of the fact that we lack a similar luxury for many of the other documents from this area. These, instead, came from the Bedouin. The archive of Salome Komaise is among the latter category.¹⁰ While X Ḥev 65, Salome Komaise's marriage certificate, was found in the Cave of Letters during the controlled excavations, the rest of the archive has had to be pieced together at a later date from documents that were originally thought to have originated from a different area of the Judaeian Desert – Naḥal Ṣe'elim. Salome's archive, much smaller than that of Babatha, is therefore now thought to have come from the very same Cave of Letters as that of her contemporary.

Both women lived in a small village called Maoza, on the southern coast of the Dead Sea. It is probable that they knew each other: aside from the fact that their documents came to rest in the same cave, they are witnessed by some of the same people and their family properties shared certain neighbours.¹¹ The papyri in the archives date, for the most part, from c. 94-132 C.E., and significantly more survive from Babatha's archive than that of

¹⁰ They were brought to the Palestine Archaeological Museum, now the Rockefeller Museum, in August 1952 and July 1953. See Cotton and Yardeni (1997: 1-6; 158) for more details on the provenance of these texts, which form part of what was originally designated the Seiyal Collection.

¹¹ X Ḥev 64, l. 11 / 32-33 mentions the "heirs of Yosef son of Baba" (κληρονόμοι Ιωσηπος Βαβα), who also appear in P. Yadin 7, l. 6 / 38 (ירתי יוסף בר בבא) (cf. l. 11 / 45; l. 12 / 47). On the same witnesses appearing in both archives, see Cotton and Yardeni (1997: 159; 220): one example may be found in Yeshua son of Yoḥanan, who witnesses both X Ḥev 64 (l. 46) and P. Yadin 20 (l. 47).

Salome Komaise: 35 documents were in Babatha's purse, yet only 8 have been identified that are thought to have belonged to Salome Komaise or her family.¹² Nevertheless, the two archives are similar in nature. They are both trilingual, including either whole documents or subscriptions written in Greek, Nabataean Aramaic and Jewish Aramaic. Furthermore, both archives consist of legal paperwork, including deeds of gift, sales contracts, marriage contracts, census returns, and, in Babatha's case, two series of petitions and summonses that form the basis of litigation which seems to have been destined for the Roman governor's court.

Simply because of the number of documents involved, we are able to say more about Babatha's life than that of Salome. An overview of her family is laid out in Figures 1 and 2 (below).¹³ Babatha was married twice: first to a Jesus, son of Jesus, next to Judah, son of Eleazar Kthousion. Her first husband, Jesus, died at some point prior to 124 C.E., leaving her with an orphaned son of the same name, and the ensuing dispute between Babatha and her son's guardians provides one example of litigation in the province. Her second husband, Judah, also died, probably between April 128 C.E. and June 130 C.E.,¹⁴ leading to a dispute between Babatha and other members of her husband's family over his estate. This seems to have been ongoing at the time that she fled to the caves where her archive was found. Judah himself had another wife, Miriam, a fact that has often been taken as rare evidence of polygamy among Jews at this time outside of royal circles.¹⁵ Judah also had a daughter called Shelamzion, whose Greek marriage certificate was found in the archive,

¹² Cotton, in Cotton and Yardeni (1997: 158, n. 1), raises and dismisses the possibility of adding another document to Salome Komaise's archive.

¹³ See pp. 8-9.

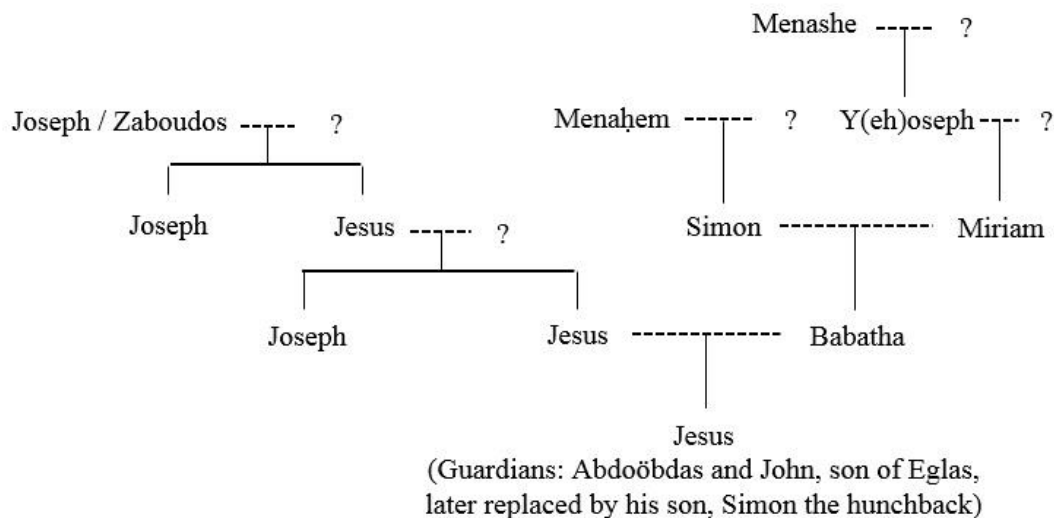
¹⁴ There is some doubt about the whether he had actually passed on by 19th June 130 C.E.; see p. 70 for further details.

¹⁵ See Lewis (1989: 23-24), Bowersock (1991a: 337) and Goodman (1991: 174). Katzoff (1995a) disagrees, preferring to interpret the situation as one of serial monogamy; cf. Lewis's (1997) response to this proposition.

along with a few of her other papers, suggesting that there were close ties between the women of the family.

Babatha and her associates were undoubtedly wealthy. The papyri frequently refer to large amounts of money: Babatha seems to have lent her second husband Judah 300 denarii, and his daughter's dowry was the not insubstantial sum of 500 denarii.¹⁶ Even larger amounts of property are also in evidence: Babatha's father leaves houses and palm orchards to his wife,¹⁷ Judah owns property in Engedi¹⁸ and Babatha herself registers four date-orchards in her own name.¹⁹

Figure 1: Babatha's First Marriage²⁰



¹⁶ Attested in P. Yadin 17, a deposit, and P. Yadin 18, Shelamzion's marriage contract.

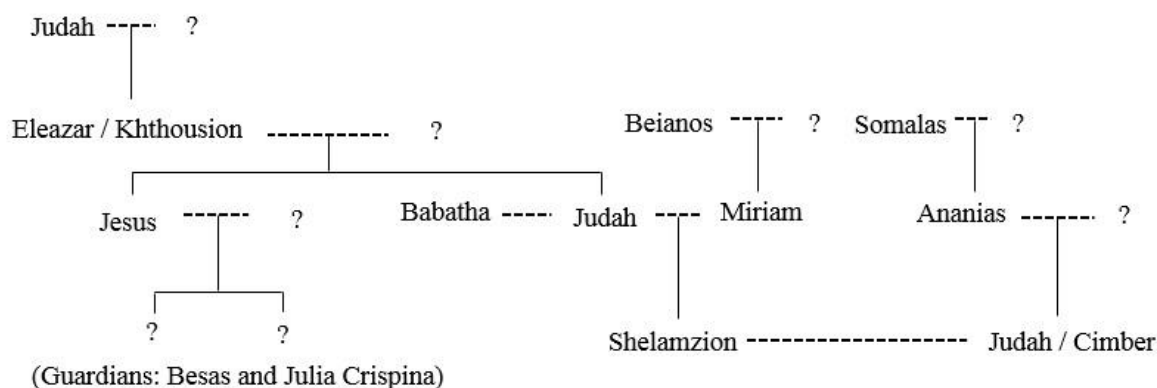
¹⁷ In P. Yadin 7, a deed of gift.

¹⁸ See P. Yadin 11 and 19.

¹⁹ See the census declaration, P. Yadin 16.

²⁰ Adapted from Lewis (1989: 25).

Figure 2: Babatha's Second Marriage²¹



About Salome, we are less well informed. Her family is summarised in Figure 3 (below).²² Like Babatha, she appears to have been married twice: first to Sammouos, son of Shimon, next to Yeshua, son of Menahem. The contract for her second marriage is found in her archive.²³ Once again, we seem to be dealing with a family of some means: two census returns attest the land that Salome's brother, Levi, and first husband, Sammouos, owned.²⁴ Additionally, Salome Grapte, Salome Komaise's mother, transfers all her property in Maoza to her daughter in a deed of gift.²⁵ Mother and daughter seem to have had some sort of disagreement over an inheritance which was later resolved; in connection with this, in one document, the daughter renounces all claims to her father and brother's estates.²⁶

²¹ Adapted from Lewis (1989: 25).

²² See p. 10.

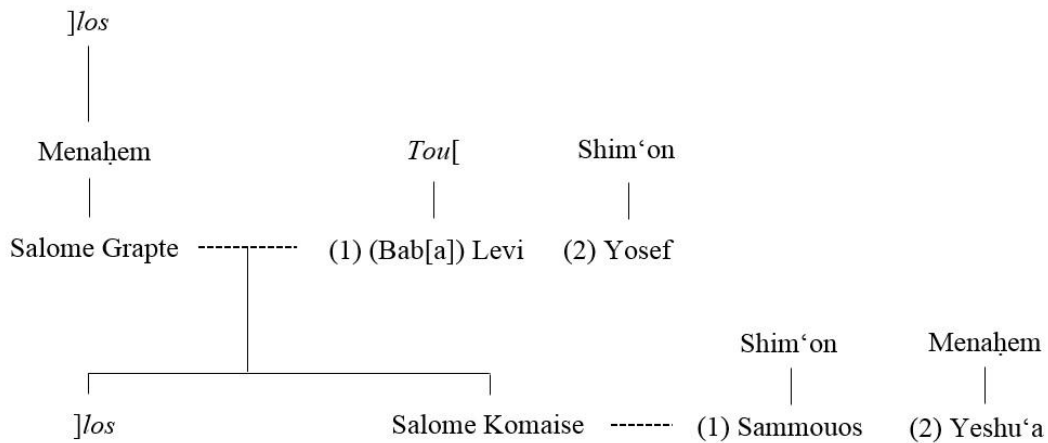
²³ X Hev 65.

²⁴ X Hev 61 and X Hev 62. The identity of Levi is somewhat uncertain, and Sammouos' identity as Salome's first husband is also not definitely confirmed.

²⁵ X Hev 64.

²⁶ X Hev 63.

Figure 3: Salome Komaise's Family²⁷



The household items and clothing of extremely high quality that were discovered in the cave along with the papyri further attest to the wealth of the people who found themselves there, if not Babatha and Salome Komaise specifically. In short, we are not dealing with people on the poverty line – the individuals the archives document clearly belonged to the upper level of local society, in economic terms at any rate.

The majority of the people in both archives, and the two families in particular, were Jewish. Aside from the preponderance of Jewish names that appear in the documents, several other details speak to their Jewish context. The cave where the documents were found was one that was used by Jews as a refuge after the Bar Kokhba revolt – indeed, nearby Engedi was a stronghold of the Bar Kokhba forces and the fact that Babatha’s second husband Judah owned property there may have been one reason she chose to flee to these particular caves. Furthermore, in one document, Babatha’s son, Jesus, is explicitly described as a Ἰουδαῖος, a Jew,²⁸ and Babatha’s marriage certificate to her second husband, Judah, is often identified

²⁷ From Cotton and Yardeni (1997: 160).

²⁸ P. Yadin 12, ll. 6-7.

as an early example of a *ketubba* – a Jewish marriage contract.²⁹ Thus while none of the principals describe themselves as Jews, there seems to be little doubt that we are dealing with a Jewish community here.

This community appears to have had good relations with their non-Jewish neighbours: Nabataeans and Romans are also in evidence in the archive, with little sign of tension. Judah, Babatha's second husband, borrows money from a Roman centurion,³⁰ and among the guardians of the various wards in the Babatha archive are (judging from their names) two Jews, one Nabataean and one woman with a very Romanised name: Abdoöbdas, John, son of Eglas, Besas and Julia Crispina. Furthermore, the documents frequently attest both Nabataeans and Jews acting as active parties to transactions, or offer a combination of Nabataean and Jewish names as witnesses or subscribers to the documents. Babatha and Salome Komaise's circle of acquaintances therefore appears to have regularly encompassed non-Jews.

Finally, we must address the question how the two archives ended up in a cave on the western coast of the Dead Sea, over the border in Judaea. The last document of the two archives is dated to 19th August 132 C.E., around the time of the outbreak of the Bar Kokhba revolt. The two women, along with others in their community, seem to have fled to the caves at this time – significantly taking their much-valued paperwork with them. This may have been to escape feared reprisals from the Romans when the revolt broke out;³¹ as mentioned, the Cave of Letters was one known to have been used as a refuge for

²⁹ P. Yadin 10. This is written in Jewish Aramaic, and contains many of the *ketubbot* clauses laid out later in the Mishnah: cf. *m. Ketub.* 4:7-12.

³⁰ P. Yadin 11.

³¹ Suggested by Lewis (1989: 4) in his publication of the archive. Yadin (1962: 251) also thought the family had fled to an area of Judaea not under the control of the Bar Kokhba rebels; Goodman (1991: 175) also states that they “were caught up in the war of A.D. 132-135 and died in consequence.”

Jews after the revolt. Conversely, perhaps the community chose to show support to the rebels and so crossed the border.³² No hint of sympathy with the rebel cause is found in the archives, nor awareness of the planned revolt, though perhaps we should not expect it in documents of this nature.

It is worth pointing out that the two archives also fail to mention the 115-117 C.E. Jewish Diaspora revolt under Trajan, in which the Jewish communities in Mesopotamia, Cyrenaica, Cyrene and Egypt were involved, but which left Judaea untouched. These two Jewish families in Roman Arabia seem to have been similarly unaffected, and if they suffered any reprisals at the hands of their Roman rulers these are entirely unmentioned.

The two women and their associates in flight ultimately died in the cave to which they fled. Along with the documents and the possessions of the people who spent their last days there, more than twenty skeletons were found in the Cave of Letters, one of which may have been Babatha's.³³

Previous work

The delayed publication of the Babatha archive and the relatively recent piecing together of that of Salome Komaise meant the scholarly community had a long wait after the documents' discovery before the archives could be worked upon in their entirety. It was not until 1989 that all the Greek documents in the Babatha archive were published, the preparation of the Greek papyri having been entrusted to Naphtali Lewis after Yadin's

³² Indeed, Cotton and Yardeni (1997: 159) refer to "their participation in the Bar Kokhba revolt."

³³ Yadin certainly believed this was the case; see comments in Lewis (1989: 5).

death.³⁴ Lewis obviously expected that the publication of the Aramaic documents would follow shortly: the introduction to his edited volume explicitly indicates that certain sections will be dealt with in the next volume.³⁵ Unfortunately, however, these did not emerge until 2002; their publication was undertaken by Joseph Naveh, Ada Yardeni and Jonas Greenfield, whose role was taken over by Baruch Levine after Greenfield's sudden death in 1995.³⁶ Six documents belonging to Salome Komaise were first identified as a unified archive by Hannah Cotton in a 1995 article;³⁷ Cotton updated this work in 1997, when the number of documents belonging to the archive was raised to seven.³⁸ Since then a further papyrus has been attributed to the archive by Hanan Eshel.³⁹

Before the archives were published in full, owing to the early publication of certain papyri and general overviews of the documents,⁴⁰ scholars were aware of their existence and would reference them in their work.⁴¹ Yet little substantial study of the archives emerged until the 1990s, thirty years after their excavation. This was primarily on the Greek

³⁴ See Joseph Aviram's prefaces in Lewis (1989: ix-x) and Yadin et al. (2002: ix-x) for more details on the publication process. Polotsky, who was originally working on the Greek part of the Babatha archive before excusing himself due to ill-health, published an initial overview of its contents: see Polotsky (1962). He followed this up with the publication of three documents (Polotsky (1967)): P. Yadin 15 (though labelled as 12 in this early publication) (a deposition), P. Yadin 27 (a receipt for maintenance) and P. Yadin 28-29 (the so-called 'judiciary rule'). Yadin (1971: 222-253) also gave an account of the discovery and nature of the Babatha archive; cf. Yadin (1962: 235-248) and Yadin (1963) for earlier summaries.

³⁵ The loss of Section V "Law," that Lewis intended "To appear in Volume II of the Documents" is a particular shame.

³⁶ Yadin et al. (2002: ix-x). Along with the listed editors – Yadin, Greenfield, Yardeni, and Levine – additional contributions to this volume were made by H. M. Cotton and J. Naveh. Two of the Aramaic papyri from the Babatha archive had been published previously: P. Yadin 7 in Yadin, Greenfield and Yardeni (1996) and Yardeni (2000a: 93-102), with an English translation in Yardeni (2000b: 45-49); P. Yadin 10 in Yadin, Greenfield and Yardeni (1994) and Yardeni (2000a: 125-130), with an English translation in Yardeni (2000b: 56). One further papyrus, P. Starcky (= P. Yadin 36) was also published early (see Starcky (1954)), though its place in the archive has been disputed: see its entry in *Survey of the Documents* for more details (pp. 33-34).

³⁷ Cotton (1995a). The documents identified as belonging to the archive are those later labelled as X Hev 12, 60, 61, 63, 64 and 65.

³⁸ The documents that were then included in the archive were published in Cotton and Yardeni (1997: 60-64; 158-237); X Hev 62 had been added to those documents identified in Cotton (1995a) (see n. 37).

³⁹ Eshel (2002) adds X Hev 2.

⁴⁰ See n. 34. On the early publication of a few of the Aramaic papyri, see n. 36.

⁴¹ For example, Bowersock (1983: 76-89) devoted an entire chapter to the Babatha archive in his history of Roman Arabia.

documents and it has only been in the last decade that the full archives have been available to the scholarly community at large. Work was possible on the few papyri which had been published prior to this date, and they did indeed inspire several earlier articles.⁴²

Since the full publication of the Greek part of the Babatha archive, the documents have not lacked attention and the bibliography grew extremely quickly. Several notable contributions should be flagged in this.⁴³ First, were the series of articles by Hannah Cotton published throughout the 1990s and 2000s. Most of these focus on a specific aspect of law or indeed on single documents: Cotton, for example, though she publishes on quite a range of topics relating to the archives, devoted a good number of articles to the problem of succession.⁴⁴ This, indeed, has tended to characterise much of the work on these papyri: either single themes, or individual / a choice few documents were selected as the topic of papers. Ranon Katzoff and David M. Schaps' edited volume, *Law in the Documents of the Judaean Desert*, published in 2005, continued this theme with a collection of essays that addressed individual aspects of the papyri, a few of the documents or particular legal problems therein. Thus, while the collection was a significant step in dedicating an entire volume to the laws of these papyri, it did not amount to a coherent study of the functioning of law in this area.⁴⁵

The first full-length book on the subject came in 2007 in the form of a former PhD thesis in Legal History by Jacobine Oudshoorn: *The Relationship between Roman and Local Law*

⁴² On the papyri that were published early, see n. 34 and n. 36. Lemosse (1968), Seidl (1968), Biscardi (1972), Lewis (1978) and Wolff (1980) all discuss these three documents.

⁴³ The following summary is not intended as an exhaustive overview but focuses on the most significant works on this corpus. Further work on the archives, particularly the individual papyri, will of course be cited throughout, especially in the *Survey of the Documents*.

⁴⁴ On this subject, see Cotton and Greenfield (1994), Cotton (1996a), (1997a) and (1998a).

⁴⁵ Indeed, it was not designed to do so: the editors aimed to “stimulate further thought” on a series of problems connected to the documents (Katzoff and Schaps (2005a: 6)).

in the Babatha and Salome Komaise Archives: General Analysis and Three Case Studies on Law of Succession, Guardianship and Marriage. As the title suggests, this was divided into two parts: a general introductory/methodological section, followed by a set of three case studies. Oudshoorn, though once again working primarily through specific case studies, attempted to consider the functioning of law in the archives and the area from which they originated as a whole, rather than simply focusing on particular aspects of law. She saw the community that the archives document as operating under a Jewish “substantive” legal framework, but thought that, in terms of “formal” law, the papyri may have been designed to conform to a different legal system: ‘Hellenistic’ or Roman, for example. The book remains a significant contribution to scholarship on the documents and, indeed, is the closest we have come to an attempt to understand the functioning of law in general in this community.⁴⁶

These three works, or series of works, is but a small sample of the most significant contributions to scholarship on the subject. It is, however, representative of the general approach that has typically been taken to the papyri. The majority of this has focused upon their more formalistic aspects. Essentially, scholars have concentrated on identifying legal formulae or finding parallels in the phrasing of the documents with the various legal systems in operation at the time, though it should be noted that the legal texts to which they often have recourse are often codified or redacted in a much later period. So, for example, the appointment of two guardians (rather than one) in P. Yadin 12 is compared with Roman practice and assessed against it to deduce whether this is evidence of ‘local’ or Roman legal tradition. Naphtali Lewis saw it as the former,⁴⁷ while more recently Tiziana Chuisi

⁴⁶ Evans Grubbs (2009) offers a considered review of the book’s flaws and merits; see also the reviews by Jackson and Piattelli (2010), Avemarie (2009) and Kloppenborg (2012).

⁴⁷ Lewis (1989: 48), though he also notes the appointment of two guardians in M. Chr. 88 (c. 150 C.E.).

observed that the number of guardians was not fixed in Rome,⁴⁸ meaning that the appointment of two did not necessarily conflict with Roman practice. In each of these cases, the practice is identified and compared with another known legal tradition (in this instance, Roman). A conclusion is then reached about whether it corresponds to that tradition or not, and, if it does, the document is then thought to function under that ‘operative law’. As this example makes clear, such conclusions can differ significantly.

This method involves careful consideration of individual phrases and the possible parallels in various bodies of law, be it Jewish, Roman, Greek or Nabataean.⁴⁹ The commentaries in the published volumes of the papyri offer astonishingly detailed, careful examples of this kind of comparative approach.⁵⁰ Cotton’s extensive work on these documents builds upon this, as do the two main recent studies of the laws used in these archives (mentioned above).⁵¹ The importance of such work should not be underestimated; it illuminates the complexity of the legal world in which the parties operated and the incredible diversity of legal phraseology, spheres and traditions which could combine even within a single contract. An understanding of the documents themselves and the legal traditions that they evidence is vital to any further study of the socio-legal context in which they operate.

Behind this traditional approach is, however, an implicit assumption that phraseology and formulae played a vital role in determining, or at least indicating, legal sphere. This in turn

⁴⁸ Chuisi (2005: 107); cf. Oudshoorn’s (2007: 312, n. 39) comments on this observation.

⁴⁹ These are more or less problematic endeavours, depending on the amount of information available about such bodies of law. While we know little of Nabataean legal tenets, we are much better provided for in the rabbinic and Roman spheres. This increase in available information, however, providing as it does a ‘norm’ against which the documents may be compared, brings its own problems, as does the fact that most of this evidence was codified considerably later than our period.

⁵⁰ Yadin et al. (2002); Cotton and Yardeni (1997); Lewis (1989).

⁵¹ Namely Oudshoorn (2007) and Katzoff and Schaps (2005). In the latter edited volume, Michael Satlow’s contribution is a possible exception to this general approach. He adopts what he calls an “instrumental” method, in order to understand “a family at work,” rather than placing the documents in the context of a particular legal framework: see Satlow (2005: 53; 65) on his chosen methodology.

suggests that on some level people were thinking in terms of systems of law and that we may detect the law under which a particular document operated from a close examination of its phrasing, legal substance and diplomatics. In Cotton's words:

“The diplomatics of ancient documents can often give us important clues about the legal system (or systems) in operation in the documents themselves. Moreover, legal systems can intersect in one and the same document.”⁵²

This is certainly true in that the way contracts were drawn up reflects particular traditions. These can then be identified from careful examination and comparison of documents. Various traditions, or “legal systems”, as Cotton puts it, may also be reflected in one and the same papyrus. As such, the formulation of a document is extremely important.

None of this is in dispute. Nevertheless, the danger in such an approach is that we fail to consider the people involved in the documents' making. By focussing so firmly on the formulaic aspects of the contracts we lose sight of the human element at play in their construction and use. This agency is vital to understanding the social and, moreover, the legal context of the two archives. It may, then, be time to take a different approach.

Legal pluralism, multi-legalisms and a ‘ground-up’ approach

Scholarship on Roman law has undergone something of a transformation in the last century. Previously, it was studied as a systematised, coherent body of rules, as embodied in the codified legal texts from late(r) antiquity. This was due in no small part to the contemporary circumstances in which the subject was studied: the ideas of unification that were prevalent in nineteenth century Germany led to an idealised view of Roman law,

⁵² Cotton (2003: 50).

which was seen as, “the ancient counterpart of the hopes and aspirations of the contemporary German jurists and the imperial trends of the late nineteenth century.”⁵³ This model dominated scholarship for a long time. In recent decades, however, understandings of Roman law and the study of it have shifted dramatically, leading to a new concept of law and empire. Much of this work has focused on the situation post-212 C.E., examining the effects of Caracalla’s universal grant of citizenship, the *Constitutio Antoniniana*, on the legal habits of the empire’s inhabitants.⁵⁴ The result has been a shift from an emphasis on unification to a focus on the lengthy vitality of local law and custom after 212 C.E.

Indeed, legal pluralism, multi-legalism or conflict of law in the fields of modern legal studies, sociology and anthropology have all had their effect on the most recent work in the discipline.⁵⁵ While much of this has been directed at the period after 212 C.E., it is not without relevance to the earlier era. Furthermore, scholarship on the situation after the *Constitutio Antoniana* often looks back to the previous situation.⁵⁶ The result has been a greater awareness of the complexity of the functioning of law in the Roman Empire in both

⁵³ Tuori (2007: 44): see *passim* for an excellent window into the influence of these ideas on the study of Roman law and legal pluralism in the ancient world.

⁵⁴ Theoretically, at least, the effect of this was to bring all free inhabitants of the Roman Empire under the *ius civile*. This, it was for a long time assumed, led to the gradual death of ‘local’ law, in favour of the new, unified system (see, for example, the attitude that pervades Sohm’s (1911) handbook). How ‘local’ law was accommodated, integrated or excluded from this overarching legal unity provoked various responses. Particularly relevant works on this general topic of the interaction between Roman and local law include: Mitteis (1891), Schönbauer (1937) on the concept of ‘provincial law’, Mélèze-Modrzejewski (1970) on the survival of Ptolemaic legal institutions under Rome and the concept of ‘dual citizenship’ (and indeed much of the work by this author: for a sample, see his collected papers in Mélèze-Modrzejewski (1990)) and Amelotti (1999) on attempts by later emperors to minimize the import of local law. See also Tuori (2007) and Schiller (1978: 537-541; 545-547) for overviews of some of these notable works and further bibliography.

⁵⁵ There is a wealth of literature on legal pluralism and conflict of law theory. A good starting point is Berman (2009), who provides an overview of the field’s development and current state; see also Shahar (2008) for this, who offers a useful definition of ‘weak’ and ‘strong’ legal pluralism that may provide food for thought with regard to the ancient world. Galanter’s work is particularly notable for its social idea of law: see especially Galanter (1981). With reference to the application of this literature to the ancient world, Pölönen (2006) summarizes the relevant literature well, while arguing for a re-interpretation of “socio-legal phenomena” in the ancient world using the sociology of law.

⁵⁶ Or, indeed, scholars who typically focus on late antiquity have brought their approach to the earlier period: see Humfress (forthcoming) as an example.

periods – in the way that people approached it, and the multiplicity of legal traditions that subjects and rulers alike were compelled to acknowledge (to a greater or lesser degree), negotiate, choose between, decide upon and generally deal with in their day to day lives.⁵⁷

In short, the new emphasis is on an idea of law in the ancient world that is far removed from past conceptions of Roman law as a formalized, systematic body of rules. The focus in these studies is not on rules imposed from above, but instead contends:

“It is more profitable to look at the issue of law and legal practice from the bottom up, and to ask whether, how and why Rome’s subjects, as individuals or as groups, availed themselves of the Roman legal system ...”⁵⁸

Thus, we have shifted away from a sole concentration on law imposed from the top. Instead, how people approached and thought about law from their situation ‘at the bottom’ or ‘on the ground’ is factored into any understanding of the functioning of law within the empire. Papyrological evidence provides a particularly good source for studies of this kind, and indeed recent work on legal papyri from Egypt has taken just this type of ‘ground up’ method to heart.⁵⁹ This approach, however, is not limited to papyrology but filters into considerations of law within the empire on a more general level.⁶⁰

The result is that we move away from an idea of law as a rigid system of rules and begin to see it as a socially-constructed idea. This does not amount to a variation on the ‘law-in-

⁵⁷ It is worth emphasising that this variety was a factor not only for subjects but their rulers. On this, see, for example, Galsterer (1986: 26): the application of Roman law in the provinces, “depended ... on the good will of the decurions, the municipal magistrates, and councillors.”

⁵⁸ Humfress (2013a: 93). See also Humfress (2011: 43-46) on the importance of a ‘ground-up’ approach.

⁵⁹ Bryen (2012) and (2013) are especially good examples of this approach to the Egyptian papyri, as is Kelly’s (2011) work on petitions and litigation.

⁶⁰ Kantor (2009) and (2012) are good instances of work in which such considerations factor into general understandings of law.

practice' or 'law-in-action' approach (as opposed to a 'law-in-the-books' one),⁶¹ but demands a social understanding of law or, to borrow Caroline Humfress' phrase, "law within lived experience."⁶² Law, at all times, is firmly situated within its social, temporal and geographical situation.⁶³

The archives within this multi-legal approach

If we return to the Babatha and Salome Komaise archives, the kind of method outlined above allows for a rather different approach to the archives from that which has previously dominated discussion.⁶⁴ It allows us to move away from concentrating purely on the formulaic elements of the papyri and instead examine the manner in which the litigants approached the law. As part of this, we need to assess the practical aspects of using both the documents and the legal process.

This involves consideration of rather different questions from those involved in identifying parallels and 'operative law'. In examining the documents from the 'ground-up', we need

⁶¹ As Humfress (2013a: 92) and (forthcoming: 7) has demonstrated, this kind of approach typically leads to a kind of 'gap-analysis', in which we attempt to determine how far the law transmitted in the books matches actual practice. While this is helpful in some respects, it lacks the concern with the specific social context of law and legal processes with which we are here concerned.

⁶² Humfress (forthcoming: 8).

⁶³ See Geertz (1983) for an anthropological approach to law that emphasises just this localization of concepts of law: "Law ... is local knowledge; local not just as to place, time, class and variety of issue, but as to accent – vernacular characterizations of what happens connected to vernacular imaginings of what can" (Geertz (1983: 215)).

⁶⁴ Indeed, Humfress (2013a: 89) has already pointed out the need for such work on the Babatha archive: "Comparatively little work, however, has been done on how Babatha might have attempted to strategically range across different types of law and legal institutions in order to achieve an outcome favourable to her interests ... Babatha's use of both Rabbinic and Roman law thus becomes evidence for (her access to) a kind of 'multi-legal' knowledge or at least a 'multi-legal' awareness – through which she attempted to achieve certain specific goals." Humfress (2013a: 89) also points to Satlow (2005) as one example of work that "begins to explore this alternative perspective." It should be noted that Cotton (2007) recently interacted with some of the 'legal pluralism' literature, by examining the relevance of the modern concept of 'private international law' for the archives. More significant, perhaps, is her re-interpretation of three documents from the Judaeian desert as settlements from arbitration (Cotton (2002a: 21-23)), which, of necessity, factors in these considerations of 'on the ground' functioning and interactions.

to consider explicitly how litigants commissioned them to be made; whom they asked to write them and why; how much knowledge litigants, scribes and judges had of the ‘law’; how they acquired this knowledge; and indeed, most fundamentally, what ‘law’ even meant in this context to all involved. Legal knowledge and access to it becomes key and the very people involved in the cases these documents attest are placed at the heart of how law functioned in this province.

The premise upon which such a study is based is that while people may have had a very clear concept of what the law was, this varied from place to place and person to person, resulting in very different practical applications. This also may have led to misunderstandings, conflict or a process of redefining one’s understandings when different people met and engaged with one another. One such setting might be a Roman court, when litigants encountered a Roman governor. Thus, agency, situation and context are fundamental concerns. From this perspective, the formulae and legal references in the papyri become less obviously determinative of law, since the documents are part of a process of negotiation by which people determine, or perhaps even construct, what the law is.

The aim of this thesis is to build up a picture of the way in which the community that the two archives attest coped with its legal situation and approached, found out about and thought about the law. This will be tackled by considering the people involved, their actions and interactions. This differs from previous work on the documents in two respects. First, it does not aim to identify the ‘operative law’ of the archives as Jewish, Hellenistic, Roman or otherwise, using the parallel-hunting method that others have typically applied.

Secondly, it aims to consider the archives as a whole in a coherent study of the community, rather than focusing on individual documents or select problems of law.

In light of these aims, this study is not structured according to case studies or particular fields of law – guardianship or succession, for example. Instead, I consider in turn the various people involved in drawing up and using the documents in order to assess the varying contributions, considerations and influences that led to them being written in the way that they were. Much of this will involve mapping out fields of possibilities – possible attitudes and mindsets, often working with comparative evidence from elsewhere in the empire. Yet at all times the particularities of this area and these people must be and will be kept in mind: this is a history of a small, specific group of people. Indeed, in considering approaches and attitudes to law, it is vital to reflect upon what and how people thought about it. Such concentrated bodies of evidence as these two archives allow us to do just that.

Before embarking upon a systematic consideration of the people involved in drawing up the documents, I include in Chapter One an overview of the corpus. This consists of a survey of the documents, including details of language, date, principals, subscriptions and document form. The papyri are arranged in chronological order, as far as this may be determined, and each document is given its own treatment, in which I comment upon the various legal formulae and traditions that have previously been identified. The aim is to give the reader an impression of the legal diversity of the papyri and of previous scholarship on the documents individually, as opposed to the general works and trends identified in this introduction. This is also designed to serve as a point of reference on individual papyri throughout the rest of the thesis.

The main body of the thesis then follows in a series of chapters focused upon particular individuals, or groups of individuals, who were involved in the formulation and use of the papyri. Chapter Two therefore begins with an examination of the scribal influence on the creation of the documents. This is a factor that is sometimes implicitly acknowledged but has not previously been considered explicitly with regards to the legal framework of the two archives. The purpose of the chapter is to demonstrate that we may not necessarily speak directly and unproblematically of the parties' legal knowledge or intentions because all but one of the documents (P. Yadin 10) were drawn up by scribes, not the parties themselves. The reasons for employing a scribe are considered in order to determine the ways in which these writers may have influenced the forms of the papyri. It is then argued that we should take this extra filter into account in any attempt to identify legal traditions or decisions on the part of the litigants. This is not to say that we should divorce the parties from their documents completely, but it does make it probable that many of the terminological details in the papyri were determined not by the litigants but by the scribes.

Chapter Three will examine the possibility of legal experts being present in the province and how these may have been utilized by the parties.⁶⁵ I first consider the evidence more generally for such legal experts in the Roman Empire in order to give an outline of the kind of activities in which they were engaged. I then turn to the archives specifically. I shall argue that the strongest evidence for the influence of some kind of legal practitioners lies in the presence of P. Yadin 28-30 in the Babatha archive – these are three copies of a Roman *actio tutelae*, translated into Greek. Their relationship to the guardianship dispute

⁶⁵ Advocates would be the other obvious category of people within the legal 'profession', if that is an appropriate word in this context, who may have been involved in the documents' use. This group, however, cannot be given a separate treatment in this thesis due to the nature of the evidence – we do not have trial transcripts in the archive and so the activities of the advocates in the courtroom, if they operated in Roman Arabia, remain undocumented.

attested by other documents in the archive is extremely problematic, but P. Yadin 28-30 still attest to some level of (Roman) legal knowledge and access to legal literature, or at least legal models, in the new province. This in itself is informative, particularly when we are considering the possibility of legal practitioners operating in the area; these are the people most likely to have been able to procure such models for Babatha. It will be suggested that these legal advisors may have been distinct from some of the scribes identified in Chapter Two – this is not, however, to suggest that there was no overlap between the two groups. This relationship will be examined in the concluding part of the chapter.

Chapter Four then turns to the parties' attitudes towards the legal formulae and languages of the documents – namely whether they thought writing in a particular language or using particular legal formulae automatically placed them under a certain legal sphere. This is not to undermine the arguments of Chapters Two and Three about the limitations to the litigants' input into the technicalities of the documents but rather to outline the ways in which parties could still contribute to the papyri. The ways in which their preconceptions influenced the formulation and use of the documents are of prime concern. It is suggested that the legal formulae in the Greek papyri in particular, rather than being determinative of law, were part of a process by which the parties negotiated their legal position, with the help of their scribes and/or legal advisors. References to specific legal 'systems' are therefore reinterpreted as bids by the litigants to show that their claims were well-grounded in local tradition in order to impress the Roman authorities, who valued, or at least were thought to value, local custom. It will also be argued that the provincials thought more in terms of authorities and courts than conflicting or overlapping legal systems, a concept which is perhaps somewhat anachronistic.

The issue of the existence of local courts, defined broadly as non-Roman legal fora, as an alternative to the Roman system is next examined in Chapter Five. It is suggested that the absence of direct attestation for such legal fora in the archives should not be taken as proof of their non-existence. This lack of reference does, however, mean that the discussion makes great use of evidence elsewhere in the Roman Empire; this is employed to contextualise the archives and consider possible non-Roman legal fora that might have been operating in the area. It is suggested that if these local courts existed they were probably viewed under the umbrella of arbitration by Roman authorities. These, along with the informal negotiations that will be discussed in the next chapter, may also have been used in conjunction with the Roman court system.

Chapter Six, *The Roman Officials*, suggests that the presence of the Roman governor had a far-reaching effect on the way in which the litigants conducted their cases, both in and out of court. In particular, the use of the Roman court system was rather more complex than just appeal in the hope of judgement. I suggest that it was probable that litigants would often engage in private negotiations at the same time as they pursued justice through the courts. This might sometimes have come under the umbrella of arbitration, discussed in the previous chapter, but in all probability also encompassed even more informal discussions and interactions between parties. The Roman procedure was thus deployed as a bargaining chip in these negotiations, and it may have been that Babatha and her fellow litigants never fully intended for their cases ultimately to be judged by a Roman authority.

The *Conclusion* then brings together the themes that have been raised in the thesis to suggest a broad schema for the workings of law in this particular area of the Roman

Empire. It is suggested that its operation was greatly influenced by the people involved and their own preconceptions, aims and experiences. 'Law,' then, was not a straightforward system of rules, formulated and applied in a straightforward manner; it appears to have been contingent on a range of understandings and motivations of the people involved, who were in turn influenced by their own particular traditions and backgrounds.

Chapter One

Survey of the Documents

Much time has been spent trying to untangle the various legal traditions that permeate the archives. Often, as outlined in the *Introduction*,⁶⁶ this involves looking for similarities or parallel phraseology in other, usually later, codified legal texts. The value of such an approach has already been underlined: it brings to the fore the multitude of legal traditions and, if you will, ‘systems’ which can combine even within a single contract and can therefore serve to convey the plurality of ‘laws’ within this community. Nevertheless, it has also been suggested that the usual goal of such a method – identifying the operative legal framework of a papyrus – is perhaps not so feasible and may actually serve to minimize the complexity which such work otherwise highlights.

The main body of this thesis will focus upon identifying the level of influence that the various people involved exerted upon these documents’ production and use – essentially, how they came to exist in the way that they did. Yet such an ‘agency-based’ approach first needs to be set in context; an introduction to the documents themselves is a necessity. This chapter will therefore provide an overview of the documents’ final contents and forms to allow the reader to become acquainted with the material with which we are dealing.

The intent of the following catalogue is to offer the reader an introduction to the individual documents – their contents, the notable ‘legal phrases’ therein, the languages in which they were written and past scholarly debates on particular points of the individual papyri. Each

⁶⁶ See pp. 12-17.

document is therefore treated individually. As far as can be determined, the papyri are arranged in chronological order within their respective archive. It is hoped that this will allow readers to gain a sense of any changes that occur over time, while still retaining the unity of each archive. At the beginning of each review, a much-simplified table is also provided for ease of reference in later discussions of the papyri.

A note on classifications

As is made clear in the *Introduction*, I have severe doubts about the legitimacy of searching for a definitive ‘operative law’ of the archives, yet much of the previous literature engages with this task either directly or indirectly. In doing so, various classifications for such an operative legal framework are employed. Because one purpose of the following survey is to flag up particular points of debate in past scholarship, it is worth outlining very briefly the legal traditions often used for classifications of the ‘law’ in each document and the problems with each classification. Four categories are most commonly used:

Local / Nabataean Law. This is, perhaps, the most straightforward to define of the four traditions outlined here. It refers to that law or custom used in the communities in which the documents were drawn up where there is no evidence that the tradition applies only to Jews in the area. It is conceived as being the legal system in use in the Nabataean Kingdom. If the classification is used with reference to documents from the Roman period, the idea is the same and it is thought to be that law which survived at a local level in spite of the change in ruling power. While this is a simple enough definition, it can rely to a certain extent on an absence of evidence for other legal traditions – if a feature is not familiar from

Jewish, Greek or Roman law, it might be classed as 'local'. This is in no small part due to the scarcity of evidence for Nabataean law.

Jewish Law. The definition of Jewish law in this period is problematic even before we reach these documents. In general, there are two typical points of reference, one much earlier, one later: Biblical law and Talmudic/rabbinic law. The latter encompasses legal tradition as laid out in rabbinic texts from the Mishnah and Tosefta onwards (two Jewish legal collections, redacted c. 200 C.E.) and is usually divided into two periods of relevance here: the Tannaitic, referring to the sayings and rulings of sages active in the first and second centuries C.E.; and the Amoraic, referring to the third to fifth centuries C.E.⁶⁷ When we come to apply either Biblical or Talmudic/rabbinic law to these documents, we are faced with an obvious problem of chronology. While we might, perhaps, refer back to Biblical law we must be sensitive to how this was observed in this era and indeed in this particular area. With regard to Talmudic law, we are obviously in the period before the first rabbinic texts were redacted. Coupled with this is the fact that the level of influence of the rabbis at this stage is somewhat uncertain. Thus, what conclusions should we draw if we find parallels in these papyri with rabbinic texts that were redacted in a later period? While this might initially seem like a good indication of 'Jewishness' there is little to determine whether (a) this is evidence for the existence of some form of early rabbinic law of which the community in question was aware, or (b) the rabbis incorporated into *halakha* existing Jewish law or even local traditions that were practiced by Jews but not necessarily specific to their community.

⁶⁷ Yaron (1992: 29-30) has an extremely brief introduction to the term 'Jewish law'.

Roman Law. The ‘Roman’ classification brings with it some problems similar to those connected with rabbinic literature and the Jewish designations: namely, the texts to which we look for Roman law were usually codified much later than the documents under discussion here, making comparison somewhat problematic. Indeed, as raised with respect to rabbinic texts, the law classified later as Roman may also have taken into account existing earlier practices with roots in non-Roman traditions.⁶⁸ In both cases, we have something of a ‘chicken and egg’ situation. Furthermore, while certain features or the form of a contract may appear obviously Roman to us, the parties involved in drawing up the document might not have actively identified them as such. Conversely, while we may point to differences or even ‘mistakes’ in formulation or practice compared with the law of the textbooks, this does not mean that people in the area would have viewed a particular legal feature as any less ‘Roman.’

Greek / ‘Hellenistic’ Law. The final classification often employed in analyses of the documents is that of ‘Hellenistic’ or ‘Greek’. This is used since, at times, the parties involved explicitly place a clause or entire document under ἑλληνικὸς νόμος. What is meant by this is, however, unclear and the phrase does not appear either elsewhere in the Roman Near East or in the Egyptian papyri.⁶⁹ This is despite the fact that the only Hellenistic legal system we know of is that from Ptolemaic Egypt. This very explicit reference is therefore far from straightforward.

These cautions having been fully noted, the above designations will still be employed where relevant in the following survey when discussing previous interpretations of the

⁶⁸ See Chiusi (2005) on this, who shows that the kind of techniques employed by Babatha have parallels in later Roman cases. She therefore suggests that there was an “interaction [between Roman and ‘local’ legal traditions] in which the exchange of ideas goes into [*sic*] both directions” (Chiusi (2005: 132)).

⁶⁹ Lewis (1991: 40-41).

documents. Nevertheless, we should be mindful of the problems with such classifications at all times and not take them as definitive. Their employment in the overview that follows is merely to convey previous opinions on the documents and highlight the problems involved in assigning a papyrus that might include references to multiple legal traditions to one particular legal 'system'.

The Babatha Archive⁷⁰

TABLE 1: THE DOCUMENTS OF THE BABATHA ARCHIVE

P. YADIN	LANGUAGE	DESCRIPTION	DATE (C.E.) ⁷¹
36	Nabataean Aramaic	Renunciation of claims.	c. 58-67
1	Nabataean Aramaic	Debenture (?).	8 th Elul, 93/94
2	Nabataean Aramaic	Sales contract (almost identical to 3).	3 rd Kislev, 97/98
3	Nabataean Aramaic	Sales contract (almost identical to 2).	2 nd Tebet, 97/98
4	Nabataean Aramaic	Guarantor's agreement (?).	Unknown, though 97/98 is mentioned
31	Greek	Too fragmentary to determine contents.	c. 110 (?)
5	Greek	Loan written in the form of a deposit.	13 th Daisios, 110
6	Nabataean Aramaic	Tenancy agreement.	119
7	Jewish Aramaic	Deed of gift.	24 th Tammuz, 120
8	Jewish Aramaic	Sale/purchase (?) contract.	3 rd Tammuz, 122
9	Nabataean Aramaic	Waiver (?) or sales contract.	122
10	Jewish Aramaic	Babatha's marriage certificate.	Unknown
11	Greek	Copy of a loan on hypothec.	6 th May, 124
12	Greek	Copy of an extract from the Petra βουλή council minutes.	Between 27 th February and 28 th June, 124
28-30	Greek	Copies of a Roman formula.	Unknown
13	Greek	Copy of a petition to the Roman governor.	Second half of 124
33	Greek	Fragmentary. Copy of a petition concerning orphans. (?)	Unknown
14	Greek	Summons.	11 th October or 24 th Hyperberetaios (=12 th October), 125
15	Greek	Deposition.	11 th October or 24 th Hyperberetaios (=12 th October), 125

⁷⁰ All text and translations from the Babatha archive throughout this thesis will be taken from Lewis (1989) and Yadin et al. (2002) unless otherwise stated.

⁷¹ Day and month references are given in accordance with the calendar(s) used in each document. In this summary table, years are given solely in the format of the Common Era date; further details on the dating formulae in the individual papyri may be found in each entry.

16	Greek	Copy of a census declaration.	2 nd December / 16 th Apellaios and 4 th December, 127
17	Greek	Loan in the form of deposit.	21 st February / 6 th Dystros, 128
18	Greek	Shelamzion's marriage contract.	5 th April / 15 th Xandikos, 128
19	Greek	Deed of gift.	16 th April / 26 th Xandikos, 128
20	Greek	Concession of rights.	19 th June / 13 th Daisios, 130
21	Greek	Purchase of a date crop / labour contract. (?)	11 th September / 24 th Gorpaios, 130
22	Greek	Sale of the same date crop in 21 / labour contract. (?)	11 th September / 24 th Gorpaios, 130
23	Greek	Summons.	17 th November / 1 st Dios, 130
24	Greek	Deposition.	Undated.
25	Greek	Summons and counter-summons.	9 th July, 131
26	Greek	Summons and reply.	9 th July, 131
34	Greek	Fragmentary. Copy of a petition. (?)	c. July, 131 (?)
27	Greek	Receipt for maintenance.	19 th August / 1 st Gorpaios, 132
35	Greek	Too fragmentary to determine contents.	c. August / September, 132 (?)
32	Greek	Too fragmentary to determine contents.	Unknown
32a	Greek	Too fragmentary to determine contents.	Unknown

P. Yadin 36 (= Papyrus Starcky)⁷²

Language: Nabataean Aramaic.

Subscriptions: 1 Jewish Aramaic signature, traces of another (script indeterminate).

Scribe: Unknown.

Date: 58-67 C.E.⁷³

Document form: Double.⁷⁴ A substantial part of the inner text is missing.⁷⁵

This document is a renunciation of claims. Bannai and Nikarchos had borrowed money from Isimilik, who eventually issued a writ of seizure on their property. Fifteen and a half

⁷² First published by Starcky (1954). The three fragments that make up this document were rearranged and an updated version given by Yardeni (2001).

⁷³ Although the document itself is undated, its date may be calculated from a reference to an earlier agreement within the papyrus (which is given in the form of Babylonian month, regnal year).

⁷⁴ In double documents, the text was written out twice on the page. The top (the inner text) was then rolled up and tied before witnesses. This was originally meant to act as authentication of the outer (i.e. the lower, still visible) text, though the inner text is often extremely abbreviated. See Lewis (1989: 6-10) for an excellent overview of double documents.

⁷⁵ See Yardeni (2001: 124-125) for details.

years later, when Bannai and Nikarchos had both died, Eleazar, their heir, redeemed the writ of seizure and paid off the remaining debt. P. Yadin 36 was then written to confirm that no claims remained.⁷⁶

The inclusion of this document in the Babatha archive is not confirmed. Indeed, Ada Yardeni, in re-editing the papyrus, explicitly denied its place there as it was not found in Babatha's leather purse with the rest of the documents.⁷⁷ Hanan Eshel relocated it in the Salome Komaise archive based upon its newly-identified provenance of Naḥal Hever,⁷⁸ though there is little supporting evidence for this in the document's contents and it is considerably earlier than the rest of the archive. The palm grove can be identified with the garden of Nikarchos in P. Yadin 21 and 22, which belonged by that point to the estate of Babatha's second husband Judah, son of Eleazar. There is therefore an, admittedly tenuous, link with Babatha in the internal contents of the document, which is why it has tentatively been included within this portion of the survey.

With regard to the legal frameworks employed in this contract, Jacob Rabinowitz has indicated a Talmudic parallel in the treatment of a defaulting debtor.⁷⁹ In any case, considering the date it was written, P. Starcky represents valuable evidence for the operation of law under the Nabataean kingdom.

⁷⁶ On the nature and contents of the document, see Starcky (1954: 180), Rabinowitz (1955) and Yardeni (2001: 127).

⁷⁷ Yardeni (2001: 128).

⁷⁸ Eshel (2002: 171).

⁷⁹ Rabinowitz (1955: 12): "Under Talmudic law, an unpaid creditor had the right to seize, through judicial process, as much of the defaulting debtor's property as necessary to satisfy the debt, and, after valuation (*šūmā*) and proclamation (*'akraztā*) made by the court, obtain satisfaction of the debt by occupying the property. A debtor whose property was so transferred by the court to his creditor had nevertheless the right to redeem the property from the creditor by paying him the amount of the debt for which it was seized. The right of redemption could be exercised not only by the creditor himself but also by his heirs." Cf. *b. B. Bat* 169a; *b. Ketub.* 100b; *b. B. Meši'a* 35b; *y. Ketub.* 11:6.

P. Yadin 1⁸⁰

Language: Nabataean Aramaic.

Subscriptions: 7 Nabataean Aramaic signatures (including that of the scribe), repeated on both sides of the document.

Scribe: Huwaru, son of Awatu.

Date: 8th Elul, Year 23 of Rabbel II (93/94 C.E.) (Babylonian day and month, regnal year).

Document form: Double. Inner version is considerably shorter than outer.

This is most likely to be a debenture. The document is split into two main parts. In the first section, the debtor, Muqimu, acknowledges that he owes his wife, Amat-Isi, 150 selas, which is to be paid back after two years. This money comes “from the agreement of the *mōhar*”,⁸¹ at this time a payment made by the bride’s family on occasion of the marriage, which was to be repaid when the marriage was dissolved.⁸² In return for access to these funds, the husband, Muqimu, mortgages his assets. Abad-Amanu acts as guarantor.

The second part of the papyrus is a statement by Amat-Isi that she agrees to the above loan. This may mean that Muqimu legally needed his wife’s agreement in order to access the *mōhar* money; hence this inclusion of Amat-Isi’s attestation.

The debtor, guarantor and creditor are all Nabataean and, once again, the date of the contract means it provides evidence for the operation of law within the Nabataean kingdom.

⁸⁰ The most recent edition of the text may be found in Martone (2005).

⁸¹ P. Yadin 1, l. 18: מן עדי מהר.

⁸² Originally, the *mōhar* had been a payment in the opposite direction. See Yadin et al. (2002: 171-172) for an overview of the development and changing meaning of the term.

P. Yadin 2

Language: Nabataean Aramaic.

Subscriptions: 4 partly legible Nabataean Aramaic signatures (including that of the scribe), 3 other illegible signatures.

Scribe: Azur, son of Awatu.

Date: 3rd Kislev, Year 28 of Rabbel II (97/98 C.E.) (Babylonian day and month, regnal year).

Document form: Double.

This document and the following should be considered together. Both are sale contracts of what appears to be the same parcel of land, since three of the listed abutters are virtually identical.⁸³ In P. Yadin 2, the Nabataean commander Archelaus purchases the land from a Nabataean woman called Abiadan, daughter of Aptaḥ. The seller is the same woman in P. Yadin 3, though the purchaser is now Shimon, probably Babatha's father.⁸⁴ Why the same parcel of land was sold twice within a month is unknown.⁸⁵

The editors of the papyri seem particularly concerned that P. Yadin 2, a cancelled document, is retained at all or at least that it is retained without being defaced in some way to show its invalidity.⁸⁶ There does not, however, seem any reason to suppose that defacement was a universal practice in the area and we could easily imagine a conscientious, or worried, seller retaining all the paperwork s/he had for a parcel of land.

⁸³ The western abutter is listed in P. Yadin 2, l. 4 / 23 as “the houses of Taḥa’, daughter of ‘Abad-Ḥaretat” (בתי תחא ברע עבדחרתת), while in P. Yadin 3, l. 4 / 26 it is “the houses of Ḥunainu, son of Tayim-’Ilahi, and the houses of Taḥa’, daughter of ‘Abad-Ḥaretat” (בתי חנינו בר תימאלהי ובתי תחא ברע עבדחרתת). It is possible the parcel of land was extended in the second contract (cf. Yadin et al. (2002: 202)) or that some of the houses on this side of the plantation had been sold in the intervening month. Cotton and Greenfield (1994: 216-217) identify the date groves that are the subject of P. Yadin 2 and 3 with the land declared by Babatha in P. Yadin 16.

⁸⁴ Cotton and Greenfield (1994: 217) suggest that Babatha may have received the land as a gift from her father when she married her first husband.

⁸⁵ There are multiple reasons why a sale may not proceed. Yadin et al. (2002: 203) suggest that someone, possibly the son of LTY who appears in P. Yadin 3, l. 43 (cf. l. 16, where his name is also restored) but is not present in P. Yadin 2, appeared who “had a prior lien against ‘Abi-‘adan’s property, or to whom ‘Abi-‘adan was otherwise indebted, and blocked the earlier sale.”

⁸⁶ They point to X Ḥev 69 (130 C.E.), a cancelled Jewish marriage contract which had lines drawn through it, as an example of such defacement (see Yadin et al. (2002: 202)).

Water rights are conceived as part of the property in both documents, as they are in P. Yadin 7 and 42, and in X Hev 64. This is not a habit specific to the Nabataean kingdom; it is paralleled in other parts of the Roman Empire and in Jewish sources.⁸⁷ A reference to a leasing tax payable to the king is also included in both papyri.⁸⁸ Indeed, the near-identical form of the two contracts, together with the extremely similar X Hev 2, also written in Nabataean Aramaic and dated to c. 100 C.E., does suggest that there may have been a standard model for such sale agreements in the Nabataean kingdom. These papyri thus provide us with invaluable evidence for sales practice under the Nabataean monarch.

P. Yadin 3

Language: Nabataean Aramaic.

Subscriptions: 7 Nabataean Aramaic signatures (including the scribe).

Scribe: Azur, son of Awatu.

Date: 2nd Tebet, Year 28 of Rabbel II (97/98 C.E.) (Babylonian day and month, regnal year).

Document form: Double.

See above for comments. The primary difference between the two contracts, aside from the new purchaser, is that Abiadan now acts with a son of LTY, whereas in P. Yadin 2 she acted alone. Furthermore, the specific hours and days for irrigation of the property are detailed in P. Yadin 3, in contrast to the previous contract which simply states the rights in general.⁸⁹ These differences, however, have little impact on the observations made above about sales contracts in the Nabataean kingdom.

⁸⁷ On sources from elsewhere in the Empire, see Cotton (1995a: 193-194) and Cotton and Yardeni (1997: 215-216); these include two documents from Kurdistan from the first century B.C.E. (P. Avroman IA (88 B.C.E.) and P. Avroman IIA (22/21 B.C.E.)), the *Tablettes Albertini* (FIRA III 139, ll. 5-9), and multiple Egyptian papyri. On the Jewish sources (*m. B. Meši'a* 103b, cf. *t. B. Meši'a* 9:2; *t. Mo'ed* 1:2 and *b. B. Bat* 12b), see Yadin et al. (2002: 6); cf. Cotton (1995a: 194) for an overview of this subject and directions towards further literature.

⁸⁸ See Cotton (1997b: 256): "By 19 November and 18 December, the respective dates of P. Yadin 2 and 3, the lease-rent (אכר) 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." Cf. Yadin et al. (2002: 228-229).

⁸⁹ P. Yadin 3, ll. 3-4 / 24-25; cf. P. Yadin 2, ll. 6-7 / 22.

P. Yadin 4

Language: Nabataean Aramaic.

Subscriptions: Remains of 6 Jewish Aramaic signatures; remains of Nabataean Aramaic scribal signature.

Scribe: Azur, son of Awatu.

Date: Unknown, though the regnal Year 28 of Rabbel II (97/98 C.E.) is mentioned.

Document form: Double (inner text has not survived).

The papyrus is extremely fragmentary, making it difficult to determine its nature. In their edition of the papyrus, Yadin et al. suggest it is a possible guarantor's agreement, based upon the restoration of ערִב, "guarantor," in l. 12.⁹⁰ The possible guarantor was acting in the purchase of a plantation. One of the principals may be Jewish, if the restoration of the name Yehoseph is safe, though this is far from certain.⁹¹

The scribe employs conventional terms and formulae that are also found in other Nabataean papyri,⁹² perhaps suggesting some affinity with other contracts written in this era.

Unfortunately, the fragmentary state of this papyrus means that we can say little more on its contents and legalities. This is the last papyrus in the Babatha archive which dates to the regnal era; those that follow were written after the Roman conquest.

P. Yadin 31

Language: Greek.

Subscriptions: Remains of Jewish Aramaic and Greek attestations; remains of five Jewish Aramaic signatures.

Scribe: Unknown.

Date: c. 110 (?) (seems to be dated by provincial and consular year).

Document form: Double.

The text is so fragmentary that little can be said about the contents of this document.

⁹⁰ Yadin et al. (2002: 245).

⁹¹ The restoration in l. 12 may be either ערִב[יה] or ערִב[ב]: see comments in Yadin et al. (2002: 245).

⁹² See comments in Yadin et al. (2002: 246).

P. Yadin 5

Language: Greek.

Subscriptions: Remains of Greek and Jewish Aramaic signatures on the *verso*; these presumably corresponded to the 7 witnesses whom the scribe listed at the end of the document on the *recto*.

Scribe: Unknown.

Date: 13th Daisios, 110 C.E. (Macedonian day and month, consular year, provincial year).

Document form: Simple.

Aside from the fragmentary P. Yadin 31, whose date is in any case uncertain, P. Yadin 5 is the first document that we possess from the Roman era. It is a deposit contract. Joseph, son of Joseph, has on deposit to his nephew's credit the sum of one thousand, one hundred and twenty 'blacks' of silver.⁹³ The nephew is Jesus, son of Jesus, who would become Babatha's first husband, hence the presence of the document in this archive. Joseph seems to owe this money to his nephew because of the, presumably recent, death of his brother (Jesus's father); Joseph mentions in the papyrus quite extensive assets that belonged "to your father and me."⁹⁴ Lewis posits that the brothers were in business together and that, after his brother's death, Joseph totaled up his brother's share and acknowledged the 'debt' to his heir, Jesus, in the present document. Jesus' mother has apparently also been repaid the amount of her dowry.

The deposit was an extremely flexible form of contract, used in both Hellenistic and Roman times in Egypt for a variety of purposes.⁹⁵ The reference to a double penalty in the upper

⁹³ Lewis (1989: 36) discusses this currency, though see most recently Goldenberg (2007) on the nature of these 'blacks'.

⁹⁴ See P. Yadin 5, Frag. a, col. i, ll. 7-13: "that you have with me a thousand and a hundred twenty "blacks" of silver as a deposit of all the assets of silver, contracts of debt, investment in factory, value of figs, value of wine, value of dates, value of oil and of every manner [of thing] small and large, from everything which was found [to belong] to your father and me, between me and him" (ἐχ[ει]ν σε παρ' ἐμ[οῖ] ἀργυρίου μέλανας] χεῖλια καὶ [ἐ]κατὸν εἴκοσι παραθήκη[ν] πάντων ὑ[παρχόν-] των καὶ ἀ[ρ]γυρίου καὶ χ[ι]ρογράφων ὀφ[ι]λήματος κα[ὶ] δ[ι]απάνης ἐργαστηρίου καὶ τειμῆς [ὀ]λύθων κα[ὶ] τειμῆς οἴνου καὶ τειμῆς φοίνικος καὶ τε[ι]μῆς ἐλαίου καὶ ἐκ παντὸς τρόπου μικροῦ καὶ μεγάλου ἐκ πάντων[ν] ὧν εὐρέθη πατρὶ σ[ο]υ καὶ μοι μεταξύ μου καὶ α[ὐ]τοῦ). Such a range of assets does seem to fit the hypothesis of a business association rather well.

⁹⁵ Disguising dowry payments is one of the most frequently cited examples of the variety of uses for the deposit form. Cf. BGU I 114 *recto*, col. i, ll. 5-13: a Roman prefect in A.D. 117 stated in his judgement, "We

half of the document may perhaps be due to Roman influence: Lewis observes that, in the Egyptian papyri, such a penalty (presumably demanded if the deposit is not repaid upon request) is not attested before the Roman period.⁹⁶ He also, however, notes that there is a Biblical precedent of a double penalty for certain violations.⁹⁷

The Greek language of the document does not necessarily represent a choice on the part of the parties. It is possible that this was a translation, which might be confirmed by the restoration of [ἐ]ρμη[νε]ί[α], “translation” in l.1 of Frag. a, col. i.⁹⁸ As such, the original may have been written in either Jewish Aramaic or Nabataean Aramaic, though we might still, perhaps, see some significance in the fact that someone felt it worthwhile or necessary to secure a Greek copy.

P. Yadin 6

Language: Nabataean Aramaic.

Subscriptions: The remains of 3 or 4 signatures, possibly in Jewish Aramaic; there may also be traces of 1 or 2 more signatures (script indeterminate).

Scribe: Yoḥana son of Makkuta (identification based on handwriting).

Date: 119 C.E. (consular year, provincial year).

Document form: Simple.

In this document, Yoḥana son of Meshullam, from Engedi, agrees to act as tenant-manager for the lands in Galgala (in Maḥoz Eglatain) owned by Babatha’s second husband, Judah.⁹⁹

The scribe’s hand is the same as that of P. Yadin 9, the subscription of P. Yadin 22 and P. Yadin 8, which is written in Jewish Aramaic; it is on this basis that he is identified as

know that the deposits are dowries” (νοοῦμεν ὅτι αἱ παρακαταθήκαι προῖκές εἰσιν). Roman soldiers disguised their wives’ dowries in the form of deposits as they were not legally allowed to marry.

⁹⁶ Lewis (1989: 40); cf. Taubenschlag (1955: 349-350).

⁹⁷ Exodus 22: 4-9, cited in Lewis (1989: 40). The examples here, however, relate to theft, damage to property and disputed ownership so they may not provide the best comparison for failure to repay a loan on demand.

⁹⁸ Lewis (1989: 39). Lewis also points to the many Semitisms in the Greek as support for this.

⁹⁹ Maḥoz Eglatain (מחוז עגלתין) should be identified with Maoza (Μαωζα) and Maḥoza (מחוזא); see Cotton and Greenfield (1995).

Yohana, son of Makkuta.¹⁰⁰ The principals are both Jews yet it should be noted that the contract is written in Nabataean, rather than Jewish Aramaic.

It should be pointed out that this is the first Aramaic document we have that was written in the Roman era. The most obvious change is in dating conventions. This might simply have been changed out of necessity; the date is now rendered by reference to the consuls and the provincial year, rather than regnal year. Other than this, there are no obvious ‘Romanisms’ upon which to pick up.

P. Yadin 7¹⁰¹

Language: Jewish Aramaic.

Subscriptions: 7 Jewish Aramaic signatures.

Scribe: Uncertain; possibly an unknown son of Shimon.¹⁰²

Date: 24th Tammuz, 120 C.E. (consular year, imperial year, provincial year, Babylonian day and month).

Document form: Double.

This extremely well-preserved papyrus is a deed of gift in which Babatha’s father, Shimon son of Menaḥem, gives all his property in Maḥoza to his wife,¹⁰³ Miryam daughter of Yoseph.¹⁰⁴ While this is termed an “eternal gift,” Shimon retains all rights over the property until he dies and Miriam only gains possession upon his death.¹⁰⁵ Much of the document is concerned with detailing the property in question, including their irrigation periods,¹⁰⁶ and stipulating Miriam’s rights to the gift. The gift is given on condition that Miriam

¹⁰⁰ Whose name is found in P. Yadin 8, l. 10, P. Yadin 9, l. 13 and P. Yadin 22, l. 34.

¹⁰¹ Original publication: Yadin, Greenfield and Yardeni (1996); cf. Yardeni (2000a: 93-102), with an English translation in Yardeni (2000b: 45-49).

¹⁰² The remains of the last signature (l. 79), belonging to a son of Shimon, are in a similar hand to that of the rest of the document; it is on this basis that the scribe is tentatively identified. See comments in Yadin et al. (2002: 75).

¹⁰³ The terms Maḥoza and Maḥoz Eglatain both appear in this document. See n. 99 for comments on place names.

¹⁰⁴ As in P. Yadin 2 and 3, irrigation rights are conceived as part of the property. See comments on these documents for further details.

¹⁰⁵ Yaron (1992: 45), supported later by Rivlin (2005: 165) defines this as a ‘gift of one in good health’, Cotton (1996a: 410) as a ‘gift after death’. See Yaron (1960: 1) for a useful twofold division of these kind of documents, similar types of which are found in Talmudic, Egyptian and Roman law.

¹⁰⁶ See p. 37 for comments on the inclusion of irrigation periods.

remain his wife and continues to attend to his needs until his death.¹⁰⁷ Shimon also specifies that Babatha, their daughter, should have the right to reside in the *horreum*, which is part of the property gifted, if she is widowed and has no husband. This right is withdrawn in the event that she remarries.¹⁰⁸

The editors of the 2002 publication note that the composition, format, scribal tradition, appearance and language of this document resemble the other Nabataean papyri found at Naḥal Ḥever,¹⁰⁹ and indeed these are referred to extensively in their commentary on the document. The scribe also frequently uses Arabic terms. The document therefore seems quite firmly situated in its Nabataean locale.

Cotton and Greenfield suggested that the reason for drawing up this deed of gift might have been Babatha's recent marriage to her first husband, Jesus. They speculate that at the time Shimon also drew up a (now lost) deed of gift that granted Babatha the orchards she later declares in the census.¹¹⁰ Shimon then went about providing for his wife in the event of his death; hence the present document.¹¹¹ This implies that she would not have been provided for had he not drawn up this contract. In other words, the law of succession did not automatically allow a wife to inherit her husband's estate.¹¹² This did not, in fact, contradict Jewish law, though other features of the apparently operative inheritance law have been thought to do just that.¹¹³

¹⁰⁷ P. Yadin 7, ll. 28-29 / 62-63.

¹⁰⁸ The clause guaranteeing Babatha a widow's residence has a specific parallel in *t. Ketub.* 11:7, although, unlike this document, the Toseftan passage contains no prohibitions against the daughter bringing in a second husband.

¹⁰⁹ Yadin et al. (2002: 73).

¹¹⁰ In P. Yadin 16; cf. Cotton and Greenfield (1994: 217-218).

¹¹¹ Cotton and Greenfield (1994: 218).

¹¹² See Cotton and Greenfield (1994: 220).

¹¹³ In particular, the law of succession in these documents, "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

P. Yadin 8

Language: Jewish Aramaic.

Subscriptions: 5 Jewish Aramaic signatures (including that of the scribe), 1 Greek signature.

Scribe: Yohana son of Makkuta (identification based on handwriting).

Date: 3rd Tammuz, 122 C.E. (consular year, imperial year, provincial year, Babylonian day and month).

Document form: Simple.

This is a contract concerning a sale or purchase of two animals, a donkey and another female animal. The transaction takes place between two brothers: Yehoseph son of Shimon, and another son of Shimon whose name has unfortunately been lost.

There are gaps at crucial points in the papyrus which has led to some debate over its exact nature. Its contents, in brief, are as follows: Yehoseph confirms receipt, though whether this is of money or the animals is not entirely clear, and that nothing else is owed on the transaction. There is what looks like the remains of a defension clause in 1.7 (the line is fragmentary); these clauses were generally undertaken by the seller, guaranteeing to clear the purchases from any future claims. The contract also includes a penalty clause, in which Yehoseph undertakes to pay a penalty should he rescind on his obligations, though we are not sure of the sum to which this penalty would amount.¹¹⁴

Although the papyrus is clearly written from Yehoseph's perspective,¹¹⁵ there has been some controversy over his exact role in the transaction. The editors of the 2002 publication believed that he was the purchaser and thus in this contract bought the animals in question from his brother.¹¹⁶ This interpretation has been challenged by Hillel Newman, who argues that Yehoseph is in fact the seller. This is primarily based upon the existence of the

children, whatever their sex, to those of the man's brother or his brother's children" (Cotton and Greenfield (1994: 220)). This will be covered in more detail in the entry on P. Yadin 19 (pp. 67-69).

¹¹⁴ It appears that Yehoseph would have to pay the full value of the animals plus an extra sum (ll. 8-9).

¹¹⁵ The contract starts out by being written in the third person (ll. 1-4) before shifting to the first person (ll. 5-9).

¹¹⁶ Yadin et al. (2002: 109); hence their labelling of this papyrus as a 'Purchase Contract'.

defension clause at 1.7: these are paralleled by similar or identical clauses in other documents from the Judaean desert, though all these are sales contracts, written from the perspective of the seller.¹¹⁷ Newman's re-reading is a convincing one that makes rather good sense of this fragmentary document. It may therefore be preferable to view Yehoseph as the seller.

A couple of further points on the papyrus should be noted. First, the sales tax mentioned in 1.9, which previously had been payable to the Nabataean king, was now payable to Caesar.¹¹⁸ This appears to be a very simple, direct substitution: Caesar has taken Rabbel II's place.¹¹⁹ The simple form of the document is also notable since, as Yadin et al. observe, "most sales of real property were recorded in double documents."¹²⁰ Like P. Yadin 7, this document is also formulaically similar to Nabataean Aramaic documents; indeed, while the scribe, who is identified on the basis of his handwriting,¹²¹ here writes in Jewish Aramaic, the other documents he is known to have penned are written in Nabataean Aramaic.¹²² This might help explain the affinity to the Nabataean documents.¹²³

¹¹⁷ See Newman (2006: 332-333), which includes references to the comparable documents (e.g. P. Yadin 2, ll. 10-11 / 32-33; P. Yadin 3, ll. 11-12 / 35-36). Newman (2006: 332) notes that in the Greek contracts P. Yadin 21 and 22, the 'purchase' and 'sale' of a date crop respectively (on the disputed nature of these documents, see their respective entries on pp. 71-74), such a phrase is only found in the latter document, written from the perspective of the vendor (cf. P. Yadin 22, ll. 20-25). Despite the language variance, this pair of contracts and the lack of a defension clause in that of the 'purchaser' does provide food for thought on P. Yadin 8.

¹¹⁸ It should be noted that Newman (2004: 247-251) has argued that this is in still part of the penalty clause. Thus, payment would only be made to the emperor in the event that Yehoseph fails to honour the terms of the contract.

¹¹⁹ The payment under the Nabataean kingdom is evidenced in P. Yadin 2, l.15 / 40 and P. Yadin 3, l. 18 / 45-46.

¹²⁰ Yadin et al. (2002: 109).

¹²¹ See Yadin et al. (2002: 110; 117).

¹²² P. Yadin 6 and 9. He also subscribed P. Yadin 22 in Nabataean Aramaic.

¹²³ For more details on this, see the commentary in Yadin et al. (2002: 109; 115-117).

P. Yadin 9

Language: Nabataean Aramaic.

Subscriptions: 2 Jewish Aramaic signatures, 2 Nabataean Aramaic signatures (including the scribe). Possible remains of another Jewish Aramaic signature.

Scribe: Yoḥana son of Makkuta (identification based on handwriting).

Date: 122 C.E. (consular year, provincial year).

Document form: Simple.

The fragmentary state of this document makes it somewhat difficult to comment on its exact nature. Yadin et al. suggest it may be a waiver of claims, since it “is not formulated in the usual manner of sale contracts,”¹²⁴ despite explicit reference to a sale.¹²⁵ The suggestion is based upon l. 6, where it is stated that “nothing whatever ... *remains* of mine with you.”¹²⁶

As for P. Yadin 8, Newman has suggested a different reading of this document based on a comparison with the former contract.¹²⁷ He argues that this is, in fact, a sales contract written from the perspective of the vendor, though not for a parcel of land, as Yadin et al. suggested.¹²⁸ In his interpretation, l. 6 is part of the defension clause.¹²⁹ This is a perfectly plausible reading but we cannot escape the fact that the papyrus is so fragmentary that a degree of uncertainty about the contents and nature of the document is somewhat inevitable.

As in P. Yadin 8, payment to Caesar is stipulated in l. 9. This appears to confirm the hypothesis that the emperor had simply been substituted into this pre-existing formula.¹³⁰

¹²⁴ Yadin et al. (2002: 268).

¹²⁵ P. Yadin 9, l. 8: “and all the costs of these purchases” (וכל דמי זבניא אלה).

¹²⁶ P. Yadin 9, l. 6: ולא עדא/ערא לי עמך מנדעם. The meaning of עדא/ערא is somewhat unclear, hence the italics (which are not mine: see Yadin et al. (2002: 273)); cf. Yadin et al. (2002: 275-276) for possible solutions.

¹²⁷ Newman (2006: 334-335).

¹²⁸ Yadin et al. (2002: 268).

¹²⁹ See the entry on P. Yadin 8 for further discussion (pp. 43-44).

¹³⁰ For p. 44 for further comments on this substitution in P. Yadin 8.

P. Yadin 10¹³¹

Language: Jewish Aramaic.

Signatures: 5 Jewish Aramaic signatures are partially preserved (including that of the scribe and groom). There are traces of one further signature, also in Jewish Aramaic.

Scribe: Judah, son of Eleazar Kthousion.

Date: 3rd Adar, year unknown (Babylonian day and month, consular year (names missing)).

Document form: Double. Inner text is missing.

This is Babatha's marriage contract to Judah son of Eleazar Kthousion, her second husband.¹³² The date is unfortunately uncertain. It has been suggested that it was written prior to 125 C.E., since Judah acts as Babatha's guardian in documents written that year.¹³³ There does not, however, seem any reason to assume that they had to have already married by this point, and indeed Judah is not styled as Babatha's husband in the relevant documents – the first time he appears as such is in P. Yadin 17, written on 21st February 128 C.E. The date must, therefore, remain open to review. What is confirmed, however, is that this Jewish Aramaic contract was written firmly within the Roman period. Of further note is the fact that Judah himself was the scribe of this document: this is the only papyrus within the two archives where we can confirm that one of the parties was the writer.¹³⁴ The decision not to hire a professional scribe to write this contract will be discussed in more detail in the Chapter Two.¹³⁵

This is labelled by Yadin et al. as “one of the earliest Jewish marriage contracts known to us.”¹³⁶ Indeed, its Jewish character has gone undisputed, something of a rarity with regard

¹³¹ Initial publication: Yadin, Greenfield and Yardeni (1994). Yadin also gave details and discussion of the text in Yadin (1962: 244-45) and (1971: 237-39).

¹³² Yadin, Greenfield and Yardeni (1994: 77) thought that the amount of Babatha's dowry, 100 selas, confirmed that this was her second marriage, since it was believed to correspond to the rabbinic amount set for widows and divorcees (cf. Yadin et al. (2002: 119)). Friedman (1996: 56-61) and Safrai (1996) have both demonstrated that this argument is in error but it is not disputed that this was indeed Babatha's second marriage.

¹³³ P. Yadin 14, ll. 22-23 and P. Yadin 15, ll. 31-32. Lewis (1989: 58) stated that this was a duty “normally performed by a woman's husband.”

¹³⁴ There does not seem to have been any requirement for the groom to write the *ketubba* personally: see Friedman (1996: 60).

¹³⁵ See pp. 104-109.

¹³⁶ Yadin et al. (2002: 119).

to these documents, to the extent that it is usually labelled as a *ketubba*.¹³⁷ This is due in no small part to the contract's close correspondence with the guidelines for *ketubbot* as laid out in the Mishnah, redacted c. 200 C.E.¹³⁸

There were six mandatory *ketubba* clauses laid out in *m. Ketub. 4: 7-12*. Some of these are evident in our document and some have been restored within it, though they appear in a different order from those in the Mishnah. The following are found within the papyrus in its current state: specification of the *ketubba* (the amount that was due to the wife on termination of the marriage by death or divorce) (ll. 6-10.); the promise to redeem a wife in the event that she is taken captive (ll. 10-11); a clause allowing female children to live with and be provided for by the husband (so, here, Judah) until their marriage (l. 14); the clause guaranteeing that, in the event of her husband's death, the widow may reside in her late husband's house and that his estate will provide for her maintenance (ll. 15-16). The two remaining clauses have been restored in the papyrus: the promise that male children will inherit the *ketubba* money should the wife predecease the husband (restored at ll. 12-13); and finally, the pledge of all his property by the husband as surety for the *ketubba* (restored at ll. 17-18). Even without the restorations, the correspondence is striking.¹³⁹

¹³⁷ It is worth noting that the term *ketubba* is typically used with two meanings: first, it refers to the marriage contract itself; secondly, to the money payable by the husband to the wife upon dissolution of the marriage (see Satlow (1993: 133) and *passim* on the nature of the *ketubba* more generally). On elements that are often found in *ketubbot* contracts, see the list in Yadin, Greenfield and Yardeni (1994: 84): “1) the date and place of its writing; 2) the names of the groom and the bride as part of the groom's declaration; 3) the marriage proposal; 4) the promise to give the bride her due; 5) the mandatory *ketubba* clauses or ‘court stipulations’; 6) the statement that the document will be replaced; and 7) a statement by the groom that he accepts all the above provisions.”

¹³⁸ The contract also contains the term *ketubba* at l. 5, to which Yadin et al. (2002: 119) point as further evidence of its nature, though a promise to feed and clothe Babatha “pursuant to your *ketubba*” (ובכלהבתיך) does not seem to constitute a statement that the papyrus itself is one such document.

¹³⁹ As further evidence that these forms were in use in Palestine in this pre-Mishnaic period, Yadin et al. (2002: 137), in direct citation of Yadin, Greenfield and Yardeni (1994) on which much of their new commentary is based, point to P. Murabba'at 20 (117 C.E. (?)) and P. Murabba'at 21 (undated), “two fragmentary *ketubbot* from Murabba'at ... which preserve slight remnants of these clauses,” as well as to two Greek marriage contracts from the same site: P. Murabba'at 115 (124 C.E.) and P. Murabba'at 116 (second century C.E. (?)).

Added to all this is the fact that Judah explicitly takes Babatha as a wife, “according to the law of Moses and the Judaeans,”¹⁴⁰ a statement that should perhaps be contrasted to the explicit references to ἐλληνικὸς νόμος in P. Yadin 18 and X Hēv 65, two other marriage contracts from these archives, written in Greek.¹⁴¹ There do seem, then, to be definite choices taken here concerning a marriage contract from a variety of available options.

The dowry should perhaps be mentioned as raising a couple of interesting points. This is set out in Tyrian tetradrachms, which was compared in the initial publication with the stipulation in *y. Ketub.* 1:2 that in Palestine the *ketubba* must be paid in the currency of the sanctuary.¹⁴² An equivalency clause is given here, equating the amount to 400 denarii. While this sum was previously thought to correspond to that set by rabbinic authorities for widows and divorcees, this has since been disproved; Babatha's dowry is in fact more than four times the minimum amount.¹⁴³ This once again emphasises that we are dealing with an extremely wealthy family, with large amounts of money and property involved in their transactions.

P. Yadin 11

Language: Greek.

Subscriptions: Greek translation of Judah's attestation; 7 Greek signatures.

Scribe: Justinus.

Date: 6th May, 124 C.E. (consular year, Roman day and month).

Document form: Double.

This is a copy of a contract for a loan of 60 denarii taken out by Judah, Babatha's second husband,¹⁴⁴ from Magonius Valens, centurion of *cohors I miliaria Thracum*. As security,

¹⁴⁰ P. Yadin 10, l. 5: כד[י]ן מושה ויה[ו]א דאי. See Yadin et al. (2002: 132-133) for comments on this phrase.

¹⁴¹ P. Yadin 18, l. 16 / 51; X Hēv 65, ll. 9-10. See the respective entries on each of these documents for further discussion (pp. 62-66, 90-93).

¹⁴² Yadin, Greenfield and Yardeni (1994: 90, n. 44).

¹⁴³ See n. 132 for further details and bibliography.

¹⁴⁴ It is unclear whether the couple were married at this point.

Judah hypothecates a courtyard in Engedi, which is uniquely described in this document as a “village of lord Caesar.”¹⁴⁵ The courtyard belonged to his father but was entrusted to his care;¹⁴⁶ indeed, he confirms explicitly that he has from his father permission to hypothecate and to lease out the property.¹⁴⁷ That this is a copy is evident from the fact that Judah’s acknowledgement is given in Greek and marked as a translation. Magonius Valens may have kept the original.

In the terminal clause, the contract is termed a lease (μίσθωσις) though this may perhaps be explained as a standard scribal phrase;¹⁴⁸ there seems little doubt that the document is a loan. Semitic custom may be detected in the description of the abutters to the courtyard, where, as per tradition, the east is placed first.

Of particular note in this document is the amount that Judah borrowed. This was initially written as 40 denarii; it was then crossed out and the sum of 60 denarii inserted above. Lewis thought that this was a “usurious squeeze” on Judah: so, in addition to the interest rate specified within the papyrus, Magonius Valens was thought to have added an extra 20 denarii to the sum to be repaid from the start of the arrangement.¹⁴⁹ This is possible, though, as Lewis himself observes, would mean that Judah was in dire need of money to accept

¹⁴⁵ P. Yadin 11, l. 1 / 13: κώμη κυρίου Καίσαρος.

¹⁴⁶ While Lewis (1989: 42; 83; 89) believed that this same courtyard was referred to in both P. Yadin 19 and 20, Cotton (1996b) has demonstrated that the courtyard in P. Yadin 20 is different from that referred to in this document and P. Yadin 19.

¹⁴⁷ See P. Yadin 11, l. 4 / 16-17: [the courtyard] “whereof I have from the said Elazar trusteeship to hypothecate and to lease out” (ἧς ἔχω ἐπιτροπήν ὑποτιθέναι κα[ὶ] ἐγ[μ]ισθο[ῖν] πα[ρὰ] τοῦ αὐτοῦ Ἐλαζά[ρο]υ).

¹⁴⁸ Lewis (1989: 41-42) points out that earlier in the document (1) Judah is claimed to have had his father’s permission to “hypothecate and lease” the property and (2) immediately before the document is termed a lease, the scribe wrote “the standard right-of-execution clause which he had doubtless written many times before in both leases and loans”. The term can therefore be attributed to scribal influence.

¹⁴⁹ Lewis (1989: 41).

these terms;¹⁵⁰ a not entirely implausible state of affairs considering that he later seems to have borrowed money from his wife, Babatha, in P. Yadin 17. Nevertheless, we should perhaps be cautious here. It is also possible that Judah simply changed his mind while the contract was being drawn up and requested a larger loan, which the centurion provided.

This document represents the first direct interaction we see of the locals with their Roman rulers. Notwithstanding the possible usury, it appears that there were at least reasonable relations between locals and the army in this initial period, even if this was motivated by economic factors.

P. Yadin 12

Language: Greek.

Subscriptions: 4 Nabataean Aramaic signatures, 1 Greek signature.

Scribe: Unknown.

Date: Between 27th February and 28th June, 124 C.E. (Roman day and month, consular year).¹⁵¹

Document form: Double. Inner version is shorter than the outer.

This document is the first in a series which refer to Babatha's disputes with the guardians of her orphaned son, Jesus.¹⁵² It is a copy of part of the minutes from the council meeting in Petra at which two guardians were appointed for Jesus: Abdoöbdas son of Ellouthas, and John, son of Eglas. Jesus is described as a Ἰουδαῖος in this document – this is the only case in which any of the people in the documents are specifically designated Jews.

¹⁵⁰ Lewis (1989: 41). See also Satlow (2005: 59) who observes that Judah seems to be “perpetually strapped for cash.”

¹⁵¹ The month is lost but possible restorations are limited, giving us this range of dates: see Lewis (1989: 50) for comments.

¹⁵² For a detailed assessment of the interaction between Roman and provincial laws in this series of documents, see Chuisi (2005); also Cotton (1993a).

We learn from the document that the original minutes were displayed in the temple of Aphrodite at Petra. Thus, these records were obviously made publically available and people were able to commission copies, as Babatha appears to have done.

The appointment of two guardians has often been attributed to local custom, since “Greek and Roman practice was normally content with a single guardian,”¹⁵³ though Tiziana Chiusi has pointed out that the number was not legally fixed in Rome.¹⁵⁴ These positions are not, perhaps, incompatible: appointing two guardians, while not strictly in line with Roman convention, did not contradict Roman law. Cotton has noted that the appointment recalls the Roman institution of *tutoris datio* by a magistrate,¹⁵⁵ though it is not clear why the βουλή, instead of the municipal magistrates, should appoint the guardians or whether this action was a result of local or Roman administrative procedures.¹⁵⁶ Indeed, our scant knowledge of the administrative organisation of Petra at this time somewhat hinders further comments on the manner in which this appointment was made.

This is the only time we find an action of the βουλή within these two archives. No complaints appear to be taken to this body; Babatha, in her disputes with the guardians whom it appointed, instead seems to go straight to the Roman governor.

¹⁵³ Lewis (1989: 48).

¹⁵⁴ Chiusi (2005: 107).

¹⁵⁵ Cotton (1993a: 95). She further comments on the application of Roman legal forms in the document and the fact that Babatha does not seem to have been aware of any of the Jewish practices regarding guardianship and an orphan’s mother (Cotton (1993a: 100)).

¹⁵⁶ See Lewis (1978: 110) for a brief discussion of this appointment, who suggests that the practice may not, in fact, be quite so unusual despite the lack of attestation (cf. Ulpian, *Edict*, Book 36 (*Digest* XXVII. 8.1.pr.)); cf. Chiusi (2005: 107-108). See also Isaac (1992: 64) on why this was decided at Petra rather than the closer town, Rabbath-Moab.

P. Yadin 28-30¹⁵⁷

Language: Greek.

Scribe: Unknown.

Date: Unknown.

Document form: Three single documents.

P. Yadin 28-30 are three near-identical copies of a Roman formula. This was an *actio tutelae*, written in Greek, though presumably copied at some point from a Latin original.¹⁵⁸

They are often compared with the example formula on deposit given in Gaius, *Institutes* IV. 47. The papyri are undated and while Lewis' suggestion that they were prepared for Babatha at the time of her dispute with Jesus' guardians is plausible,¹⁵⁹ it remains rather unclear exactly how they fitted into this framework.¹⁶⁰ Indeed, from a perspective of codified Roman law, Babatha probably would not have had the right of recourse to an *actio tutelae*.

A couple of oddities in these papyri need to be emphasised: first is the fact that three copies were found in Babatha's purse. This seems to indicate that they were not used – otherwise why would all copies have remained among her paperwork for the excavators to find? Secondly, while P. Yadin 28 and 29 were drawn up by the same person, Lewis observes that P. Yadin 30 is written in a different hand.¹⁶¹ Babatha therefore appears to have commissioned one person to write two copies, then another to write a further. Finally, how Babatha procured this formula is a source of particular interest since it may attest to the presence of legal advisors in the province and, at the very least, indicates the availability

¹⁵⁷ Initial publication: Polotsky (1967).

¹⁵⁸ This may have been from the provincial edict or from a Greek handbook of formulas: for the former view see Seidl (1968: 348); Nörr (1995a: 89) (cf. Nörr (1998: 322)) and (1999: 269-270)); for the latter, see Biscardi (1972: 140-151).

¹⁵⁹ Lewis (1989: 118).

¹⁶⁰ This will be discussed in detail in the Chapter Three (pp. 139-155).

¹⁶¹ Lewis (1989: 118).

and the use of Roman legal forms. All these issues will be discussed in detail in the Chapter Three.¹⁶²

P. Yadin 13

Language: Greek.

Scribe: Theënas, son of Simon (identification based on handwriting).

Date: Second half of 124 C.E.

Document form: Simple.

This is a copy of a petition Babatha submitted to the Roman governor, Julius Julianus, in which she complains about the actions of the guardians appointed in P. Yadin 12.

The text is fragmentary, but we learn that Babatha believed Abdoöbdas and John were paying her an insufficient amount for her son's care. Joseph, probably her late-husband's brother,¹⁶³ is also mentioned in l. 8, though we are unsure in what connection. Babatha appears to ask the governor to take steps to remedy the situation, though we are unsure exactly what she requested. Chiusi suggests that she wanted the governor to fix an acceptable sum for maintenance.¹⁶⁴

Babatha therefore appears here to be attempting to utilize the authority of the Roman governor's court against the guardians appointed by the Petra βουλή. There is consequently a shift in authority. Whether she could have chosen to go to the βουλή on this matter is unknown.

¹⁶² See pp. 139-155.

¹⁶³ Lewis (1989: 53).

¹⁶⁴ Chiusi (2005: 111-112).

P. Yadin 33

Language: Greek.

Scribe: Unknown.

Date: Unknown.

Document form: Double. Only the top is preserved.

The document is extremely fragmentary and only the top is preserved. It refers to a copy of a petition, which was to be displayed. The petition would have been appended below this initial text, but is unfortunately now lost.

The petition is displayed amongst others, “ἐν ταῖς ἰαθυμείσι” – an extremely odd word.

Lewis posits a connection with the Aramaic word for orphan: אמת (yathma), which does seem to fit rather nicely.¹⁶⁵ Based upon this mention of orphans, he then tentatively assigns this a possible date of 124-125 C.E.¹⁶⁶ and supposes a connection with the complaints of Babatha against the guardians of her orphaned son. It should, however, be noted that this could just as well have come later than 125 C.E. if Babatha decided to mount a second stage of litigation at a later date.¹⁶⁷ A mention of orphans could also refer to her subsequent litigation against the orphans of Judah’s brother, Jesus. This would mean dating this papyrus later, in 130-131 C.E.

¹⁶⁵ Lewis (1989: 126).

¹⁶⁶ Lewis (1989: 126).

¹⁶⁷ This possibility will be discussed in the Chapter Three (see p. 150).

P. Yadin 14

Language: Greek.

Subscriptions: 1 Nabataean Aramaic, 2 Jewish Aramaic and 1 Greek signature. A fifth survives but is so fragmentary that the language cannot be determined.

Scribe: Theēnas, son of Simon (identification based on handwriting).

Date: 11th October or 24th Hyperberetaios (=12th October), 125 C.E. (imperial year, consular year, Roman day and month, provincial year, Macedonian day and month).¹⁶⁸

Document form: Double.

In this document, Babatha summons John, son of Joseph Eglas,¹⁶⁹ to appear at the governor's court in Petra. Jesus' other guardian is not included in the summons. Together with the other summonses in the archive,¹⁷⁰ the papyrus provides evidence of the παραγγελία procedure in Roman Arabia.

The substance of the complaint is a little clearer here than in the previous papyrus, although unfortunately the text is still fragmentary at the crucial point. Babatha summons John, "On account of your not having given ... to my son, the said orphan ... just as Abdoöbdas son of Ellouthas, your colleague, has given by receipt."¹⁷¹ It is significant that just one guardian is summoned in this document, since Babatha deposes both in P. Yadin 15. This may mean that she only had a dispute with John, while Abdoöbdas was paying her a satisfactory amount. From this document alone, we might indeed conclude that John had failed to pay anything while Abdoöbdas had given her the agreed sum, though the information in P. Yadin 15, which is better preserved, seems to contradict this.

¹⁶⁸ The dating uncertainty is rooted in a discrepancy between the Roman and Macedonian dates: the former (four days before the ides) would be 12th October, the latter (24th Hyperberetaios) would be 11th October. See Lewis (1989: 57) for further comments.

¹⁶⁹ In this document, he is referred to as John, son of Joseph, son of Eglas (ll. 6-7 / 23: Ἰωάνη Ἰωσήπου τοῦ Ἐγλα); this is also used in P. Yadin 15, ll. 3-4 / 18. Elsewhere, however, the name John, son of Joseph Eglas, or just John, son of Eglas, is employed: see P. Yadin 12, l. 8; P. Yadin 15, l. 33 and l. 37 (in Nabataean Aramaic); P. Yadin 27, l. 6.

¹⁷⁰ P. Yadin 23, 25 and 26.

¹⁷¹ P. Yadin 14, ll. 26-29: διὰ τό σε μὴ δε[δωκέναί τῳ] ὑ[ἰῶ μου ± 10 τῳ] αὐτῳ ὀρφανῶ ἐξ ὄ[...].[...].εστ. [...].καθάπερ δέδωκεν Ἀβδοῦβδας Ἐλλο[υ]θα ὁ κολλή[γας σου] δι' ἀποχῆς.

This is the first document in which Babatha has an ἐπίτροπος, a term which is used in the Judaean desert documents for guardians of both women and minors. The function here is performed by Judah, her second husband, though it is unclear whether the two were married by this point.¹⁷² The term used contrasts with the Egyptian papyri, in which an ἐπίτροπος was the guardian of a minor, while the κύριος would be a woman's guardian. This use of a single term is typically attributed to Roman influence, where guardians of women and children were both designated *tutores*.¹⁷³ This is a plausible enough suggestion, especially since women do not have guardians in any of the Nabataean or Jewish Aramaic papyri – it seems to be a feature adopted when the principals wished to make their documents easier to use in a Roman legal forum or, as is the case here, when the document is explicitly intended for the eyes of the Roman governor.

On a final note, there is a slight variance between the inner and outer text, in which Cotton and Eck have found significance.¹⁷⁴ In the outer text, Julius Julianus is referred to as ἡγεμών (l. 30), the standard designation of a governor. The corresponding line of the inner text has a lacuna after the name of Julius Julianus (l. 11), but the name Julianus reappears two lines later, along with the start of what seems to be the title ἑπαρχος (l. 13).¹⁷⁵ The usual translation of this is “prefect,” rather than “governor”. This would be an inappropriate designation to apply to a senatorial governor such as that of Roman Arabia. Cotton and Eck take this to mean that two different Julianuses are being referred to here: the one, the

¹⁷² He also acts as her guardian in P. Yadin 15, ll. 31-32 and P. Yadin 16, ll. 15-16, 35-36.

¹⁷³ In the Aramaic subscriptions, a distinction between the two terms is retained. Cotton (1997c: 269) suggests, working from Wolff (1980: 796-797), that local scribes writing in Greek, “copied from the proclamations of the Roman authorities,” who, “thinking in Latin, even if writing in Greek, may well have used the term ἐπίτροπος for the two kinds of *tutor*.”

¹⁷⁴ Cotton and Eck (2005: 42-44).

¹⁷⁵ The text runs: ἐπὶ Ἰουλιαν[ο]ῦ ἑπά[ρχου], which Lewis (1989: 56) translates as “before Julianus, governor.”

governor; the other, a *iudex datus*, i.e. a judge to whom the governor had given delegated jurisdiction – here, in view of the title, they suggest “a prefect of an auxiliary unit stationed in the province.”¹⁷⁶ While, as the authors point out, Julianus is a common name, I am unsure whether this can really be put down to any more than a scribal slip. It is worth mentioning, however, since apart from this possibility we have no evidence in the archives of any Roman official other than the governor administering justice in the province.

P. Yadin 15¹⁷⁷

Language: Greek.

Subscriptions: The parties’ attestations in Greek, Jewish Aramaic and Nabataean Aramaic; 7 signatures – 2 are lost, 1 Greek, 4 Nabataean Aramaic.

Scribe: Theēnas, son of Simon, λιβλάριος.

Date: 11th October or 24th Hyperberetaios (=12th October), 125 C.E. (imperial year, consular year, Roman day and month, provincial year, Macedonian day and month).¹⁷⁸

Document form: Double.

This document is written on the same day and in the same hand as P. Yadin 14. It has been identified as a Greek equivalent to a Roman *testatio*, a statement made in front of seven witnesses, who then sign the document. P. Yadin 15 has the requisite number of witnesses.¹⁷⁹

Since this papyrus is better preserved than P. Yadin 13 and 14, we are now able to learn more definite details of Babatha’s complaint. Babatha here deposes both of Jesus’ guardians: John, son of Eglas, and Abdoöbdas son of Ellouthas. She claims that they have not paid sufficient maintenance, proportionate to the income from his money and property and “commensurate in particular with a style of living which befits (?) him.”¹⁸⁰ She then

¹⁷⁶ Cotton and Eck (2005: 43).

¹⁷⁷ Initial publication: Polotsky (1967).

¹⁷⁸ See n. 168 for comments on the dating discrepancy in P. Yadin 14; the same apply to this document.

¹⁷⁹ Cotton (2003: 55).

¹⁸⁰ P. Yadin 15, ll. 6-7 / 22: καὶ μάλιστα πρὸς ὀμειλίαν ἢν εἰκου[σα] [... αὐ]τῷ.

refers to a previous deposition against them, in which she offered to mortgage her own property if they entrusted her son's assets to her. The rationale for this offer is her claim that she would be able to increase the level of interest from the half a denarius per hundred per month that they have contributed to one and a half denarii per hundred per month. She then refers to the fact she has summoned John (in P. Yadin 14), "for his refusal of the disbursement of the [appropriate] maintenance money."¹⁸¹

In a discussion of the solution that is proposed by Babatha, Chiusi notes that, "a mother's offer to encumber her own property with a mortgage in order to get the administration of the ward's property is, as far as I know, only found in Roman sources."¹⁸² The sources Chiusi discusses are at least a century later than this document, and so, as she herself emphasises, this does not amount to proof of 'Romanness' – it is not certain that Babatha here sought refuge in a specifically Roman solution to her problem. The compromise she proposes may be one familiar to her from similar local situations and which eventually came to be used in Roman law. Alternatively, it may indeed have been recommended by a Roman legal advisor, perhaps the same person who copied out P. Yadin 28-30.

We also learn from this document that Babatha was illiterate. This is explicitly stated in her subscription, which was written for her by Eleazar, son of Eleazar. The phrase used is that Babatha, "did not know letters" – this is a familiar expression from Egyptian papyri.¹⁸³

¹⁸¹ P. Yadin 15, l. 11 / 28: *περὶ τῆς ἀπειθαρχείας ἀποδόσεως τῶν τροφίω.* Lewis adds "[appropriate]" to his translation in light of the previous statements in the papyri but when taken in conjunction with the complaints in P. Yadin 14 we might pause to wonder whether John had indeed been paying any money at all.

¹⁸² Chiusi (2005: 128-129).

¹⁸³ P. Yadin 15, l. 35: *διὰ τὸ ἀγῆρας μὴ εἰδέναι γράμματα.* The translation is literal and my own; Lewis (1989: 61) renders the phrase, "because of her being illiterate." Illiteracy in the archives will be discussed in more detail in Chapter Two (pp. 100-104). See Greenfield (1993) for a discussion of this phrase in this papyrus, and directions to further bibliography.

This contrasts with the fact that she appears to sign P. Yadin 10, על נפשי, “on her own behalf,”¹⁸⁴ and no one is described as having written for her. It seems unlikely that Babatha was just illiterate in Greek, since there was no reason she could not write her attestation in whatever language she was most comfortable – many of the Greek documents from the archive have Aramaic subscriptions. The best solution to this contradiction may be in an appeal to levels of literacy; while she could sign her name in Jewish Aramaic, she could write little else, including a more extended subscription.¹⁸⁵

P. Yadin 16

Language: Greek.

Subscriptions: Babatha’s attestation and the prefect’s notation are preserved in Greek translation; 5 Nabataean Aramaic signatures.¹⁸⁶

Scribe: Unknown.

Date: 2nd and 4th December, 127 C.E. (imperial year, consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Double. The inner text is considerably shorter than the outer.

The document is a copy of a census declaration filed in the city of Rabbath-Moab.¹⁸⁷ Babatha registers her ownership of four date palm groves in Maoza. Traditional measures are used to describe the tax paid on the land, which is both in kind and money. One of the abutters of one property is listed as the estate of Caesar, evidencing the presence of imperial lands in the area. Judah once again acts as Babatha’s guardian and writes for her, as is revealed in the subscription.

Babatha obviously had to travel to Rabbath-Moab to make this declaration. This was then submitted to the cavalry prefect, Priscus, whose subscription is attached and dated two

¹⁸⁴ P. Yadin 10, l. 22.

¹⁸⁵ See the comments in n. 354.

¹⁸⁶ Babatha’s name also appears on the right hand side of the *verso*, separate from the other signatures.

¹⁸⁷ This was probably an official copy: “The handwriting and syntax of the document show a corresponding superiority to the work of the village scribes of Maoza who prepared the other Greek documents of the Babatha archive” (Lewis (1989: 68)).

days later than Babatha's original declaration. The document was then displayed in the basilica of Rabbath-Moab and Babatha commissioned this copy of it. This may have been necessary to protect her against excessive taxation demands.¹⁸⁸ When the copy was made, only the translations of both Babatha's and the prefect's subscriptions were copied out, the latter in a different hand from the rest of the document.¹⁸⁹ This might, perhaps, have been due to the fact that the attestation was written in Latin and a different person was needed in order to translate it.

Of note is the fact that the Jewish Babatha swears by the τύχη of Caesar – this was presumably a standard Roman formula but one which she seemingly did not feel under any compulsion to omit.¹⁹⁰ Similar oaths are found in the census returns from the fourteen-year cycle in Egypt.¹⁹¹

This document, along with the other land declarations from these two archives, constitute valuable evidence for how provincials in this area declared property to the Roman authorities. This, significantly, included agricultural land; in Egypt, from where we have a considerable amount of evidence, such land was not declared in the census. The papyri may therefore be valuable more generally for issues of provincial administration.¹⁹²

¹⁸⁸ See Isaac (1994: 265) "The certified copies held by the declarants, such as Babatha, were valid documents, showing the taxes assessed by the provincial authorities. They bound both the owner of the property and those who levied the taxes. It is thus quite possible that they served to protect the owners against excessive or random demands from the city authorities, who were in a position to impose their own estimation if they were not shown a valid and up-to-date copy of a declaration."

¹⁸⁹ Lewis (1989: 65).

¹⁹⁰ The same oath is found in X Hev 61, l. 2, another land declaration, from Salome Komaise's archive: see Cotton (1991: 266-267) and Cotton and Yardeni (1997: 178-179) on the oath formula. We find another Jew swearing an oath by the emperor's person (not his *genius*) in CPJ II 427 (= BGU IV 1068): here, Soteles son of Josepos, a Jew, affixed an oath by the emperor to the notification of his son's death (101 C.E.). More generally on Jewish attitudes towards imperial cult, see Noy (2001).

¹⁹¹ See Cotton (1998b: 167-168) for further discussion.

¹⁹² See Isaac (1994: 259) on the value of this and *passim* on the tax system more generally.

P. Yadin 17

Language: Greek.

Subscriptions: Judah's Jewish Aramaic attestation; 7 signatures – 1 lost, 6 Jewish Aramaic.

Scribe: Theēnas, son of Simon, λιβλάριος.

Date: 21st February, 128 C.E. (consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Double.

The document is, like P. Yadin 5, a loan written in deposit form. Judah acknowledges to Babatha, here for the first time explicitly stated to be his wife, that he has on deposit from her three hundred denarii. If he does not repay the amount when requested, he will have to pay twice as much in addition to damages – there is, like in P. Yadin 5, no date set by which the loan must be repaid. Babatha has an ἐπίτροπος for the transaction, Jacob, son of Jesus.¹⁹³

For comments on the deposit form and the double penalty included in this document, see P. Yadin 5.¹⁹⁴ The latter feature is better preserved in this deposit than the earlier papyrus. We might suspect that both here and in P. Yadin 5, the deposit form might have been chosen for its flexibility: the parties to both contracts are family members, and so leaving the date of repayment open, as the deposit allowed, could have been a desirable feature.

A *stipulatio* clause is also included at the end of the document, or more correctly a *cautio*, the written record of a *stipulatio* transaction. This was a formal question and answer that consisted of a formal pledge; in legal terms, it was classed as a *stricti iuris* and unilateral contract. It was originally verbal in form, and consisted of a question and answer that had to correspond (for example, *spondes? spondeo.*),¹⁹⁵ though this rule gradually became

¹⁹³ See comments p. 56 for a discussion of terminology in guardianship.

¹⁹⁴ See pp. 39-40.

¹⁹⁵ See Gaius, *Institutes* III. 92.

more relaxed.¹⁹⁶ The form of the *cautio* in the current document is, “In good faith the formal question was asked and it was agreed in reply that this is thus rightly done.”¹⁹⁷ Its use here, in four other documents in the Babatha archive and one in that of Salome Komaise are our earliest examples of *stipulatio* in an eastern province,¹⁹⁸ even though it came to be used widely in contracts of all kinds across the empire.

P. Yadin 18¹⁹⁹

Language: Greek.

Subscriptions: 2 Jewish Aramaic attestations; 7 signatures – 6 Jewish Aramaic, 1 Greek.

Scribe: Theënas, son of Simon, λιβλάριος.

Date: 5th April, 128 C.E. (consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Double.

This is the marriage contract of Judah’s daughter, Shelamzion. In this document, Shelamzion’s father, Judah, son of Eleazar Kthousion, gives her away to Judah Cimber.²⁰⁰

This is explicitly stated to be done for her to be a wife to Judah Cimber, “according to the laws.”²⁰¹ The dowry is then stipulated: Shelamzion has brought to the marriage the sum of 200 denarii in the form of “feminine adornment in silver and gold and clothing.”²⁰² That the value of this is indeed 200 denarii has been mutually agreed. Judah Cimber acknowledges that he has received this from Shelamzion’s father, and himself contributes a further 300 denarii; all this is to be included in the dowry.²⁰³ He then promises to feed

¹⁹⁶ For example, languages other than Latin were permitted. Cf. Gaius, *Institutes* III. 93; Ulpian, *Sabinus*, Book 48 (*Digest* XLV. 1.1.6).

¹⁹⁷ P. Yadin 17, ll. 38-39: πίστει ἐπὴρωτήθη καὶ ἀνθρωπολογήθη [ταῦ]τα οὕτω[ς] καλῶ[ς] γ]είνεσθαι. Also restored in l. 16.

¹⁹⁸ The other instances are found in P. Yadin 18, ll. 27-28 / 66-67, P. Yadin 20, ll. 16-17 / 40, P. Yadin 21, ll. 27-28, P. Yadin 22, ll. 29-30 and X Hev 65, ll. 13-14.

¹⁹⁹ Initial publication: Lewis, Katzoff and Greenfield (1987).

²⁰⁰ Katzoff assumes from his Roman name that Judah Cimber was a Roman citizen (Lewis, Katzoff and Greenfield (1987: 237)).

²⁰¹ P. Yadin 18, l. 7 / 39: κατὰ τοὺς νόμους.

²⁰² P. Yadin 18, ll. 8-9 / 40-41: κοσμίαν γυναικίαν ἐν ἀργύρῳ καὶ χρυσῶ καὶ ἱματισμῶ.

²⁰³ The large amount of money and property involved here once again testifies to the wealth of these people.

and clothe his wife and any future children, “in accordance with Greek custom / law” (ἐλληνικῶ νόμῳ).²⁰⁴ The dowry is secured upon all of Judah Cimber’s possessions, both present and future,²⁰⁵ and he promises to redeem the contract for Shelamzion whenever she demands;²⁰⁶ this is presumably equivalent to a promise to repay the dowry upon dissolution of the marriage.²⁰⁷ If Judah Cimber refuses to do so, he is liable to repay double the amount.²⁰⁸ The contract concludes with a *stipulatio* clause,²⁰⁹ followed by the attestations of both Judahs in Jewish Aramaic.

The contract is remarkable for the multitude of traditions it seems to reflect. Parallels may be found in Roman, Greek, Egyptian (Demotic) and Jewish law or custom for various features of the contract. As a result, debate has raged over whether this should be viewed as a fundamentally ‘Greek’ or ‘Jewish’ document in terms of its operative law.²¹⁰

The first point of debate is the ἔκδοσις clause in which Judah, son of Eleazar Kthousion, gives away his daughter. This is extremely common in Greek marriage contracts,²¹¹

²⁰⁴ P. Yadin 18, l. 16 / 51. In the inner text, this is inserted above the line.

²⁰⁵ The pledging of all possessions as security for the dowry finds a parallel in Demotic (though not Greek) marriage contracts from Egypt: see Cotton (2002b: 137). Among Greek marriage contracts, only this document, X Hev 65 and X Hev 69, a cancelled marriage contract from the Judaean desert (130 C.E.), have this liability clause in which the groom pledges his entire property as guarantee for the maintenance of the wife.

²⁰⁶ The exchange clause is found in other Aramaic documents from the Judaean desert (see Lewis, Katzoff and Greenfield (1987: 243, n. 37) for references), while the formula ὅπῳταν αὐτὸν ἀπαίτησει, “whenever she may demand it” (P. Yadin 18, ll. 22-23 / 59) is familiar from other Greek papyri: see Wasserstein (1989: 115).

²⁰⁷ Lewis (1989: 77).

²⁰⁸ See pp. 39-40 for comments on double penalties.

²⁰⁹ See pp. 61-62 for comments on *stipulatio*.

²¹⁰ Katzoff is the most strident of those advocating a Jewish legal framework for the document: see especially the initial publication (Lewis, Katzoff and Greenfield (1987)) for his views. Wasserstein (1989) was one of the earliest objectors, who dedicated much of his article to a refutation of Katzoff’s reading; see also the response by Katzoff (1991). For an excellent, concise overview and bibliography on the disputed nature of this document, see Yiftach-Firanko (2005: 67).

²¹¹ See Méléze-Modrzejewski (2005: 14): the father’s “giving” of the bride (or, in his absence, a close male relative or the woman herself could do so) is an unchanging aspect of the “legal substance” of Greek marriage contracts. See also Yiftach-Firanko (2005) for further information about ἔκδοσις.

whereas in the Jewish *ketubba*, it is the groom who takes a wife.²¹² Ranon Katzoff, however, has offered a somewhat different *interpretatio Hebraica*: if Shelamzion was still a minor, she would not have been able to be a party to a *ketubba*. Jewish custom, however, still allowed her to marry, as long as her father gave her away.²¹³ This does still leave a question which persists throughout much of the debate – why was a Greek rather than Jewish Aramaic document chosen? There is also no corresponding evidence that Shelamzion was, in fact, a minor.²¹⁴

Controversy has also raged over the meaning of κατὰ τοὺς νόμους (l. 7 / 39) and ἑλληνικὸς νόμος (l. 16 / 51).²¹⁵ Lewis thought the reference of the former was to “their customary, i.e. Jewish, laws,”²¹⁶ though this does not seem to be immediately apparent in view of the multitude of legal traditions reflected in both this document and others throughout the archive. Interpretation of the second formula has also been far from straightforward. Yadin, in describing the contract, thought this put it firmly under ‘Hellenic law’.²¹⁷ Katzoff disagreed, suggesting instead that the reference was “only to the provision for support of the wife and children” and should therefore be translated “in the Hellenic manner.”²¹⁸ As support for this, he argues that there was no provision for support for a wife and children

²¹² See P. Yadin 10 for comparison.

²¹³ Lewis, Katzoff and Greenfield (1987: 231). Despite Katzoff’s emphatic stance that the document is fundamentally Jewish, he admits that, “the dominant diplomatics here are Greek”: see Lewis, Katzoff and Greenfield (1987: 237-240; citation from 237). See also Katzoff (1995b: 41): “It appears, then, that the formulary of Hellenistic marriage documents was used by the drafter of this document to clothe basically Jewish notions as to what ought to be said in a marriage document.” For a contrasting interpretation, see Wasserstein (1989: 109-113).

²¹⁴ See Wasserstein (1989: 110): “There is nothing in our document to justify, or for that matter, to make us feel the need for such an assumption. It is supported by not a single form or feature of our document nor by any fact stated in it.” Wasserstein goes on to lay out further objections to this interpretation.

²¹⁵ On what is meant by ἑλληνικὸς νόμος, see Wasserstein (1989: 119-120), who suggested that it was “a koine of private law arising from the amalgam of Greek and oriental institutes.” For an opposing view, see Lewis (1991: 40-41). Indeed, the exact meaning of this term or, to be more precise, what the parties thought was meant by it seems to be at the root of the question.

²¹⁶ Lewis (1989: 81). Katzoff, in Lewis, Katzoff and Greenfield (1987: 241), agrees.

²¹⁷ Yadin (1971: 246).

²¹⁸ Lewis, Katzoff and Greenfield (1987: 240).

in Hellenic law, and that this phrase does not appear in Greek marriage contracts in relation to supporting a wife.²¹⁹ Both Wasserstein and Geiger have refuted Katzoff's interpretation, suggesting that Greek law did in fact require the husband to support the wife and included provisions to that effect.²²⁰

The dowry, or more specifically, the addition by the groom to the dowry, has also sparked debate.²²¹ This is one of the elements which Katzoff views as specifically Jewish, citing the Mishnaic prescription of *m. Ketub. 6.3* as evidence of a Jewish requirement for this additional payment.²²² Wasserstein's comparison with the Roman *donatio ante nuptias in dotem redacta* should, however, also be noted.²²³ This once again seems to leave us in the position of weighing up conflicting parallels.

A final point: in his rejection of Katzoff's Jewish interpretation of the document, Wasserstein argued that this was a secular contract drawn up alongside a *ketubba* of the kind Babatha and Judah employed.²²⁴ This seems somewhat unlikely – why, when she kept her records so meticulously, would Babatha choose to retain the Greek contract and not the Aramaic?²²⁵ Or, if the two-document marriage was a standard, why just keep her own Aramaic *ketubba* and not her Greek, secular contract? What we seem to have here is a case of two couples choosing to marry using different kinds of contracts.

²¹⁹ Lewis, Katzoff and Greenfield (1987: 240).

²²⁰ Wasserstein (1989: 108-109) and Geiger (1992). See Wasserstein in particular for examples of such clauses in Greek contracts. The promise to feed and clothe the wife herself may have been included in Jewish contracts under the influence of Demotic deeds, though it is a familiar element in Greek marriage documents from Egypt (see Cotton and Yardeni (1997: 268-269)). The potential number of traditions and influences here are therefore fairly high.

²²¹ For an overview of the controversy concerning this payment, see Satlow (1993: 139, n. 24).

²²² Lewis, Katzoff and Greenfield (1987: 242).

²²³ Wasserstein (1989: 114).

²²⁴ Wasserstein (1989: 120-121).

²²⁵ Ilan (1993: 253) raises similar points.

It should also be noted that while the contract is drawn up in Greek, in contrast to Judah and Babatha's own Aramaic marriage document (P. Yadin 10), both Judah and Judah Cimber write their attestations in Jewish Aramaic. Moreover, in the subscriptions, the word used to describe the dowry is פָּרָן, a commonly attested transliteration of φέρνη,²²⁶ whereas in the main body of the text the terms used are προίξ and προσφορά. This might tell us something about the different levels of awareness of Greek terms or custom on the part of the groom and the scribe.

Nevertheless, the linguistic and legal decisions should not be attributed solely to the scribe: the parties seem to have made a conscious decision about the kind of contract they wanted. Although Babatha had used Theēnas regularly before, Judah could presumably have drawn up a Jewish Aramaic marriage contract similar to his own if that was what was desired. The choice of a Greek contract here therefore does seem deliberate.

²²⁶ פָּרָן is well attested in Palestinian literature. See Friedman (1980: 76-79) for an overview of its use.

P. Yadin 19

Language: Greek.

Subscriptions: Jewish Aramaic attestation; 7 witnesses – 1 Greek, 6 Jewish Aramaic.

Scribe: An unknown son of Simon.

Date: 16th April, 128 C.E. (consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Double. Inner text is mostly lost.²²⁷

In this deed of gift,²²⁸ Judah gives his property in Engedi to Shelamzion, half immediately, half to be transferred to her ownership after his death.²²⁹ Included in this was a courtyard in Engedi, which seems to be the same one Judah hypothecated in P. Yadin 11.²³⁰ He also offers to register the property in her name with the public officials, or perhaps in the public archives, should she so wish.²³¹

πάντα κύρια καὶ βέβαια, “all valid and secure” (l. 25), renders the Semitic expression וכלא וקיא, which usually concludes a document. The final sentence in which Judah offers to register the property therefore seems to be a last minute addition, perhaps influenced by the experience of the census the year before. It is possible that registering land with the authorities was now thought to be a good guarantee of ownership and therefore worth offering to do in any transfer of property.

²²⁷ The few remaining lines do not correspond to the outer text. We may therefore assume that there was considerable variance between the two (see Lewis (1989: 86)).

²²⁸ Lewis reads διὰθή[κ]ην (l. 4) in the inner text of the papyrus: a “will”. This does not necessarily mean that we should view the document as a testament, or indeed as “both a deed of gift and a testament,” as Murphy-O’Connor (1999: 227) described it; see Lim (2004: 366-369) on this. See Katzoff (1990), and the updated version, Katzoff (1994), for an interpretation of this document in terms of a Jewish legal framework; Rivlin (2005: 180-182) revised Katzoff’s conclusions, though still interpreted the document as reflecting Jewish law.

²²⁹ There is an oft-cited Biblical parallel to this act in the Book of Tobit 8:21, where the bride’s father gives Tobit half of his possessions immediately, and promises to him the other half after his death.

²³⁰ See Lewis (1989: 83) and n. 146 for further bibliography. It should be noted that since P. Yadin 11 was written nearly four years earlier, the Roman army had left, hence the change in abutters (cf. Cotton (1996b: 199)).

²³¹ Cotton (1998b: 169-70) interprets διὰ δημοσίων (P. Yadin 19, ll. 26-27) as referring to public archives, pointing to further references in P. Yadin 20, l. 13 / 35-36 and P. Yadin 24, ll. 4-6. She also suggests this may be why this deed of gift was written in Greek: so that it could be deposited in the archives.

At this point, it may be worth outlining the debate over the law of succession in this area that has been prompted by the various deeds of gift in these two archives. It has been suggested that these deeds might have been used to circumvent local rules of succession.²³² It was thought that drawing up a deed of gift for a daughter implied that she would not inherit in its absence.²³³ In this particular case, support for this hypothesis was found in the fact that in P. Yadin 24, Besas challenges Babatha's right to hold a date orchard which had belonged to her husband and threatens to re-register them in the name of Judah's nephews. Shelamzion there does not seem to have had any claim on her father's property; the nephews appear to have been next in line.²³⁴ This in turn appears to contradict Jewish inheritance law, which allowed daughters to inherit from their fathers in the absence of a son.²³⁵ The solution to which parents turned was to dispose of their property in deeds of gifts, thus ensuring that a daughter would be provided for after their death.

Scholarly opinions on this subject have consequently typically fallen into two camps: those who argue for a Jewish framework and those preferring one that was local and non-Jewish. The latter view, as has been laid out above, was mainly promoted by Hannah Cotton in a series of articles throughout the 1990s.²³⁶ She has since modified her position and now concedes that the law of succession might not have been completely opposed to Jewish inheritance rules and that there could have been different reasons to draw up such a deed of gift,²³⁷ perhaps to safeguard a daughter's right to her parents' "real property" rather than

²³² For details on this issue, see p. 42.

²³³ Cotton and Greenfield (1994: 219).

²³⁴ Cotton and Greenfield (1994: 219).

²³⁵ Wives would not inherit their husband's property in Jewish law though nephews did not supersede a daughter in the line of succession (cf. Numbers 27:8 and *m. B. Bat* 8.2 on the latter point). See Cotton and Greenfield (1994) and Cotton (1998a) for further discussion of the operative laws of inheritance. Ilan (2000) has also weighed in on this subject, seeing the deeds of gift in the two archives as circumventing Biblical law; Rivlin (2005: 182) interprets the documents in line with Tannaitic *halakha*. For an introduction to Jewish inheritance law and the place of deeds of gift within the scheme of succession, see Yaron (1992).

²³⁶ See n. 44 for a list of these articles.

²³⁷ Cotton (1998a: 116-117).

letting it fall into the hands of her husband.²³⁸ Alternatively, it might simply be a way of safeguarding a daughter's inheritance after a second marriage of a parent; thus, Judah grants Shelamzion his properties in Engedi after marrying Babatha in the expectation of a new male heir who would compromise her right of inheritance.²³⁹

In any case, it is notable that Judah decided to transfer this property only eleven days after Shelamzion was married. In some way, her marriage seems to have prompted him to make provision for his daughter after his death.

P. Yadin 20

Language: Greek.

Subscriptions: Attestations in Jewish Aramaic and Greek. 7 signatures – 4 Jewish Aramaic, 1 Greek, 2 Nabataean Aramaic.

Scribe: Germanos, λιβλάριος.

Date: 19th June, 130 C.E. (imperial year, consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Double. The inner text differs significantly from the outer.²⁴⁰

In this document, the guardians of the orphans of Judah's brother, Jesus, concede that Shelamzion owns a courtyard in Engedi. This is probably not the same courtyard as that referred to in P. Yadin 11 and 19.²⁴¹ The guardians, Besas, son of Jesus, and Julia Crispina, offer to register the property with the authorities or perhaps in the archives,²⁴² though this would be done at Shelamzion's expense. They also promise to defend her against any counterclaim on it. As in the other Greek documents from the Judaean desert, Shelamzion has a guardian representing her in this matter – here, this is her husband, Judah Cimber.

²³⁸ See Cotton (2002b: 129-130) for a discussion of this possibility, which also applies to X Hev 64. In a similar vein, Satlow (2005: 62) suggests that parents gave property to their daughters through such deeds instead of in their dowry as "it kept the property out of the hands of their sons-in-law."

²³⁹ Cotton and Yardeni (1997: 204).

²⁴⁰ Lewis (1989: 89) tabulates these differences.

²⁴¹ See n. 146 on this.

²⁴² This depends on the translation of διὰ δομησίων (I. 13) / διὰ δημοσίων (II. 35-36). See n. 231 for bibliography on the possible existence of public archives.

The concession is part of an ongoing dispute, documented in subsequent papyri, concerning Judah and his brother Jesus' property after they had both died. It had been assumed that the former must have died at some point between 16th April 128 C.E., when P. Yadin 19 was written, and 19th June 130 C.E., when the current document was drawn up. This must, however, be questioned if the courtyard was not indeed the same as that in P. Yadin 19.²⁴³ In that case, Shelamzion's possession of the courtyard would not have been dependent on P. Yadin 19, in which she would have received full ownership after her father's death. It is therefore not entirely certain that Judah had died just yet.

Lewis suggested that the guardians' original claim must have been based on the fact that the courtyard was originally owned by Shelamzion's grandfather; it was thought that the guardians were contesting Judah's original right to dispose of it to Shelamzion.²⁴⁴ This was based upon the assumption that this was the same courtyard that was the subject of P. Yadin 19, since called into question.²⁴⁵ This leaves the basis of their original claim open to interpretation.

It has been suggested that the dispute, in which Judah's nephews seem to have some claim on his property, might have arisen from local succession laws.²⁴⁶ The subsequent documents relating to the litigation, however, show that it was intended to be conducted through the provincial governor's court; hence this might have had some influence on the formulation of the papyri. This uncertainty about the legal basis on which the guardians

²⁴³ As Katzoff (2007: 548, n. 9) points out. In this case, we would have to adjust the dates of Judah's death to sometime between 16th April 128 C.E., when he was definitely alive, and 11th September 130, when P. Yadin 21 was written, in which it seems obvious that he had passed on.

²⁴⁴ Lewis (1989: 93).

²⁴⁵ See n. 146.

²⁴⁶ See p. 42, 68-69 and 74 for more details.

were making their claims should, however, be kept in mind when reading the entries on the following documents relating to this dispute – namely, P. Yadin 21-26.

The title of the female guardian, Julia Crispina, is distinctive. Rather than being given the usual label within these archives of ἐπίτροπος, she is instead called an ἐπίσκοπος.²⁴⁷ Unlike the other women in the Greek documents, she acts without a male guardian and indeed is able to pursue litigation against Babatha on her own in later papyri.²⁴⁸ Her name may suggest Roman citizenship, though whether this had anything to do with what seems to be a privileged legal position is uncertain. In order for it to have any impact on her ability to conduct business free from a guardian, in strict terms of codified Roman law, she would also need to have had *ius trium liberorum*; Roman citizenship in and of itself would not have been enough.

P. Yadin 21

Language: Greek.

Subscription: Jewish Aramaic attestation; the remains of 5 Jewish Aramaic signatures, 1 Greek signature (that of the scribe).

Scribe: Germanos, λιβλάριος.

Date: 11th September, 130 C.E. (imperial year, consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Simple.

This document should be considered alongside P. Yadin 22. While the present contract is written from the point of view of the person who, for the time being, we shall call the ‘purchaser’ of the date crop, the following is the corresponding document written from the perspective of the ‘seller’.

²⁴⁷ See Lewis (1989: 92) and Cotton (1993a: 97) for a discussion of the term. It does occur in various inscriptions from Roman Arabia and Syria, though its exact meaning is still somewhat uncertain and, in any case, may not be comparable with the sense in a legal document such as this. In these inscriptions, it is often connected with religious buildings or temples: see Grainger (1995: 186; 191) for comments and a table of the relevant inscriptions.

²⁴⁸ In P. Yadin 25.

There is some divide over how to interpret the nature of these two documents. While Lewis, in his initial publication, labeled them the purchase and sale of a date crop, Benjamin Isaac questioned this and raised the possibility that they might constitute a lease of the right to work the orchard.²⁴⁹ Later suggestions have tended to combine the two interpretations (to be discussed below).²⁵⁰

In these two contracts, Babatha appears to sell the produce from three date orchards to Simon son of Jesus, who also had a guarantor – Samouos son of Menaḥem – for the transaction. The orchards are labelled as the Pherora, Nikarkos and Molkhaios orchards and had belonged to Judah. Both this contract and the following state explicitly that Babatha holds these orchards “in lieu of your/my dowry and your/my debt.”²⁵¹ This appears to refer to her right to reclaim her *ketubba* money and possibly to the money owed to her by Judah from P. Yadin 17. The legality of her possession is contested in P. Yadin 23-26.

Amihai Radzyner, in a detailed discussion of the transaction, argues that it is best thought of as similar to the Hellenistic *καρπωνεΐα* contracts from Egypt;²⁵² a mixture of a sale and a lease with a strong emphasis on the labour element. The leasing element is attributed to local law in Israel,²⁵³ which was unfamiliar with sales of unharvested fruit. On this reading,

²⁴⁹ Isaac (1992: 75). Lewis (1994: 246) later defended his position against criticism.

²⁵⁰ See especially Radzyner (2005) and Katzoff (2007); Broshi (1992: 233-234) also suggested a share-cropping arrangement (for comments on the differences between his English and Hebrew analyses, see Radzyner (2005: 146)).

²⁵¹ P. Yadin 21, ll. 11-12: ἀντὶ τῆς σῆς προ{ο}ικὸς καὶ <ὀ>φιλῆς; P. Yadin 22, l. 10: ἀντὶ τῆς προ{ο}ικὸς μου καὶ ὀφιλῆς.

²⁵² Radzyner (2005: 149). Lewis (1989: 94) tentatively points to the possible influence of the Roman concept of *emptio venditio* on the decision to draw up two separate contracts for sale and purchase.

²⁵³ Radzyner (2005: 152-160) deduces this from comparisons with Tannaitic literature, though states quite strongly that he believes the Tannaitic leasing laws and bills were rooted in local custom and Oriental law, rather than that Tannaitic legal rulings influence practice here (Radzyner (2005: 153)). Katzoff (2007: 547) in contrast argues that in the case of P. Yadin 21, “rabbinic jurisprudence affected Jewish practice.”

Babatha retains property rights over the dates, though Simon is paid for his labour with part of the crop. Katzoff reinterprets the contracts entirely in the context of Jewish law and therefore sees them as “a dodge”; Babatha sold the fruit on the tree so that it would be interpreted as landed property, meaning she had a right to sell it either for her *ketubba* / dowry or for maintenance – the sale of movables, i.e. the already picked dates, would have been prohibited since they would have been considered the property of the heirs under Jewish law.²⁵⁴

It seems likely that Radzyner is correct in emphasising the labour element, since this explains the odd fact that Babatha seems to be selling a date crop in exchange for dates. We should perhaps tend, therefore, towards the later views of this as a contract that combined elements of sale, lease and labour – whether we see the roots in local, Jewish or Greek law.

P. Yadin 22

Language: Greek.

Subscriptions: Nabataean Aramaic attestation; 3 Jewish Aramaic signatures survive, 1 Greek signature (that of the scribe).

Scribe: Germanos, λιβλάριος.

Date: 11th September, 130 C.E. (imperial year, consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Simple.

This is the corresponding ‘sale’ contract to P. Yadin 21, written on the same day as its counterpart. The primary addition to this contract is at ll. 20-25, in which Babatha promises to protect the ‘buyer’, or worker, Simon son of Jesus, from any counterclaims against the land; in that event, she will owe him twenty silver denarii.

²⁵⁴ Katzoff (2007: 565-566).

For further comments on the contents of the two documents, see the entry for P. Yadin 21 (above).

P. Yadin 23

Language: Greek.

Subscriptions: 5 signatures – 1 lost, 3 Jewish Aramaic, 1 Greek. Additionally, the scribe has signed on the *recto*.

Scribe: Germanos, son of Judah.

Date: 17th November, 130 C.E. (consular year, Roman day and month, Macedonian day and month – date is at the end).

Document form: Double.

This document forms part of a series which details the litigation between the guardians of Jesus' (Judah's brother) orphaned sons and Babatha. In this papyrus, Besas, one of the guardians, summons Babatha before the governor, Haterius Nepos, regarding her seizure of a date orchard, which she is now said to be holding "by force"²⁵⁵ and which he claims belongs to the orphans. This presumably relates to one of those orchards whose crop is dealt with in P. Yadin 21 and 22. Unlike in P. Yadin 14, where a definite date for the hearing is specified, Babatha is summoned to Petra "or elsewhere" and ordered to continue attending until judgement is passed.²⁵⁶

While the document implies that the case was to be heard in the Roman provincial court, under what law of succession Besas makes this claim on the orphans' behalf remains uncertain.²⁵⁷ This was unlikely to have been Roman law. It is therefore possible that the document demonstrates that provincials expected the Roman authorities to enforce or adjudicate claims made under non-Roman law.

²⁵⁵ P. Yadin 23, l. 6 / 17: βία.

²⁵⁶ Lewis (1989: 57) commented on the specific date in P. Yadin 14: "presumably the present summons was drawn up after notification of a date certain on the court calendar for the instant suit." Either P. Yadin 23 was drawn up without such a notification, or the lack of date might perhaps show a growing awareness of how Roman legal procedure worked: they would have to turn up and wait.

²⁵⁷ See pp. 68-69 for further comments.

P. Yadin 24

Language: Greek.

Scribe: Germanos, son of Judah.

Date: Unknown.

Document form: Double.

This document might have been written on the same day as P. Yadin 23, though its fragmentary state means we cannot be certain. It is certainly drawn up by the same scribe and has a similar subject matter.²⁵⁸

Besas here details his grievance against Babatha, whom he deposes. He begins, however, by acknowledging that Judah registered the date orchards in Maoza in her name “ἐν τῇ ἀπ[ο]γραφῇ,” a phrase which Lewis translates as “in the census” but may refer once again to public archives.²⁵⁹ Besas then mentions the right of the orphans to inherit the orchards, “from the name of Jesus, their father.”²⁶⁰ This may imply that the orchards originally belonged to Eleazar, and that the fundamental tenet of Besas’ complaint is a challenge to Judah’s legal right to them, and hence, his right to have registered them in Babatha’s name.²⁶¹ Besas concludes by summoning Babatha to disclose by what right she holds the orchards and threatens to register them in the orphans’ names if she does not do so.

Besas’ concluding threat is odd, since he had previously acknowledged that the orchards were indeed registered to Babatha. If this was thought to be proof of ownership,²⁶² it is rather strange that he then questions the right by which Babatha retains the orchards and

²⁵⁸ On the evidence for suggesting they were written on the same day and thus stand in a similar relationship to P. Yadin 14 and 15, see Lewis (1989: 105).

²⁵⁹ P. Yadin 24, Frag. a, l. 5. See n. 231 on public archives.

²⁶⁰ P. Yadin 24, Frag. a, l. 8: ἐξ ὀνό[ματο]ς Ἰησοῦ[ο]υ πατρὸς αὐτῶν] (cf. Frag. e, l. 17: Ἰησοῦ[ο]υ πατρὸς αὐτῶν).

²⁶¹ See the entry on P. Yadin 20 (pp. 69-71) for further discussion of this, though the implications of that papyrus are somewhat unclear.

²⁶² See p. 67 for comments on this.

threatens to re-register them.²⁶³ If the above supposition about the substance of Besas' claim is correct, then what is here being demanded is actually that Babatha prove by what right Judah held the orchards. Thus registration might have been proof of legitimate ownership but it did not in and of itself confer it.

P. Yadin 25

Language: Greek.

Subscriptions: Greek scribal signature; isolated Jewish Aramaic letters from signatures survive on the *verso*.

Scribe: Germanos, son of Judah.

Date: 9th July, 131 C.E. (consular year, Roman day and month - date is at the end).

Document form: Double.

The document is poorly preserved, meaning that we are left with large gaps in our understanding of the legal process it describes. Julia Crispina, stated to be acting alone since Besas is ill, summons Babatha to Petra so that the governor may judge their case. She acts “pursuant to the subscription of his excellency the governor,”²⁶⁴ which Lewis suggests may indicate that Besas had taken the case further since P. Yadin 23 and 24. Since the papyrus was written about eight months after P. Yadin 23, this is a plausible suggestion. It does, however, mean that we are missing a copy of the relevant petition by Besas that the governor subscribed; either Babatha did not have a copy made when it was displayed, or she lost it.²⁶⁵ As noted in P. Yadin 19, Julia Crispina acts without a male guardian, the only woman to do so in the Greek documents in these archives.²⁶⁶

²⁶³ Indeed, if these are the same orchards referred to in P. Yadin 21 and 22, as seems likely, why she does not state in those documents that she owns them outright? Why claim she holds them “in lieu of my dowry and my debt” (P. Yadin 22, l. 10: ἀντὶ τῆς προϋκός μου καὶ ὀφιλῆς)? We may have evidence of different attitudes toward the legal force of registration, though, if so, Besas at least seem to hold internally contradictory opinions.

²⁶⁴ P. Yadin 25, ll. 6-7 / 33-34: κατὰ τὴν ὑ[πογραφή]ν τοῦ κρατίστου ἡγεμόνος.

²⁶⁵ We might perhaps look back to P. Yadin 33, a petition referring to orphans, though there is no way to confirm whether this did indeed relate to this case.

²⁶⁶ See p. 71 for more details on Julia Crispina.

Babatha next issues a counter-summons to appear before the governor in Rabbath-Moab. She complains that she has been falsely accused of using force – this seems to be a misunderstanding of βία, which perhaps demonstrates a certain lack of familiarity, either on Babatha or her scribe’s part, with Roman legal terminology. This may be contrasted with Julia Crispina or her scribe’s apparent comfort in using the term.²⁶⁷ Finally, she rejects the legal procedures (τὰ νόμιμα), probably of Julia Crispina’s summons (the text is uncertain at this point). The latter then states she has carried out the legal formalities and reminds Babatha that she has the option of challenging the orphan’s guardian (Besas) before the governor if she is unhappy with any of the proceedings.

What comes through very strongly in all three parts of the document is the constant appeal to the governor’s court. Thus, while we may be unsure in which legal system the dispute is rooted, or indeed whether it ever actually reached a Roman court, the participants show no hesitation in invoking the Roman governor in their dealings with their opponents.

P. Yadin 26

Language: Greek.

Subscriptions: 5 Jewish Aramaic signatures.

Scribe: Germanos, son of Judah.

Date: 9th July, 131 C.E. (consular year, Roman day and month – date is at the end).

Document form: Double.

This document was written on the same day as P. Yadin 25 by the same scribe. It details a separate aspect of the disputes that followed Judah’s death. Babatha summons Miryam, also Judah’s wife, before the governor, because she had seized everything in Judah’s house. Miryam, in turn, refers to an earlier summons in which she ordered Babatha not to

²⁶⁷ The reference to βία by Crispina is, however, omitted from the outer text. Lewis (1989: 112) suggests it may have been inserted into the inner text as “an exegetical afterthought ... to define more precisely the malfeasance charged.”

go near her and Judah's property, and states that Babatha has no claim against Judah's estate.

One of the most significant features of this petition is that Judah is described by both Babatha and Miriam as "my and your late husband."²⁶⁸ This phrase has frequently, though not universally, been interpreted to reveal that polygamy was a common practice among Jews in the area.²⁶⁹ This indeed contradicts the previously commonly held view that Jews were monogamous in this period.

P. Yadin 34

Language: Greek.

Scribe: Germanos, son of Judah (identification based on handwriting).

Date: c. July, 131 C.E.

Document form: Double, although the inner text does not seem to have been written.²⁷⁰

The inside of the papyrus survives only in fragments, even though the outer dimensions are almost complete. It seems to be a copy of a document, probably a petition, submitted to the governor, since the phrase ἐντυχάνω σοί, κύριε appears around l. 12. Miryam and Judah are both mentioned, suggesting that the papyrus be dated to around the time of the disputes following the latter's death.

The text is unfortunately too fragmentary to make further comment possible.

²⁶⁸ P. Yadin 26, ll. 7-8: ἀνδρός μου καί σου ἄ[πογενομένου]; cf. ll. 13-14.

²⁶⁹ See n. 15 for bibliography on this issue.

²⁷⁰ There is a considerable space at the top of the papyrus that has been left blank – probably for the inner text. Why this was not composed is unknown.

P. Yadin 27²⁷¹

Language: Greek.

Subscriptions: Jewish Aramaic attestation with a Greek translation; Greek scribal signature.

Scribe: Germanos, son of Judah.

Date: 19th August, 132 C.E. (consular year, Roman day and month, provincial year, Macedonian month).

Document form: Simple.

Babatha, acting through a guardian, acknowledges receipt for maintenance for her son Jesus from one of his guardians, Simon. He has replaced his father, John son of Eglas, as guardian. The amount received is the same that Babatha once complained was insufficient,²⁷² though it should be noted that this is from one guardian alone. It may be that the level of maintenance had been adjusted and both guardians were now paying two denarii a month each.²⁷³

The receipt is written in epistolary form. Babatha's Jewish Aramaic attestation is written for her by Babeli, son of Menaḥem. It is also translated into Greek, where Babeli is now described as her guardian. This may again be indicative of the fact that guardians were assumed purely to meet the demands of the Roman administrators who might read the Greek of the document; in the Aramaic, Babatha had no need for such a person.

²⁷¹ Initial publication: Polotsky (1967). See also Lewis (1978) for a revised edition.

²⁷² On this dispute, see the entries on the documents P. Yadin 12-15 (pp. 50-59).

²⁷³ Chiusi (2005: 116).

P. Yadin 35

Language: Greek.

Scribe: Unknown.

Date: c. August/September, 132 C.E. (?) (there is possibly a remnant of the provincial year, though the text is uncertain).

Document form: The surviving fragment is probably from a double document.

The document survives only as a fragment,²⁷⁴ the opening of which might resemble P.

Yadin 14 and 15. Little more can be said about its contents.

P. Yadin 32

Language: Greek.

Scribe: Theēnas, son of Simon (identification based on handwriting).

Date: Unknown.

Document form: Unknown.

Too little survives of this text to comment on the content.

P. Yadin 32a

Language: Greek.

Scribe: Unknown.

Date: Unknown.

Document form: Unknown.

Too little survives of this text to comment on the content.

²⁷⁴ Six further fragments might form part of this papyrus but they contribute no further information about its text.

The Salome Komaise Archive²⁷⁵

TABLE 2: THE DOCUMENTS OF THE SALOME KOMAISE ARCHIVE

X HEV	LANGUAGE	DESCRIPTION	DATE (C.E.)
2	Nabataean Aramaic	Sales contract.	c. 100
60	Greek	Receipt for taxes or rent.	14 th Peritios, 125
61	Greek	Conclusion of a land declaration.	25 th April, 127
62	Greek	Copy of a land declaration.	18 Apellaios (=4 th December) or 11 th December, 127
63	Greek	Renunciation of claims.	Between 25 th and 31 st December, 127
64	Greek	Deed of gift.	9 th November / 20 th or 23 rd (?) Dios, 129
65	Greek	Salome Komaise's marriage contract.	7 th August / 19 th Loos, 131
12	Jewish Aramaic	Receipt for dates.	30 th January / 15 th Shevat, 131

*X Hev 2*²⁷⁶

Language: Nabataean Aramaic.

Subscriptions: The remains of 6 very fragmentary signatures survive.

Scribe: Unknown.

Date: c. 100 C.E.

Document form: Simple.

This document is a deed of sale, in which a woman called Shalom sells land in Maḥoz Eglatain to a certain Š'DLY for the sum of 75 selas.²⁷⁷ After a description of the property, Shalom confirms that she has received the required amount and that the land is now Š'DLY's to do with as he pleases, "with no lawsuit and no contest, and no oath, whatsoever;"²⁷⁸ the defension clause continues after this, in which Shalom guarantees to

²⁷⁵ All text and translations from the Salome Komaise archive throughout this thesis will be taken from Cotton and Yardeni (1997) unless otherwise stated.

²⁷⁶ Initial publication: Yardeni (2000a: 290-291), with an English translation in Yardeni (2000b: 95). All text and translation of this document are from this initial publication.

²⁷⁷ On Maḥoz Eglatain, see n. 99.

²⁷⁸ X Hev 2, l. 15: [לא דין ולא דבב ולא מו]מא כלה.

clear the purchases from any future claims. Shalom states that if she does not honour the terms of the contract, she will be liable for the entire purchase price. A payment to Rabbel II, the king, is specified, before the investiture.

Hanan Eshel identified the Shalom in this document with Salome Grapte, based on reading Menaḥem in l. 7; Menaḥem is known to be the name of her father from X Ḥev 63 and X Ḥev 64.²⁷⁹ The document is included in the archive on this basis.

The form of the sale is extremely similar to that of P. Yadin 2 and 3, both Nabataean sales contracts from the regnal period. It therefore adds to the impression that there was a standard model for such contracts.

X Ḥev 60²⁸⁰

Language: Greek.

Subscriptions: 1 Jewish Aramaic signature (possibly that of the scribe).

Scribe: Possibly Reisha, though it is more likely he has just subscribed and the scribe is unknown.

Date: 29th January, 125 C.E. (consular year, provincial year, Macedonian day and month).²⁸¹

Document form: Simple.

This is a receipt, made out to Menaḥem, son of Johannes from an anonymous son of Judah (his name is lost) and his colleagues. The son of Judah and colleagues confirm that they have received the amount due for dates, “which you owe to our Lord the Emperor in Maoza for the eighteenth year (of the province),”²⁸² it is unclear whether this refers to a tax or rent paid.²⁸³ The transaction was completed through Sammouos son of Simon, thought to be

²⁷⁹ Eshel (2002: 171).

²⁸⁰ Initial publication: Cotton (1994).

²⁸¹ On the unusual dating formulation in this document, caused in all probability by a delay in the communication of the names of the ordinary consuls for the year, see Cotton and Yardeni (1997: 168-169).

²⁸² X Ḥev 60, ll. 5-7: οὗ ὀφείλεις κ[υ]ρίῳ Καίσαρι ἐν Μαώζα ἔτους ὀκτωκαιδεκάτου.

²⁸³ For comments see Cotton and Yardeni (1997: 167).

Salome Komaise's first husband,²⁸⁴ hence its presence in the archive. A certain Reisha subscribes the document in Jewish Aramaic.

The three named people in this papyrus, Menaḥem, son of Johannes, Sammouos, son of Simon and Reisha, all also appear in X Hev 64, a deed of gift: Menaḥem and Sammouos are among the abutters of the half-courtyard that is gifted and Reisha's signature is appended.²⁸⁵ This may mean the principals were close acquaintances, though we cannot of course push this assumption too far.

The receipt is epistolary in form, like P. Yadin 27,²⁸⁶ and contains many elements that are also found in Egyptian tax or rent receipts.²⁸⁷ Isaac suggests that here local Jews are collecting taxes.²⁸⁸ Alternatively, Cotton and Yardeni have proposed that the presence of more than one collector may mean we are dealing with *conductores* of an imperial estate, though once again the collectors are local.²⁸⁹ The receipt also bears comparison with X Hev 12, which may be another receipt for taxes.²⁹⁰

²⁸⁴ See Cotton and Yardeni (1997: 160; 166).

²⁸⁵ X Hev 64, ll. 14-15 / 35-36; X Hev 64, l. 44.

²⁸⁶ See Cotton and Yardeni (1997: 167) for further examples of receipts from the Judaean desert. Besides X Hev 60 only four examples are known.

²⁸⁷ Cotton and Yardeni (1997: 166).

²⁸⁸ Isaac (1994: 266).

²⁸⁹ Cotton and Yardeni (1997: 167-168).

²⁹⁰ See Cotton and Yardeni (1997: 166-167) for a detailed comparison of the two.

*X Hev 61*²⁹¹

Language: Greek.

Subscriptions: The Greek translation of three attestations are all that survives of the document.

Scribe: Unknown.

Date: 25th April, 127 C.E. (Roman day and month).²⁹²

Document form: Unknown.

This document is a copy of the conclusion to a land declaration by a certain –los or –las (the first part of his name has been lost), son of Levi, probably Salome Komaise’s brother. Priscus, the same cavalry commander who subscribed the declaration in P. Yadin 16, underwrites it.

This document should be set alongside P. Yadin 16, whose conclusion it very closely resembles. Indeed, although the present document has lost the year in which it was written, this is restored on the basis of comparison with P. Yadin 16; in all probability, they were both written as part of the same provincial census, which took place in 127 C.E. This is supported by the fact that the same cavalry commander subscribed both documents.

An additional similarity to P. Yadin 16 is that a Jew swears by the τύχη of Caesar in what seems like a standard formula for such declarations.²⁹³ κ[α]λῆ πίστει, a Greek rendering of *bona fide*, also points to Roman/Latin influence in the drawing up of this declaration.

The declaration contains our earliest attestation of a χειροχρήστης in the Greek language, where the term is used to describe a person who performs the legal function of writing a subscription for someone who is illiterate. The term is not attested elsewhere with this

²⁹¹ Initial publication: Cotton (1991). See also Cotton (1993b) for re-publication, aided by a new fragment.

²⁹² The year is lost but can be fairly safely assumed: see Cotton and Yardeni (1997: 175-176).

²⁹³ See n. 190 for further comments on a Jew swearing this oath.

particular function before the middle of the sixth century;²⁹⁴ the Egyptian papyri typically employ ὑπογραφεύς for someone engaged in this duty. Thus, while we appear to have similar practices in both provinces, the terminology varies.

X Ḥev 62²⁹⁵

Language: Greek.

Subscriptions: 1 Greek, 4 Nabataean Aramaic signatures.

Scribe: Unknown.

Date: 18th Appelaïos (=4th December) or 11th December, 127 C.E. (imperial year, consular year, Roman day and month, provincial year, Macedonian day and month).²⁹⁶

Document form: Double. The inner text is considerably shorter than the outer.

This is another copy a land declaration for the provincial census, this time that of Sammouos son of Simon, thought to be Salome Komaise's first husband. He registers a half-share of property which he owns with his brother Ionathes. This includes a half-share of a field, a date grove and a vineyard *inter alia*.²⁹⁷ The taxes, or perhaps rent, payable on each piece are also included.²⁹⁸ All measurement units in the declaration are local. The brothers do not make a joint declaration despite their shared property: Sammouos is careful to register only his half. This declaration was displayed in the basilica in Rabbath-Moab.

Unfortunately, the conclusion to X Ḥev 62 does not survive, so comparison with the oath-formula found in the other two land declarations in these archives is not possible. The three declarations should, however, be taken together: X Ḥev 61, 62 and P. Yadin 16 were all written in the same province for the same census in 127 C.E. They are the only declarations

²⁹⁴ In Latin documents from Ravenna, though the word is found earlier with a slightly different meaning. See Cotton and Yardeni (1997: 179-180) for further details on this term.

²⁹⁵ Initial publication: Lewis (1985-1988).

²⁹⁶ The dating uncertainty is due to a discrepancy between the Roman and Macedonian dates: the former (three days before the ides of December) would be 11th December, the latter (18th Appelaïos) would be 4th December (see Lewis (1985-1988: 135-136)).

²⁹⁷ The papyrus is preserved in thirty three fragments, meaning that we may have lost some of the information about the property that is being registered.

²⁹⁸ See Cotton and Yardeni (1997: 191-192) on whether the payment referred to is a tax or rent. For more details on land and level of taxes in the two archives, see the table in Cotton and Yardeni (1997: 184).

of agricultural land that survive from the Roman world – only people and house property are attested in Egyptian census returns.²⁹⁹ This might add further weight to the idea that the Roman census was conducted differently from place to place throughout the empire.

*X Hev 63*³⁰⁰

Language: Greek.

Scribe: Unknown.

Date: Between 25th April and 31st December, 127 C.E. (consular year is possibly mentioned, though is poorly preserved).³⁰¹

Document form: Simple.

In this document, Salome Komaise acknowledges that she has no claims against her mother, Salome Grapte, regarding the estate of Komaise’s father and that of her brother. Sammouos, son of Simon, acts as guardian for her in this matter. There is a possible reference to a now-resolved controversy but the text is uncertain at this point. Salome Komaise is also stated to have given an oath on this matter. The declaration ends with a *stipulatio* clause followed by the date.³⁰²

Unfortunately, we know little about the details of the previous dispute, making a reconstruction of the case somewhat challenging. Michael Satlow has proposed the following: Salome’s father, Levi, died, followed by his son and sole inheritor shortly after. The property in question then passed back to his mother, Salome Grapte. Salome Komaise threatened to sue for a marital “gift” she thought she deserved; this was the ‘controversy’

²⁹⁹ Cotton and Yardeni (1997: 175).

³⁰⁰ Initial publication: Cotton (1995a: 177-183).

³⁰¹ Since Salome Komaise’s brother is deceased in this document and was probably referred to (alive) in X Hev 61, we can conclude that the papyrus was written after 25th April 127 C.E. Cotton and Yardeni (1997: 196-197) list the options available from the remains of the dating formula: the only possibilities that would not precede the brother’s death are 127 and 134 C.E. They quite rightly point out that using a Roman date in 134 C.E., during the Bar Kokhba revolt, would be rather odd. Hence, this document probably dates from some point after 25th April in the year 127 C.E.

³⁰² See pp. 61-62 for further comments on *stipulatio*.

referred to in this document. As a result of this, Salome Grapte decided to settle with her daughter – hence the present papyrus.³⁰³

The document certainly represents a settlement of some sort, possibly as a result of private arbitration.³⁰⁴ Cotton and Yardeni point out a number of parallels, both to the predominantly later διαλύσεις contracts and to others from the Judaean desert.³⁰⁵ The comparable documents from the latter corpus were written in Jewish Aramaic (X Hev 13) and Nabataean Aramaic (P. Yadin 9), perhaps suggesting that the Greek language was a very deliberate choice here. In any case, it appears that some kind of settlement or renunciation of claims was possible in both native languages and in Greek.

These renunciations also suggest that courts were not viewed as the sole way of deciding disputes in this community. We can say little about the situation in which the current renunciation was reached – whether the matter was resolved very informally amongst family members or the subject of a more formal arbitration process – but it provides good reason for thinking that not all claims would end up in a courtroom, Roman or otherwise. This is worth emphasising in light of the apparent frequency with which Babatha and her fellow litigants seem to have had recourse to the assizes. We must remember that it is probable that there were other options available when considering the situation as a whole.

³⁰³ Satlow (2005: 56-57). He admits it that it is unknown whether such a reconstruction would have constituted a valid legal claim.

³⁰⁴ Cotton (2002a: 21-23).

³⁰⁵ Διαλύσεις contracts are rare in Egypt in the Roman period, though became more popular later in antiquity. Two earlier examples may be found in P. Ryl. II 180 (124 C.E.) and BGU IV 1160 (5 B.C.E.). See Cotton and Yardeni (1997: 195-6) for a comparison of the documents.

X Hev 64³⁰⁶

Language: Greek.

Subscriptions: Remains of 1 Greek signature, 2 Nabataean Aramaic signatures, 4 Jewish Aramaic signatures.³⁰⁷

Scribe: Unknown.³⁰⁸

Date: 9th November, 129 C.E. (consular year, Roman day and month, provincial year, Macedonian day and month).

Document form: Double.³⁰⁹

Salome Grapte, in this deed of gift, grants to her daughter, Salome Komaise, all her property in Maoza. The transfer of ownership has immediate effect. Salome Grapte acts through a guardian, named as her husband, Yosef son of Simon. She has therefore obviously remarried after the death of her first husband, Levi. The property gifted to Salome includes a date orchard and a half-courtyard. As in P. Yadin 2, 3 and 7 in the Babatha archive, irrigation rights are included with the land.³¹⁰

The Greek is ungrammatical and un-idiomatic – indeed, Cotton and Yardeni construct an Aramaic *Urtex*t on which it seems to have been based.³¹¹ One of the Jewish Aramaic signatures was initially thought to be that of the scribe, the same Reisha who subscribed X Hev 60 – if his first language was Aramaic, then that may account for the poor Greek of this particular document. This theory has since, however, been called into serious

³⁰⁶ Initial publication: Cotton (1995a: 183-203).

³⁰⁷ In the 1997 edition, Cotton and Yardeni (1997: 203; 211) read eight signatures, supplying that of Salome Grapte in l. 42. Cotton (2003: 56-58) has since revised this opinion, noting only seven signatures on the papyrus, all belonging to witnesses: “we can see *P. Hever* 64 for what it was: a seven-witness legal document which followed the Roman custom and thus seemed to be more acceptable in a Roman court of law – and this should explain the great effort invested in the translation into awkward Greek” (Cotton (2003: 58)). Additionally, the first signature, originally thought to be in Jewish Aramaic, is now stated to be written in Greek.

³⁰⁸ Cotton and Yardeni (1997: 220) raised the possibility in their 1997 edition that the scribe was the same Reisha who subscribed X Hev 60 and who has subscribed the present document with לְתָבַחְתָּ (l. 44). Nevertheless, this verb can be translated with a factitive sense, so not necessarily “wrote” but “had it written” – i.e. commissioned the document. Cotton (2003: 57) has since retracted her opinion that Reisha was the scribe.

³⁰⁹ Differences between the inner and outer texts are tabulated in Cotton and Yardeni (1997: 212).

³¹⁰ See p. 37 for further comments on the inclusion of irrigation rights.

³¹¹ Cotton and Yardeni (1997: 207).

question.³¹² Nevertheless, the choice of Greek still seems to have given the scribe immense trouble. In light of this, the linguistic choice is an interesting one, since deeds of gift could be written in Aramaic.³¹³ It might perhaps be attributed to the desire to make the documents easy to use in a Greek-speaking, probably Roman, court or the need to deposit them in a public archive.³¹⁴

Like all the deeds of gift in these two archives, the document raises questions about the operative inheritance law and whether such deeds were designed to circumvent it.³¹⁵ Unfortunately we have little information as to the exact circumstances under which this document was drawn up, meaning that the issue must be left unresolved. Like P. Yadin 19, it might have been written to safeguard a daughter's inheritance after a second marriage of a parent and the expected birth of a male heir.³¹⁶ It might also have been connected to Salome Komaise's marriage; although her marriage contract, X Hev 65, was written two years later, the couple are explicitly stated to have been living together already. A connection between the marriage and the present gift may not, therefore, be completely untenable.

³¹² See n. 308 for details.

³¹³ P. Yadin 7 is one such example.

³¹⁴ Cotton and Yardeni (1997: 207-208).

³¹⁵ For further comments and bibliography on this issue, see p. 42, 68-69. On the issues in this particular document, see Cotton and Yardeni (1997: 203-206).

³¹⁶ See pp. 68-69 for further details.

*X Hev 65*³¹⁷

Language: Greek.

Scribe: Unknown.

Date: 7th August, 131 C.E. (consular year, Roman month and day, provincial year, Macedonian month and day).

Document form: Double. Only the inner text survives.

This is the marriage contract of Salome Komaise to Yeshua son of Menaḥem. Yeshua, from the village of Soffathe, is stated to have agreed with his wife, Salome Komaise, to live together “as also before this time.”³¹⁸ The couple therefore seem to have been living together prior to this contract. Komaise’s dowry is stipulated at 95 denarii,³¹⁹ which Yeshua confirms that he has received from her on the day that the contract was written, “as the written evaluation of feminine adornment in sil[ver and gold and clo]thing and other feminine articles equivalent to the above-mentioned amount of money.”³²⁰ The phrasing of this particular clause makes it a little unclear whether he received the actual items, the monetary equivalent or just a written record of them on that day.³²¹ He also undertakes to feed and clothe Komaise and any future children, “in accordance with Greek custom and Greek manner.”³²² This promise, along with the dowry, is secured upon all his possessions, both present and future, and it is explicitly stated that Komaise or her representative has a resultant right of execution on his property. The document concludes with a *stipulatio* clause.³²³

³¹⁷ This is the only document in the Salome Komaise archive that was published in Lewis (1989: 130-133), as P. Yadin 37, though he explicitly stated that, while found in the same cave, it was not part of the Babatha archive. All cited text will be taken from Cotton and Yardeni’s (1997: 224-237) more recent edition of the text.

³¹⁸ X Hev 65, l. 6: ὡ[ς] καὶ πρὸ τούτου τοῦ χρόνου.

³¹⁹ On the size of the dowry, which does not conform to the rabbinic minimum, see the brief comments by Ilan (1993: 249). My English in this entry reflects the language of the text: the name Salome Komaise is given in l. 4, but throughout the rest of the document she is referred to simply by her Greek designation, Komaise.

³²⁰ X Hev 65, ll. 8-9: τειμογ[ρ]αφίαν κοσμίας γυναικίας ἐν ἀ[ργύρω] καὶ χρυσῶ καὶ ἱμα]τισμῶ καὶ ἐταίροις γυ[ναι]κίοις ἀξι[οχρέαν] του ἀργυρίου.

³²¹ See Cotton and Yardeni (1997: 234) for a discussion of this issue.

³²² X Hev 65, ll. 9-10: νόμ[ω] [ἐλληνικ]ῶ καὶ ἐλλ[η]νικῶ τρόπῳ.

³²³ See pp. 61-62 for comments on *stipulatio*.

This contract has been the subject of many of the same debates as those raised about P. Yadin 18, the Greek marriage contract of Shelamzion in the Babatha archive. Like for P. Yadin 18, much of this centres on whether we should interpret the document within a Jewish or non-Jewish legal framework. Indeed the scholars involved on each side are also, for the most part, the same.³²⁴

Lewis, in his initial publication of the papyrus, thought that in this contract the act of marriage was expressed by the groom taking a wife; this contrasts with P. Yadin 18, in which we had the typically Greek ἔκδοσις formula where Judah gave away his daughter. This, he believed, meant the document's structure resembled that of a *ketubba* and he supplied certain missing words based on this supposition.³²⁵ This has been rejected by Cotton and Yardeni, who demonstrate that the nearest parallel to Lewis' reconstructed formula is actually only a *ketubba* from the fifth century C.E. – the restoration does not, therefore, seem to sit on a particularly firm basis.³²⁶ Nevertheless, while the formula represented here may not have an exact contemporary parallel, it should still be noted that it also does not contain the typical Greek ἔκδοσις found in P. Yadin 18.

The next contentious subject is the fact that the couple appear to have been cohabiting prior to this marriage contract: the couple continue life together “as also before this time.”³²⁷ Lewis suggested two possible explanations for this, the first of which he quickly discarded

³²⁴ Thus, this discussion should be taken in conjunction with that in the entry on P. Yadin 18 (pp. 62-66). Ilan (1993) offers an early overview of typical reactions to these documents, labelling the kinds of approach as either “apologetic” or “provocative.”

³²⁵ Lewis (1989: 130). This main addition was of εἰληφέναι in l. 4, so that Yeshua now agreed “to take” Salome Komaise as his wife.

³²⁶ Cotton and Yardeni (1997: 225-226).

³²⁷ X Ηεν 65, l. 6: ὡ[ς κ]αὶ πρὸ τούτου τοῦ χρόνου.

– namely, that we have here a parallel to the Egyptian ἄγραφος γάμος and the pair had been living together in a marriage without a contract – the present one was simply drawn up at a later point.³²⁸ The alternative suggestion, preferred by Lewis and fiercely defended by Katzoff, who had in fact originally made the suggestion to Lewis,³²⁹ sought to explain the matter in terms of Jewish law; the cohabitation had taken place since the couple's betrothal, in line with Jewish practice when the bride was both an orphan and a minor.³³⁰ As Cotton has pointed out, Salome Komaise was certainly not a minor at this time, and had in fact been married before to Sammouos, son of Simon.³³¹

Cotton, indeed, offered a protracted challenge to the original suggestion by Lewis, preferring to see this as an equivalent to the ἄγραφος γάμος custom attested in Egypt.³³²

Tal Ilan has also challenged the Lewis/Katzoff suggestion (as expressed in the original publication by Lewis), though on different grounds from Cotton. She suggests, through an examination of the document and the later rabbinic sources, that actually, “Some men and women in Jewish society of second-century Palestine did indeed live together out of wedlock. Moreover, this claim can actually be verified from rabbinic sources themselves.”³³³ Such a custom resembled the Egyptian practice of ἄγραφος γάμος and was a remnant of an older practice that grew up in an illiterate society.³³⁴ Thus, even among those who situate the document firmly within the context of Jewish law, there is a

³²⁸ Lewis (1989: 130); cf. the discussion in Cotton and Yardeni (1997: 227-229). Katzoff also offers an alternative reading: this is not a marriage certificate at all but a dowry receipt (Katzoff (2005: 143-144)).

³²⁹ Katzoff (2005: 134).

³³⁰ Katzoff (2005), *contra* rejections by both Cotton (in Cotton and Yardeni (1997: 227-229); previously (Cotton (1995a: 206-207)) and Ilan (1993).

³³¹ Cotton and Yardeni (1997: 227). Katzoff (2005: 140) rejects this as a problem, since he states Komaise did not need to be a minor when this contract was written but when the marriage originally took place.

³³² Cotton and Yardeni (1997: 227-229).

³³³ Ilan (1993: *passim* but especially 256-262 on the rabbinic sources). Citation from Ilan (1993: 256).

³³⁴ Ilan (1993: 263).

difference of opinion on the consequent implications of this for our understanding of Jewish society at that time.

The undertaking to support the wife and future children only appears in this document and in P. Yadin 18. In both, it is accompanied by a reference to “Greek custom and Greek manner”:³³⁵ the groom promises to feed and clothe the bride νόμ[ω] [ἐλληνικ]ῶ καὶ ἐλλ[η]νικῶ τρόπῳ (ll. 9-10). Katzoff’s reading of this is identical to his interpretation of the similar phrase in P. Yadin 18: it means “Hellenistic fashion.” He bases this on the grammatical observation that “according to Greek laws, or customs” should instead be rendered κατὰ τοὺς τῶν ἐλληνῶν νομούς.³³⁶ The meaning of the phrase is unclear: it does not appear elsewhere in the Near East nor in the Greek documents from Egypt.³³⁷ What is perhaps safe to note is that the parties, or their scribe at least, took the effort to make reference to Greek νόμος, however they understood this.

X Hev 12

Language: Jewish Aramaic.

Subscriptions: Traces of a Jewish Aramaic scribal signature.

Scribe: Unknown.

Date: 15th Shevat, 131 C.E. (Babylonian day and month, provincial year).

Document form: Simple.

This is a receipt issued to a certain Shalom, daughter of Levi, typically identified as Salome Komaise. The names of those to whom she has paid the dates, which might have been as a tax or lease,³³⁸ are mostly lost. Levi, Shalom’s father, is also mentioned again in ll. 6-7 of

³³⁵ Both these factors have been used to suggest that a single model was followed for such ‘Hellenistic’ marriage contracts in this area: see Cotton and Yardeni (1997: 235).

³³⁶ Katzoff (2005: 136). In a set of documents whose Greek is often less than idiomatic and which are far from free of grammatical errors, an argument on this basis does not seem particularly secure.

³³⁷ Cotton and Yardeni (1997: 235); cf. Lewis (1991: 40-41).

³³⁸ Cotton and Yardeni (1997: 60). The receipt may therefore have been written by tax collectors.

the document, though the text is so uncertain at this point that we cannot be sure in what context.

Unlike most of the Aramaic documents from the Judaean desert, the date is at the end of the receipt; this is also the case in the Greek receipt, X Hēv 60. Though not much more may be said about its contents, the receipt is notable for being by far the latest Aramaic document in the two archives.

Concluding remarks

The above overview of the documents has served to emphasise the sheer range of linguistic and legal variety that they contain. It also, however, leaves open a great many questions about how people made the choices that they did in the face of what appear to be numerous options. Should a deed of gift, for example, be drawn up in Aramaic (P. Yadin 7) or in Greek (P. Yadin 19, X Hēv 64)? What factors influenced this decision and what were its ramifications? Why include a *stipulatio* clause in a contract (P. Yadin 17, 18, 20, 21, 22 and X Hēv 65) and who knew how to formulate such a clause? How did one decide what kind of marriage contract would be drawn up and who decided this – the groom, the bride, either of their parents or was a more complicated mixture of influences exerted? Ultimately, how do we get to a state where documents from the same village can exhibit so many differences?

In order to try to answer some of these questions, I have proposed adopting an ‘agency-based’ approach to the documents. The point of this is to disentangle, as far as possible, the different influences that came to be exerted upon a document in its formulation and in the way key choices were made. By delineating the various groups who helped to shape the papyri, we should arrive at some understanding of how people chose from a range of options available to them in their legal lives. We shall begin to understand who and what influenced their decisions and how this might have affected the way their cases played out in court, if they ever reached a courtroom. While this will not interact in the same way as much past scholarship with the question of the operative law of these papyri, it should ultimately help us to understand the practical working of law in this area from the perspectives of all involved.

Chapter Two

The Scribes

As a general rule, parties did not write their own contracts. This is a truism for much of ancient society, in which literacy levels were low and the ability to write a legal document would be restricted to a relatively small circle. Indeed, the same could be said of the modern world, where it would be a rare case for a purchaser to write his own contract for a substantial item. Solicitors do this job; models or copies may be more widely available for use by others.

Scribal involvement, however, means that we must recognize an extra filter in the construction of these documents. We should not, perhaps even cannot, talk straightforwardly about a party's intentions regarding law or specific formulae employed in a contract without actively considering the fact that the expression of their intentions was mediated through the person who did the actual practical task of writing. This has already become a more explicit consideration in recent studies of the Egyptian papyri. With regard to petitions specifically, Benjamin Kelly comments:

“These texts were mostly written by scribes, and these scribes worked within a scribal culture with a long-established repertoire of stock phrases and *topoi*. In most cases, it is simply impossible to tell whether we are hearing the ‘voice’ of the petitioner, or that of the scribe, or whether we are hearing an echo of discourses that were common in scribal and legal culture, and simply repeated through force of habit, without necessarily representing the innermost mentalities of either petitioner or scribe. In view of this uncertainty, anyone who wishes to identify the very ‘voice’ of the petitioner in the

language of such a document – especially in formulae repeated frequently in other petitions – must discharge a heavy burden of proof.”³³⁹

Petitions are, as Kelly points out, more problematic than most genres of papyri: the petitioner aims to convince, to tell their own particular narrative about a course of events and in doing so persuade the reader that they are in the right. His or her chosen scribe (ideally) aids them in that purpose, using their experience to help fashion the narrative into one with maximum effect. Documents such as court transcripts or census declarations are not going to be subject to such a great process of narrative-shaping, though scribal mediation is, of course, still present.

This does not mean that we can therefore say nothing of the parties’ own intentions, nor indeed that we should credit the documents in their entirety to the scribes alone. A systematic identification of all stock scribal phrases, with the remainder being identified as that which is unique to the litigant’s mentality is equally problematic.³⁴⁰ Rather, we need to acknowledge that the scribe did have some sort of input into the formulation of these documents. Litigant and their scribe interacted, so that the end product represents a fusion of their influences – along with others who will be discussed in due course.

It is generally acknowledged that professional scribes wrote the vast majority of the documents in the Babatha and Salome Komaise archives but the implications of this are very often underplayed.³⁴¹ Studies of the archive scribes tend to focus on identifying their

³³⁹ Kelly (2011: 38-39). See also Bryen (2013: 56-65) on this: “There are good reasons for thinking that there is an interactive process going on when petitions are composed, and that the interface between the scribe and the speaker is a dynamic one” (Bryen (2013: 63)).

³⁴⁰ See Bryen (2013: 63-64).

³⁴¹ The information that the archives provide is often incorporated into larger studies, both of Jewish scribes and of the wider Dead Sea corpus; notably Schams (1998) and Tov (2004). The habit that certain scribes in these archives have of appending their name and in some cases their title to the documents is, however, unusual within both contexts: typically the Qumran scribes and, indeed, professional scribes more generally in antiquity are anonymous (cf. Tov (2004: 7) and Youtie (1975: 209)).

position in contemporary society;³⁴² indeed, particular attention has been given to the meaning of the self-designation “λιβλάριος” used by two scribes in six documents.³⁴³ The writers’ status, contacts, training and skills are certainly relevant concerns, since they inform us about the expertise the writers brought to the documents. Rarely, if ever, however, is scribal mediation considered in discussions of the ‘operative law’ of the documents or specific phrases within them,³⁴⁴ which are still implicitly considered to indicate the parties’ intentions as to the legal framework under which they wished to operate. Such an assumption is not necessarily erroneous but it is far from a given. We need, instead, to assess more explicitly the involvement of the scribes in the documents’ formulation, along with the parties’ reasons and motivations for choosing a particular writer in the first place.

The present chapter will therefore examine the involvement of the scribes in the formulation of these documents. First, I shall consider the reasons parties might have had for hiring a particular scribe. Some of these might have been active considerations, others implicitly understood and none are likely to have been mutually exclusive; it is probable that multiple factors played a part in choice of writer – there was not always going to have been a single, isolated reason for employing a particular person to write such contracts. I

³⁴² See, for example, Schams (1998: 209-214) and Isaac (1992: 73-74), who are particularly concerned in this respect with the meaning of λιβλάριος.

³⁴³ P. Yadin 15, 17, 18, 20, 21 and 22. These are by two different scribes, Theēnas and Germanos. The latter also signs his name to other documents (P. Yadin 23-27) but does not use the designation “λιβλάριος.” Interpretations of this term differ substantially with regard to the position of the scribes, as will be discussed in the second half of this chapter.

³⁴⁴ In a chapter which focused on the external aspects of the Judaeian desert documents (in particular double documents and witnesses), Cotton (2003: 51) commented: “On the whole, however, we may safely assume that the diplomatics, like the legal formulae, were transmitted for generations through the scribes, and were available to all, Jews and non-Jews alike.” This, however, was the fullness of the subject’s treatment. Oudshoorn (2007: 87) also mentions in passing the importance of the scribes’ involvement with regard to legal context. In contrast, Kelly (2011: *passim* but especially 38-45) constantly considers the extent to which scribes influenced the language and formulae used in petitions in Egypt.

shall then return to more familiar ground with regard to these documents and take into account the scribes' role in society and what skills, if any, they brought to the composition of the papyri besides the ability to write. Finally, the balance between the commissioners' and the scribes' input in determining the contents and form of the documents will be considered. The aim of this is to make scribal participation in the documents' creation explicit and actively consider the nature of their involvement, not to lay the entire responsibility for the end form of the documents at the scribes' door.

First, a brief clarification: the term 'scribe' is used here to denote 'writer'. It carries with it no implications about the position of these writers in their contemporary society. It does not refer to the ספרים or the γραμματεῖς of the rabbinic texts and the New Testament. It thus has a very restricted meaning in the following discussion.

Reasons for hiring a scribe

In considering the reasons why people might choose a particular writer, it is also necessary to touch upon some general points about why a scribe might be hired at all. This is because such underlying generalities, though perhaps not consciously considered by the parties involved, might point towards a motive for hiring a specific writer in a particular case. As has been stated, scribes were generally hired to write contracts; in ancient society, that was simply what was done.³⁴⁵ Nevertheless, there was often probably a choice of scribe

³⁴⁵ The lack of embarrassment about illiteracy in antiquity (see Youtie (1971: 170) and Hanson (1991: 162)) was also probably an indication of the general attitude that one hired a scribe to write because that was what they were for; that was their job. Indeed, Hezser (2001: 482) observes, "Amongst all of the extant documents from the period under discussion here only one marriage contract (P. Yadin 10) may have been handwritten by the bridegroom and a sales contract (Cotton/Yardeni no. 9) by the seller." It was not, however, unheard of for people to write their own paperwork, just not the norm: Ptolemaios, son of Diodorus, (mid-second century C.E.) sometimes drafted his own petitions (see Bryen (2013: 14) for comments and further

available and in these cases we may legitimately question the reasons one writer was employed over another.

Illiteracy

One reason for people to employ a scribe is that they themselves were unable to write. Literacy in the ancient world is not usually considered to have been high.³⁴⁶ Jewish literacy, in Roman Palestine in particular, might have been even lower and that of Jewish women lower still.³⁴⁷ Furthermore, extended written composition was an even rarer skill than reading ability. Indeed, Salome Komaise's brother has a χειροχρήστης subscribe for him in one document,³⁴⁸ while Babatha uses an ὑπογραφεύς three times.³⁴⁹ Additionally, she

references). Ptolemaios' archive consists of eleven documents, of which Ptolemaios himself is thought to have written P. Mich. XI 617 (a draft) (145-146 C.E.) and SB XX 14401 (= P. Mich. Inv. 255) (a copy) (147 C.E.) (see Whitehorne (1991: 251)).

³⁴⁶ Harris' *Ancient Literacy* (1989), though written over twenty years ago, is still probably the most comprehensive survey of literacy in the ancient world from an historical perspective. He estimated that literacy levels stood at about 15% in Rome and Italy during the Late Republic and High Empire, dispelling the many optimistic estimates which had gone before (see Harris (1989: 9) for bibliography on such previous, more optimistic studies). While Harris' methodology has been critiqued and his conclusions refined extensively over the years (see, for example, the series of responses in Beard et al. (1991)), his overriding conclusion that literacy levels were low has found general acceptance, even if it is highly questionable whether these levels can or should be statistically represented. Notable works since then that focus on the Roman period (the Classical Greek world has attracted rather more attention) include Bowman and Woolf (1994), Woolf (2000) and Bagnall (2012). On Jewish literacy in the Graeco-Roman era, see Hezser (2001); Hezser (2001: 34-36) includes a survey of previous literature up to 2001.

³⁴⁷ Hezser (2001). See also MacDonald (2005: 72-73) on male Jewish literacy. Hezser in large part bases her conclusions on the evidence of these archives; if Babatha and Salome Komaise, Jewish women from a high social strata, could not even sign their names then "one can be certain that illiteracy amongst middle- and lower-class women was almost total" (Hezser (2001: 498)). Hezser emphasises the evidence of these archives whenever discussing women's literacy, though does observe that none of the Jewish women who appear in subscriptions in any of the surviving papyri from this region sign their names (see Hezser (2001: 321)) – this provides further support for her more general conclusions about high levels of female illiteracy among Jews. We do not necessarily need to advance to her general conclusion here: it is enough for the two women involved in these particular archives to be illiterate to explain their personal need to use scribes.

³⁴⁸ In X Hev 61, ll. 3-4, Onainos son of Sa'adalos acts as χειροχρήστης for -los, the brother of Salome Komaise. This is the first attestation of the word χειροχρήστης in the Greek language (see Cotton and Yardeni (1997: 144)). See Cotton (1995b) on the meaning of the term and the later examples of its usage.

³⁴⁹ P. Yadin 15 (in which Eleazar, son of Eleazar, acts as ὑπογραφεύς (ll. 34-35)), P. Yadin 16, (Judah, son of Eleazar "wrote for her" (ἔγραψα ὑπὲρ αὐτῆς) (ll. 35-36)) and P. Yadin 27 (Babelis, son of Menahem seems to have written for her (ll. 13-14)).

is once specifically stated not to know letters (μη εἰδέναι γράμματα),³⁵⁰ a phrase frequently found in the Egyptian papyri to denote illiteracy. One other signatory in P. Yadin 15 explicitly uses another person to sign for him: Yehoḥanan, son of Aleks, whose signature in Aramaic is written “by the hand of Yehoseph, his son”.³⁵¹ As such, it is reasonable to suppose that Babatha, Salome Komaise and their contacts hired scribes to write for them for the very basic reason that they lacked this ability themselves.

A few further points. The distinction between reading and writing has already been touched upon but it is worth emphasising that lack of writing ability does not entail lack of reading ability and vice versa. The ‘illiterates’ involved in the composition of these documents need not, therefore, have been completely incapable of reading them. They may have had high, low or no reading skills. It is possible that Babatha, Salome Komaise and others could read the documents to a greater or lesser extent but still did not know how to write. Equally, lack of reading ability need not signify the complete absence of writing skills. Those who could write simple subscriptions to the documents were not necessarily able to read such extended compositions. Indeed, it is possible that many of the signatories to the documents could sign their name but possessed no further writing skills nor any reading capability.³⁵²

³⁵⁰ P. Yadin 15, l. 35.

³⁵¹ P. Yadin 15, l. 39: יהוחנן בר אלכס ביד יהוסף ברה.

³⁵² Cribiore (2001: 167-172) has demonstrated from the Egyptian evidence that elementary schooling often involved learning to write one’s name, even before students had begun to learn how to read or, crucially for ancient education, fully mastered the alphabet and syllables. See also her earlier work, Cribiore (1996), for a more comprehensive study and a useful catalogue of school exercises; she emphasises the importance placed on learning to copy scripts in early education. A nice example of the evidence is Cribiore (1996: No. 51), an ostrakon on which a student called Kametis wrote his name along with the first four letters of the alphabet, in regular and reverse order, making mistakes along the way. Additionally, Macdonald, in a detailed discussion of the connection between reading and writing, or rather the lack of such a connection, uses a modern comparison and examines documented cases of children who teach themselves to write before they are able to read; see Chomsky (1971) for the original case study, Macdonald (2005: 53) for discussion.

Indeed, a further distinction should be made between this kind of writing ability and skill in extended composition. Thus, the people commissioning the documents may not have been completely unable to write in the former sense, but lacked the ability or confidence to draw up a formal contract. They did not believe they possessed the necessary expertise to compose a lengthy, legal document even if they did have some level of writing skill. The scribes would therefore be hired because they possessed a higher level of composition ability than the principals, particularly in the relevant area – legal contracts.

Another possible scenario is that the parties could write, but not in a particular language (this issue will be discussed further below). This interpretation would mean that the phrase *μη εἰδέναι γράμματα* in P. Yadin 15 did not necessarily denote illiteracy in all languages, but rather had a restricted reference to illiteracy in the Greek language, not Jewish or Nabataean Aramaic. While such a meaning is not unattested in the Greek papyri from Egypt,³⁵³ I am inclined to agree with Hezser's analysis of its use in this particular document: the fact that the subscriptions are written in any language in these archives means that, had she been able to, Babatha could have written in the language with which she was most comfortable.³⁵⁴ The phrase therefore has the wider meaning of being unable to write in any language.³⁵⁵

All this adds layers of complexity to the original picture but does not contradict our original hypothesis that scribes were hired mainly because the parties themselves could not write,

³⁵³ Youtie (1971: 162) argues for this kind of restricted meaning, as does Depauw (2003: 99).

³⁵⁴ Babatha does, in fact, appear to sign her name in her marriage contract in Jewish Aramaic, P. Yadin 10, l. 22: "Babatha, daughter of Simon, on her own behalf" (בבתא בתאן דסימון על נפשה). This contrasts with the statement of illiteracy, should we understand it in its broadest sense of not being literate in any language. Once again, however, the explanation probably lies in levels of literacy: Babatha's ability to sign her name in Jewish Aramaic does not mean she had any writing (or reading) capabilities beyond this.

³⁵⁵ Hezser (2001: 183).

or at least compose, to the level required for writing these documents. Nevertheless, positing this as the sole reason for hiring a professional writer is problematic and, indeed, does not explain why one particular scribe might be hired. While Babatha, Salome Komaise and others in the archives may have been illiterate, plenty of people attested in the documents were not, notably Babatha's second husband Judah, son of Eleazar, who wrote her *ketubba* in Jewish Aramaic.³⁵⁶ Additionally, the principals seem to have had no problems finding a χειροχρήστης or ὑπογραφεύς to write for them;³⁵⁷ these people contributed more than just a signature and were proficient to some level in composition. In short, while some of the people in these archives were unable to write, there were those around them who could and who were presumably known to and, to a certain degree at least, trusted by the illiterate principals.³⁵⁸ They would therefore seem a prime choice to draw up a contract for a wary illiterate. Once again, however, we encounter the problem of levels of abilities. The ability to write a short subscription, while involving some compositional skill, does not equate to the ability to compose an extended, original piece of writing let alone a formal, legal document. The average χειροχρήστης or ὑπογραφεύς therefore simply did not have the necessary skills for the task.

³⁵⁶ P. Yadin 10.

³⁵⁷ See n. 348 and n. 349 for lists of these people. Four different people are attested fulfilling this role and no same person acts as χειροχρήστης/ὑπογραφεύς twice. A good number of people also sign their names when they act as witnesses; indeed, the same people appear as witnesses repeatedly. This has led Ilan (2001: 169) to argue that "literate men, in an illiterate society, practised the witnessing of documents as a profession." There seems little reason to presume that these were professional witnesses: in an area with limited literacy, they may have been used again and again because they were friends or neighbours of the family and few other people with the requisite writing skills were available. With regard to the current problem, once again there is no guarantee that such signatories would have had the requisite compositional skills to draw up an extended legal contract.

³⁵⁸ Youtie (1975: 220), in a study of the Egyptian papyri, profiles the people most likely to write for illiterates. These are (in order of preference): relatives; business associates and colleagues in government service; and then professional scribes. In other words, people who were known and trusted were the first choice.

We are, however, still left with one problem. Judah wrote his own marriage certificate. This demonstrates that he was capable of the kind of extended composition that many were not and indeed his hand has commonly been judged to be that of a skilled, practised writer.³⁵⁹ He therefore possessed the necessary skills which would have allowed him to dispense with the services of a scribe. Judah could write any documentation which either he or his immediate family needed. His family would presumably have trusted him to represent their wishes or instructions correctly and so would have reduced the risk of being defrauded through their own illiteracy.³⁶⁰ Yet he did not do so. Babatha continued to employ professional scribes after her marriage to him.³⁶¹ This suggests that people did not employ scribes solely for their writing skills: there were other factors in play, otherwise why pay for such a service? Scribes, and perhaps a specific scribe, provided something which Judah and those like him could not; some extra skill or attraction. It is these expertise that may explain the choice of a particular scribe for a specific task.

Language

One such skill may have been the ability to write in a different language. Thus, while Judah would write competently in Jewish cursive, he could not do so in Greek and so would need to employ a scribe for any documents that the parties wanted written in this language.

The implication of this is that people would employ a suitable writer when they needed a document drawn up in a language in which they were not themselves sufficiently

³⁵⁹ Yadin, Greenfield and Yardeni (1994: 77), Lewis, Katsoff and Greenfield (1987: 248) and Lewis, Yadin and Greenfield (1989: 136), though he was “not a professional scribe” (Yadin et al. (2002:118)).

³⁶⁰ Illiterates do occasionally seem to have been taken advantage of in this way: see P. Oxy. I 71 (303 C.E.); from the Ptolemaic era, see P. Enteux. 1 (259 B.C.E.) and P. Enteux. 50 (221 B.C.E.).

³⁶¹ This is of uncertain date but Babatha was at least employing scribes after Judah acted as guardian in P. Yadin 14 and 15 and she does not seem to have changed her policy.

competent. Their reasons for choosing a particular language is a further, complex issue. This might be determined by a number of far from mutually exclusive factors, including the linguistic competence of the parties to the contracts, their relative statuses, social or cultural preconceptions about particular languages and their usage, the nature of the document involved and the demands of the administration.³⁶² The key factor in the use of Greek in these archives has typically been connected with the latter; the desire to use these legal contracts in a Roman court encouraged people to write in Greek.³⁶³ This does not mean that only Greek documents were enforceable in Roman courts, merely that writing them in Greek made them easier to use in this setting.³⁶⁴ To some degree this is certainly the case, though it should not be over-emphasised to the exclusion of all other factors. While the majority of the documents dated after 106 C.E. are in Greek, this is still a majority and not an entirety: six documents from the two archives dated after 106 C.E., one to as late as 131 C.E., are written in either Jewish or Nabataean Aramaic.³⁶⁵ To take two examples, P. Yadin 10 (Babatha's *ketubba*), undated but certainly written after the

³⁶² Language choice is a subject of great debate in modern sociolinguistics, which has been picked up in multi-/bi-lingual studies of the ancient world. Of special relevance here is Spolsky's (1985: 44-45) set of "preference rules", developed in relation to spoken and written languages in first century Palestine. According to these, one chooses:

- 1) the language the speaker knows best for the topic concerned
- 2) the language that the speaker believes his or her interlocutor knows best for the topic concerned
- 3) the language used the last time the speaker spoke to the same person
- 4) a language which excludes or includes a third party
- 5) the language which asserts the most advantageous social-group membership in the interaction.

These provide some useful factors to consider in reference to these particular documents, even if there are often going to be complications with their application, which have already been discussed by Langslow (2002: 40-41). For further bibliography on multi-lingual theory applied to the ancient world, see Mullen and James (2012) and Adams, Janse and Swain (2002). Language choice will be discussed further in Chapter Four (pp. 167-176).

³⁶³ Though, as Oudshoorn (2007: 89) convincingly puts it: "It seems more likely that a gradual change to Greek occurred to facilitate the use of the documents in a Roman court context, without ever excluding the use of Aramaic in legal documents completely."

³⁶⁴ The use of interpreters in courts in Egypt is well documented (see Youtie (1975: 205) for examples). With regard to written evidence, however, Demotic contracts had a Greek summary and description making them easier to use in court. For translation of written documents in Egypt, see the comments by Hanson (1991: 176-177), with examples of explicit references to translations of Egyptian documents from the Ptolemaic period (Hanson (1991: 177, n. 65)).

³⁶⁵ These are P. Yadin 6-10 and X Hev 12. The more permanent transition to Greek (with the exception of the late X Hev 12) seems to come at some point between 122 and 124 C.E. See the discussion of language choice in Chapter Four (pp. 167-176).

creation of the Roman province, and X Hev 12 (a receipt for dates addressed to Salome), dated to 131 C.E., are both written in Jewish Aramaic. The archives provide Greek examples of the same type of documents: two Greek marriage certificates and various receipts. Possibly the principals were not concerned with using these two documents in a Roman court and so did not feel the need to have them written in Greek. This raises the question, however, of why they did feel the need to do so in other, similar kinds of documents, if indeed the reason for choosing Greek was so explicitly connected with the desire to appeal to the Roman system. We cannot simply stop at attributing language choice to the influence of the Roman government – other motivating factors must be considered in each case.

Whatever these factors, there may sometimes have been considerable pressure, real or imagined, to draw up a document in a language in which the commissioning party was not proficient. In such cases, a few options present themselves. If the other party was proficient in the desired language, he or she could draw up the document, though this would have been an unusual step given the prevailing reliance on scribes. A further drawback would have been that the non-proficient person may have been placed at a disadvantage.³⁶⁶ Another alternative was to ask a third party to write the contract – this might have been a friend or relative of one or both of the principals. Finally, there was the most common solution of commissioning a scribe to write the document in the language desired.

One possible reason for hiring a particular scribe was, therefore, for the linguistic expertise he could provide. This is slightly more specific than the general literacy issue itself as it

³⁶⁶ To be discussed in more detail below (pp. 109-110).

does not imply complete illiteracy on the part of the commissioners: this is restricted to a lack of a necessary level of competence in one particular, preferred language.

Type of document

Another factor in Judah's decision not to compose any documents aside from his marriage contract might be people's attitudes to particular types of contract. Indeed, this applies more generally to people's decision to employ, or not to employ, a scribe. There may have been a feeling that certain documents required a more professional touch or, conversely, that it was preferable to draw up more personal contracts (such as one for a marriage) oneself: in the latter case, sentiment plays a key role.

In theory, it seems reasonable that people had different attitudes towards the composition of different kinds of documents. In practice, it is very difficult to marshal evidence for such a distinction, based, as it is, on personal choice. For example, Judah, son of Eleazar, as stated above, does not write any other documents in the Babatha archive besides his marriage contract. This might indicate that he had a sentimental attitude towards this particular kind of document alone; all the others from the archive after his marriage are of a different nature and so their composition is determined by other considerations and a different attitude. There is, however, one other papyrus of a similar type: his daughter Shelamzion's marriage contract to Judah Cimber (P. Yadin 18). This is written in Greek and not in Shelamzion's father's hand. As such, while Judah may well have felt some compulsion to write his own marriage contract to Babatha, apparently no such feeling emerged in the commission of that of his daughter. Perhaps sentiment did not play a part and he simply felt capable of writing this particular type of document: he had been married

before, so could have reproduced or even just copied a previous contract, making the necessary amendments. If Michael Satlow's estimations about Judah's lack of solvency are correct, this might have been in a desperate attempt to save money.³⁶⁷ He could, however, have repeated the process once again for Judah Cimber and Shelamzion. Language competence is likely to have played a part here; Judah Cimber and Shelamzion wanted a Greek contract and so the bride's father could not compose it. If they took no part in the decision and the language was chosen by the scribe they employed, the question re-emerges – why did Judah not write them a *ketubba* similar to Babatha's? I would therefore argue that in this case the commissioning parties did indeed express a preference for a particular language or type of marriage document. This was not solely down to the scribe.

A further possibility which must be considered is that the *ketubba* was never expected to be used: it was an ornamental item, a sentimental record of a personal event and not intended to be presented in a court of any kind or used as a legal document. The primary objection to this is that Babatha does seem to have used it. She takes action in P. Yadin 21 and 22 based upon her right to her dowry money.³⁶⁸ This appears to be a reference to the money due to her as recorded in her *ketubba*. Perhaps, then, we should separate the original intentions with which the document was drawn up from actual events: P. Yadin 10 was never intended to be used but, due to unforeseen circumstances, became an instrumental legal document. In antiquity, however, widows and divorced women were generally entitled to a return of their dowry money; indeed, Roman law gradually built up an elaborate system of safeguards to protect a woman's right to it. The *ketubba* was a record of this dowry money. Even if it was regarded as no more than a receipt, it is highly

³⁶⁷ Satlow (2005) observes that Judah seems “perpetually strapped for cash” (Satlow (2005: 59)) and later describes him as, “not a father-in-law's dream: he squandered his daughter's (that is, his own) money” (Satlow (2005: 64)).

³⁶⁸ P. Yadin 21, ll. 11-12; P. Yadin 22, l. 10.

improbable that it was seen as mere decoration: this was Babatha's proof of her right to a specific amount of money upon dissolution of the marriage.³⁶⁹ Even if the legal disputes that followed Judah's death were not envisaged, it is difficult to believe that the *ketubba* was seen as fulfilling no practical role whatsoever.

This example serves to illustrate the complexities of the issue, which does not provide any easy solutions. We have not yet reached any definite conclusions about people's attitudes to particular types of contracts. This might, in fact, be impossible since, in the absence of evidence of a general cultural attitude towards certain documents, we are left trying to second-guess very individual opinions. This particular point is therefore worth considering but should not be pressed too far.

The parties involved

The use of a scribe may also have been determined by those involved in drawing up the document. If one or other of the parties were competent writers, then perhaps they could draw up the document themselves: a scribe would be needless expenditure. Two issues complicate this matter. The first, once again, relates to language competency. Person A may have objected to Person B drawing up a contract in a language he could not read. Or both parties may have wished for a document to be written in a language in which they were not competent, such as that of the administration. The second is more an issue of trust. If Person A was not well acquainted with Person B and had limited literacy or was completely illiterate, it is perhaps understandable that he would be cautious about having

³⁶⁹ If Cotton is correct about the succession laws in the area not favouring women, then this would add further importance to the stipulation of the dowry and its return; it may have been the only money to which Babatha was entitled. Cotton (1998a) has, however somewhat retreated from this stance. See pp. 68-69 for further details on this point.

Person B draw up a document. Person B may insert clauses to his own advantage or change the agreed terms, while Person A was not-so-blissfully unaware. In such a case, employing a neutral third party to draw up the contract would be a sensible precaution.

In this scenario, the main skill the scribe brought to the table was still writing ability and perhaps also language competence. He also, however, brought the added attraction of neutrality.

Official copies

In cases where our documents are copies, especially copies connected to the Roman administrative or legal system,³⁷⁰ the scribe is probably part of a wider administrative structure. He was employed to find and copy a person's census return or other document.

In this case, the scribe has no influence on the substantive contents of the document, besides perhaps the language, as he merely makes a copy of an existing papyrus. The original, of course, is still subject to the same considerations about the extent of scribal influence. Choice of scribe for the copy is dictated purely by considerations about his access to the relevant documentation.

Legal expertise

The Nabataean kingdom was incorporated into the Roman Empire in 106 C.E. The inhabitants thereafter had to adjust to their new rulers and the new ruling, administrative

³⁷⁰ Documents of this kind may include: P. Yadin 11, 12, 13, 16, 28-30, (possibly) 33, 34; X Hēv 61, 62.

and possibly legal system; only “possibly,” as it is a well-known feature of the Roman Empire that it took account of local custom or law to varying degrees. Yet, while this is known to us, it does not mean that it was evident to the people of the new province of Roman Arabia. If Babatha or one of her family now wanted to sell a piece of land or take out a loan, they could have been understandably uncertain about the new procedure or, indeed, whether there even was one. In this case, the most sensible option would be to ask someone with some kind of legal expertise what they should do, or request that they draw up a document which completed the necessary transaction. Based upon this uncertainty, it would seem likely that they would approach someone connected with the Roman regime who, they would assume, would be informed about their new rulers’ requirements.

Such a reconstruction implies that a) the scribes of these documents were perceived to have some kind of legal expertise as well as their writing ability, and b) that these scribes were in some way connected to the Roman administration. They might have been locals subsequently employed by the Romans or have come with the army or governor from elsewhere. If this reconstruction is correct, it would mean such scribes would in all probability have considerable influence on the content and legal substance of the documents. Such a reconstruction does not, however, necessarily involve all the post-106 C.E. documents. After initial contact, the people of Roman Arabia may have decided that they did not have to worry about any new system. The existing local scribes may have gradually become more informed about the new situation and been employed more frequently once people’s initial worries had died down. Or, the perception may have been that the only requirement or desideratum for composing new documents was that they be written in Greek, in which case any scribe who could write the language might be used without requiring him to have up-to-date legal knowledge.

The identity of the scribes

Examining why people hired scribes has raised several key questions regarding their identity. First is whether the post-106 C.E. scribes were locals or outsiders who arrived with the Romans. Second is how official their position was. Both considerations are vital if we are to reach any conclusions regarding the third: the extent of the legal expertise that they brought to the documents. Identifying the background and position of the writers may shed some light on this issue.

Local or ‘Roman’?

The first question to consider is whether the post-106 C.E. writers of these documents were recruited from the local population or arrived with the Romans.³⁷¹ In order to tackle this problem, we must first examine the situation prior to the Roman arrival – we may then identify points of continuity or disparity which may prove useful in profiling those acting as scribes in Roman Arabia.

We have six documents in the two archives that are dated prior to 106 C.E. either definitely or tentatively: P. Yadin 36 (= P. Starcky), P. Yadin 1-4 and X Hev 2. Of these, P. Yadin 1-4 are signed by their writers, all of whom append to their name ספרא, “the scribe”: P. Yadin 1 (93/94 C.E.) is written by Huwaru, son of Awatu and P. Yadin 2-4 (all 97/98 C.E.) by Azur, son of Awatu.³⁷² Nothing further is known about these two so it is impossible to

³⁷¹ ‘Roman’ will be used here with this sense, rather than to designate anyone who is a Roman citizen or a native of Rome itself.

³⁷² P. Yadin 1, l. 66: חורר בר עותו ספרא, “Huwaru, son of Awatu, the scribe” (the scribe’s name is restored on the *recto* though clearly legible on the *verso*); P. Yadin 2, l. 49: עזור בר עזור ספרא, “Azur, son of Awatu”; P. Yadin 3, l. 55: עזור בר עותו ספרא, “Azur, son of Awatu, the scribe”; P. Yadin 4, l. 26:

determine whether they were connected with the Nabataean regal administration or not.³⁷³

This information is represented in Table 3 (below):³⁷⁴

TABLE 3: IDENTIFIED SCRIBES OF DOCUMENTS WRITTEN BEFORE 106 C.E.³⁷⁵

DOCUMENT	DATE (C.E.)	SCRIBE	METHOD OF SCRIBAL IDENTIFICATION	LANGUAGE
P. YADIN 1	8 Elul, Year 23 of Rabbel II (93/94)	Huwaru, son of Awatu	Signature	Nabataean Aramaic
P. YADIN 2	3 Kislev, Year 28 of Rabbel II (97/98)	Azur, son of Awatu	(Partial) Signature	Nabataean Aramaic
P. YADIN 3	2 Tebet, Year 28 of Rabbel II (97/98)	Azur, son of Awatu	Signature	Nabataean Aramaic
P. YADIN 4	Unknown, though Year 28 of Rabbel II (97/98) is mentioned	Azur, son of Awatu	(Partial) Signature and handwriting	Nabataean Aramaic

The repeated presence of Azur might indicate an early preference for employing the same scribe again and again. The principals found someone competent whom they trusted to write their documents and so simply returned to him whenever they needed a new contract drawn up. This hypothesis is reasonable in the case of P. Yadin 2 and 3: these two documents are near-identical in form, written within a month of each other, and the seller, Abiadan, daughter of Abad-Ḥaretat, is the same in each. Whatever her reasons for drawing up a new sale contract for the same piece of land, it seems perfectly natural that Abiadan

[... עזור בר עו]לז [ספרא], “Azur, son of Awatu, the scribe”. Yadin et al.’s (2002: 253) identification of the scribe in P. Yadin 4 and consequent restoration of the name is based on handwriting.

³⁷³ In P. Yadin 2, Archelaus, a Nabataean commander, is the purchaser but this provides no basis for assuming that Azur also occupied an official position.

³⁷⁴ For further information on the documents’ contents, see their respective entries in the *Survey of the Documents* or the summary table in the same chapter (pp. 32-33).

³⁷⁵ The information in all tables in this chapter is based on that in the publication and commentaries on the documents in Yadin et al. (2002).

would return to the scribe who had written P. Yadin 2 for her: all she needed was a copy of this document with the names changed. This does not, however, mean she would use him for any and all writing. P. Yadin 1 and 4 share no common participants (nor do they with P. Yadin 2 and 3), and nothing is known about the possible relationship between the people in these documents. We may presume some connection based on their common find-location in Babatha's purse, but anything further is pure speculation. Consequently, we do not know if the principals did indeed go back to the same scribe over a long period, though this would seem a reasonable practice; a particular scribe might be employed repeatedly based on a relationship of trust that had been gradually built up.

We can, in any case, safely conclude that there was a person who wrote multiple documents of various types for different people prior to 106 C.E. Azur was not a party to any of the contracts and does not appear as subscriber or witness anywhere else. It is therefore reasonable to suppose that he was some kind of scribe whom people employed to write their documents for them. Further to this, we may also make the broad observation that there was a demand for the writing of documents. Competent people filled this demand.

Ḥuwaru, son of Awatu, and Azur, son of Awatu, do not appear again in any of the papyri written after the Nabataean kingdom was converted into a Roman province. This does not, however, mean that people stopped using those scribes who had operated in the Nabataean kingdom. There is one Greek document (P. Yadin 5, dated to 110 C.E.) and a fragment of another (P. Yadin 31, tentatively dated also to 110 C.E.) but the next Jewish or Nabataean Aramaic document in the archives after X Ḥev 2 (c. 100 C.E.), the latest dated contract pre-annexation, is P. Yadin 6 (119 C.E.). We therefore have a gap of about nineteen years between the last Aramaic document written under the Nabataean kingdom and the first that

was written under the Roman administration: time enough for the people in question to retire, die, move on or change professions. The fact that their names do not reappear is therefore not particularly mysterious or surprising and certainly does not indicate that people stopped using local scribes.

On the contrary, as mentioned above, six documents written after the creation of the Roman province were written in Nabataean or Jewish Aramaic, one as late as 131 C.E.³⁷⁶ Scribes have been identified for five of these documents, based upon signatures or handwriting: this information is represented in Table 4 (below).

TABLE 4: IDENTIFIED SCRIBES OF NON-GREEK DOCUMENTS WRITTEN AFTER 106 C.E. IN THE BABATHA ARCHIVE.

DOCUMENT	DATE (C.E.)	SCRIBE	METHOD OF SCRIBAL IDENTIFICATION	LANGUAGE
P. YADIN 6	119	Yoḥana, son of Makkuta	Handwriting	Nabataean Aramaic
P. YADIN 7	24 th Tammuz, 120	An unknown son of Shimon	(Partial) Signature	Jewish Aramaic
P. YADIN 8	3 rd Tammuz, 122	Yoḥana, son of Makkuta	Handwriting. The scribe's name is present but not identified explicitly as the scribe.	Jewish Aramaic
P. YADIN 9	122	Yoḥana, son of Makkuta	Handwriting. Yoḥana's name appears among the witnesses but is not conclusively stated to be that of the scribe.	Nabataean Aramaic
P. YADIN 10	3 rd Adar, year unknown	Judah, son of Eleazar Kthousion	Signature	Jewish Aramaic

Yoḥana, son of Makkuta, is identified entirely on the basis of his handwriting.³⁷⁷ In none of these documents does he sign and append ספרא to his name, as in those predating 106

³⁷⁶ See n. 365.

³⁷⁷ Yoḥana, son of Makkuta, has also been assumed to appear in P. Yadin 7 as a possessor of property. In fact, Yoḥana is a daughter of Makkuta in this document: נין[חנה ברת מכותא] (l. 46, also restored in ll. 11-12). The editors explain this as a scribal error, noting the fact that Yoḥana is “a well-known person in the Naḥal Hever documents” (Yadin et al. (2002: 97)). Furthermore, as they go on to note as explanation for the error, Yoḥana is also a woman's name, which is attested in an ossuary from the Jerusalem area (Yadin et al. (2002: 97)).

C.E. The association of this hand with his name is based upon an identification of the handwriting in these documents with the signatures in P. Yadin 8, P. Yadin 9 and that in one of the subscriptions to P. Yadin 22.³⁷⁸ His hand is skilled and cursive.³⁷⁹ It could very well have belonged to a professional writer, capable of the rapidity of writing which is on display. The documents may, then, still provide evidence that local scribes continued to operate under Roman rule and even that people tended to find one they trusted and employ him repeatedly. Notably, too, while P. Yadin 6 and 9 are written in Nabataean Aramaic, P. Yadin 8 is written in Jewish Aramaic. The scribe here appears to have been able to range across dialects, perhaps maximising his income through this skill.

These documents demonstrate that even after the Romans arrived, there were still people around who could be commissioned to write contracts in languages other than Greek. Indeed, they *were* approached to do so for about sixteen years after the province was created and occasionally even later. There was still a demand for documents written in Nabataean and Jewish Aramaic, meaning that it is extremely probable that local scribes continued to operate after the Roman occupation. They did not vanish from the scene, or at least did not do so immediately, as there was still a demand for their services.

Were, though, the scribes who continued to draw up contracts in local languages the same people who later turned their hands to Greek documents? This is not meant to refer very

³⁷⁸ P. Yadin 22, l. 34: יוחנא בר מכותא אדלונה, “Yohana, son of Makkuta, her ‘lord’.” The signatures in the earlier documents seem quite fragmentary in the photographs of P. Yadin 8 and 9: both papyri are fairly perforated around the area of the signature (see plates 33 and 56 respectively in the Plates volume of Yadin et al. (2002)). Nevertheless, the handwriting of the main body of P. Yadin 6, 8 and 9 has been matched quite definitely and the editors, in their physical description of P. Yadin 8, seem confident in their identification: “He [Yohana] apparently was the scribe of this document, as indicated by the resemblance of the handwriting in his signature and in the text ... The ligature of the word מנדעם in line 6 exposes his identity also as the scribe of the Nabataean documents P. Yadin 6 and 9 where a similar ligature appears (despite the difference between the Aramaic and Nabataean scripts)” (Yadin et al. (2002: 111)).

³⁷⁹ The script is described by Yadin et al. (2002: 111; 258; 269) in each of the documents as, “extreme cursive,” and, “a rapid script written with a skilled hand.”

literally to individuals: neither Yoḥana nor the unknown son of Simon append their names as scribes to any of the Greek papyri. Rather, was the circle of local scribes who operated under the Nabataean rule and continued to work under the Romans also responsible for writing the Greek documents that predominate from around 124 C.E.? Language skill is the obvious determining factor here: if the existing scribes knew Greek and developed their writing skills in this language, then it is possible that they acted as scribes for the post-124 C.E. documents. Their main language of operation simply shifted to Greek. If, however, knowledge of Greek in the area was extremely limited before the Romans arrived, it might be more probable the later scribes had arrived with the new rulers.

So how likely was it that the earlier scribes, or indeed others in the area, already knew Greek? Yoḥana's bilingualism in Aramaic dialects has already been noted. Indeed, multilingualism, including some level of Greek, in this area does not seem a remote possibility. Nabataea did not exist in a vacuum. Its neighbours included Egypt and Judaea: the use of Greek in the former hardly needs comment, and the language was far from unknown in the latter.³⁸⁰ Additionally, Strabo, in the late first century B.C.E., stated that Romans and many other foreigners lived in Petra.³⁸¹ The Hellenized architectural style which flourished under Aretas IV (c. 9 B.C.E. – c. 40 C.E.) also attests to some sort of contact with the Graeco-Roman world and “the Hellenic tastes of the eastern Roman Empire.”³⁸² Judah, Babatha's second husband, was from Engedi in Judaea and owned property there (P. Yadin 11 and 19), yet lived in Maoza in Arabia: this attests some kind of cross-border activity. This was admittedly in the Roman period but may have been a continuance of ownership patterns developed by previous generations of his family.

³⁸⁰ See Hezser (2001: 237-243) for an overview of the acquisition of Greek by Jews in Roman Palestine.

³⁸¹ Strabo, *Geographica* XVI. 4. 21. Strabo claims that he bases his account on the reports of his friend, Athenodorus, who had visited the city.

³⁸² Bowersock (1983: 61); cf. Millar (1993a: 394-408).

Nabataea might not have been part of the Roman Empire before 106 C.E. but this does not mean it had no contact with its neighbours.³⁸³

In short, there is evidence for Greek being used around this area and a suggestion that, at least in the earlier period, Nabataea had attracted travellers. Admittedly Maoza was a small village on the south coast of the Dead Sea and can hardly be compared with the cosmopolitan capital of Petra. Nevertheless, as is explicitly shown in the documents, Babatha, Salome Komaise and their families were wealthy. They had land and therefore produce to trade. Judah at least travelled and owned property in Judaea. Under such conditions, some contact with the Greek language, either spoken or written, would have been probable.

As has been discussed at length above, this is rather different from being able to compose lengthy legal documents in Greek. But the switch to Greek did not occur overnight: with the exception of P. Yadin 5 and the fragmentary P. Yadin 31, both dated to 110 C.E., there was a sixteen to eighteen year gap between the annexation and the time when Greek appears to have become the default legal language. This provided plenty of time for locals, including scribes, to improve their Greek language skills. There would have been a particular economic incentive to do so for the canny local scribe who realised the long-term effect of Roman occupation; if such a scribe recognized the probability of an increasing use of Greek, it was in his interests to pick up the language or to make sure his children did so. Others involved in trade may also have had a similar incentive, faced with a whole new set of potential customers in their Roman rulers.

³⁸³ It is possible that Nabataea had temporarily been part of the Roman Empire much earlier, which would support the position put forward here (see p. 4).

A comparable situation may be found in Egypt after Alexander's conquest in 332 B.C.E. and in the subsequent period under the Ptolemies. Under the Persians, lower level administration had been conducted in Demotic, while the highest level, in Memphis, operated in Aramaic. The latter, after Alexander's arrival, swiftly switched over to Greek, but the lower level appears to have continued to operate in Demotic for a long time. When the switch gradually occurred, this was probably at least in part through Egyptian scribes, who had been writing in Demotic, becoming proficient in Greek.³⁸⁴ Willy Clarysse has identified some of the Egyptian scribes who wrote Greek through examining the writing implements used for Greek documents; those who were using the Egyptian rush pen to write in the Greek language were in all probability Egyptians – there was little reason for a Greek to learn to use this implement rather than his traditional tool of the *kalamos*, which was much more user-friendly.³⁸⁵ Here, then, we seem to have native scribes learning to adapt and function in the new language of the administration. This admittedly occurred over a much longer period than we find in Roman Arabia. This longer transition period is evidenced in the fact that the Greek of these Egyptian scribes is generally excellent,³⁸⁶ while that of the writers in the Babatha and Salome Komaise archives is often littered with Semitisms that betray the mother-tongue of their writers.³⁸⁷ What we seem to have here, then, is a similar phenomenon to that which occurred in Egypt centuries earlier – local scribes learning and switching languages – but in Roman Arabia it appears to have

³⁸⁴ See Clarysse (1993: 186-188) for an overview of this process of change.

³⁸⁵ Clarysse (1993: 188-190). This is not the only evidence for Egyptian scribes writing in Greek: an inscription from Dendera has an Egyptian priest list his titles, among which are various Egyptian scribal posts and “scribe of Greek writings” (see Clarysse (1993: 186-188) for this and further examples). Additionally, in the Ptolemaic period, two ‘Egyptian’ teachers are listed for tax purposes among the Hellene group, which has led Clarysse and Thompson (2006: 127-129) to suggest that Egyptian teachers (who incidentally were the people who acted as notaries at this stage), in a climate which was now heavily promoting Greek cultural values, were utilizing their Greek skills to teach Greek as a foreign language.

³⁸⁶ Clarysse (1993: 200).

³⁸⁷ These are extensive and frequently commented upon in the publications and commentary of the papyri. For a summary of some of these, see Lewis (1989: 13-16).

occurred at a highly accelerated pace, as reflected in the quality of the language of the local scribes.

The writers of the post-124 C.E. Greek documents were therefore probably the existing local scribes who managed to convert a passing knowledge of Greek into a more advanced writing skill. Indeed, it was in their economic interests to learn or improve their Greek. They could use their existing language skills to communicate with the locals who still operated mainly in Aramaic, even if they were now called upon mostly to compose documents in Greek instead. Their local identity also explains the numerous Semitisms in the language of the Greek papyri, something which otherwise becomes rather puzzling.

Official or independent?

Having suggested that local scribes may have continued to operate well into the period after the annexation of Arabia as a Roman province, we should now ask whether they were officially connected with the Roman establishment or independent of it. Is it possible that the Romans employed locals as writers due to their language skills (*i.e.* in both Aramaic and Greek)? The discussion will focus primarily upon the two identified scribes of the majority of the Greek documents from the Babatha archive: Germanos and Theënas.

One potential employer for these two might have been the Roman army. The army, however, had its own *officium* of clerks on whom it could rely for official business. An inscription from across the empire in Lambaesis provides detailed information about their grades: a *cornicularius* was in charge of the *officium*, with an *actarius* as deputy; there

were then the *librarii* and the *exacti*.³⁸⁸ These were soldiers: the posts were military (among the *immunes*) and did not constitute a separate division. Indeed, prospective centurions were typically trained in both the military and administrative side of the army, meaning that at some point in their career they would have been expected to hold one of the aforementioned roles.³⁸⁹ These clerks primarily operated in Greek in the Eastern Empire, though were probably taught Latin; native languages may have been spoken in ethnic units.³⁹⁰ As such, for internal army business, the administrative structure was built in: the Roman army seems to have had no need to hire outsiders when they had their own people to do the job. The possibility that Germanos and Theēnas were hired by the local army unit, as suggested by Schams, should therefore probably be discarded.³⁹¹

The situation might be slightly different with regards to the Roman governor.³⁹² In his court activities there might have been a greater need for bilinguals who could speak and/or write the local language, in this case Aramaic, and speak or write a language understandable to the administration – Greek. In some sense, this was the locals’ problem to overcome if they wished to have recourse to the governor’s court. Nevertheless, translators seem to have been used in courts in Egypt. Their involvement did not even attract comment, perhaps suggesting it had become a matter of routine.³⁹³ These two

³⁸⁸ ILS 9100. See Phang (2007: 296-297) for a discussion of the inscription and Austin (2010: 102-109) for further details on the role of each official.

³⁸⁹ Breeze (1974: 270).

³⁹⁰ Phang (2007: 300).

³⁹¹ Schams (1998: 211). Lewis (1978: 105) also suggested that the λιβλάριος of these documents may have been a military clerk who was “moonlighting”.

³⁹² Though it should be noted that there was not necessarily a sharp divide between his staff and that of the army. The army staff might be used for administrative purposes (see Alston (1998: 257)). A pertinent example here is Julius Apollinaris, who served in Arabia and wrote to his father in 107 C.E. (P. Mich. VIII 466; cf. P. Mich. VIII 465): he had asked to be made the governor’s λιβράριος, and was made λιβράριος ... λεγεῶνος (*librarius* of the legion) instead (*recto*, ll. 24-30). In the editors’ words: “the distinction between his staff as governor and staff as military commander might not be too finely drawn” (Youtie and Winter (1951: 13)).

³⁹³ Two examples in which translators/interpreters appear in court cases are P. Oxy. II. 237, col. vii, ll. 37-38, dated to 186 C.E. and P. Col. VII. 175, ll. 56-67, dated to 339 C.E., admittedly much later than the period

archives also throw up plenty of evidence of translation practice: many of the subscriptions are specifically marked as such.³⁹⁴ This attests the presence of people skilled (to varying degrees) in at least two languages. Were these people already part of the Roman administration or locals employed to meet demand?

The answer to this problem lies mainly in the issue of whether the army staff, who could be used by the governor for administrative roles,³⁹⁵ could supply people who had Aramaic language skills as well as the Greek or Latin necessary for communicating in the army. If not, then it is perfectly plausible that the governor would have to look elsewhere to meet the demand. If Kennedy is correct in his hypothesis that the *VI Ferrata*, having been deployed from Syria, was in Arabia from c. 117-123 C.E., then some soldiers at least may have picked up certain skills in the related local languages from their previous posting.³⁹⁶ Whether this would have been adequate to the demand is another matter and this personnel would not have been available until eleven years after the area was annexed. In 106 C.E. the *III Cyrenaica* was most probably Arabia's garrison. This moved in from Egypt,³⁹⁷ where the primary languages were Greek and Demotic. It is not, therefore, implausible that there would have been a need for Greek and Aramaic bilinguals to contribute to the functioning of the governor's administration, particularly those skilled in the local Aramaic dialects. Certain locals may have served this need.

currently under discussion. For further examples of translations and a discussion of Demotic-Greek translation practice in Egypt, see Mairs (forthcoming).

³⁹⁴ P. Yadin 11 includes a Greek translation of Judah's attestation (ll. 29-30); in P. Yadin 16, Babatha's attestation and the prefect's notation are both marked as translations (ll. 33-38); P. Yadin 27 includes both Babatha's attestation in Jewish Aramaic (ll. 11-14) and its translation into Greek (ll. 15-18); all that remains of X Hev 61 are three translated attestations.

³⁹⁵ See n. 392 above.

³⁹⁶ See the tables in Kennedy (1980: 308-309).

³⁹⁷ Kennedy (1980: 309 and *passim*) and Bowersock (1983: 81).

There are three possible ways to define the connection between such local writers and the Romans. The first is that scribes such as Germanos and Theēnas had been recruited into the Roman army and were serving in the role of military *librarii*. This interpretation requires us to follow Lewis, Isaac and Schams in reading λιβλάριος as a Greek rendering of *librarius*,³⁹⁸ though the hypothesis here advanced differs from their analyses of the position of these two scribes. Germanos' Latin name might tell in favour of this proposition, though this is highly speculative.³⁹⁹ Germanos and Theēnas may, then, have been army recruits seconded to the governor's office for administrative duties.

There are, however, two problems with this hypothesis. First, the presence of Jews, identifiable by their patronyms (Judah and Simon respectively), amongst the soldiers of the Roman army would be extremely surprising.⁴⁰⁰ Secondly, as Isaac has already observed, these instances of (supposed) military *librarii* contrast with existing documentation of this rank, in which a military *librarius* was closely associated with, and mentioned with, his unit or office.⁴⁰¹ No unit or office is mentioned in these documents. It therefore seems unlikely that these two scribes were soldiers in the Roman army.

Additionally, Bowersock has cast doubt upon the equation of λιβλάριος with *librarius*, preferring instead to read it as *libellarius*.⁴⁰² As support for this, he notes the attestation of λίβελλος with the meaning “document” or “petition” from the Hadrianic age, and the

³⁹⁸ Lewis (1989: 64); Isaac (1992: 73-74); Schams (1998: 211).

³⁹⁹ Nomenclature helps little here. Germanos is the only Jew with this name attested in Palestine in the period 330 B.C.E. – 200 C.E. by Ilan (2002: 332), though there are five known Germanos-es in the following period (200 C.E. – 650 C.E.) (Ilan (2012: 275)).

⁴⁰⁰ Although Schoenfeld (2006) has marshalled evidence that Jews were more active in the Roman army than modern scholarship tends to assume.

⁴⁰¹ Isaac (1992: 73).

⁴⁰² Bowersock (1991a: 339).

existence of *libellarius* in Latin. The weakness in his argument is that the latter is only attested much later, a fact he acknowledges, though he argues that “words often have a functional life long before they appear in literature.”⁴⁰³ His case might be strengthened from the appearance of another word in these two archives used in a sense otherwise unattested until the sixth century C.E.: χειροχρήστης.⁴⁰⁴ A λιβλάριος then, might simply have been a notary or scribe of some kind and not synonymous with a military *librarius*. We do not, however, have to accept Bowersock’s suggestion to come to this conclusion: *librarius* is also used in a non-military context to refer to “commercial copyists of formal documents.”⁴⁰⁵ There is therefore no need to read these documents as referring to an army clerk even if we do chose to read λιβλάριος as *librarius*.

The second possibility is that we have here two locals who, through their work, had frequent dealings with the Romans. Λιβλάριος is not, therefore, an official title connected with the Roman administration. It may, however, still have been picked up through contact with the Romans, hence the use of this Latinised term. We might then wonder why it was included in some documents and not others. If this was a term for Theēnas’ and Germanos’ occupation, why not append it to all the documents they wrote?

The third, and preferred, explanation is that the two scribes were employed not by the army but on the Roman governor’s staff or some arm of the Roman administration. This would have been to supplement staff provided by the army. This is in fact Isaac’s rejected alternative: “The *librarii* from the Babatha archive may have been low-ranking clerks in a

⁴⁰³ Bowersock (1991a: 339).

⁴⁰⁴ X Hev 61, l. 4. See Cotton’s comments on the use of the term in Cotton and Yardeni (1997: 144-145).

⁴⁰⁵ See Isaac (1992: 73) and Austin (2010: 105) on the *librarius* in the civil sphere as “a private secretary, or, as his title indicates, a copyist (or seller) of books.”

local government office, possibly the one administering imperial possessions in the region.”⁴⁰⁶ Despite Isaac’s retreat from this position, it seems the most plausible option. A λιβλάριος was some kind of notary or scribe employed by the Roman government, possibly by the governor or his staff, though not recruited into the army. He was probably employed both due to writing skill and linguistic ability: thus, it would be perfectly plausible that locals who had previously worked as scribes (as outlined above) would have taken up such roles. Here, it is appropriate to return to Schams’ conclusions: while her supposition that Germanos and Theēnas were employed by a locally stationed army unit has been rejected, her analysis they were taken on “as bi- or multilingual scribes due to fluency in Nabataean and/or Aramaic,” and, “already possessed professional writing skills,” fits in well with this hypothesis.⁴⁰⁷ In view of the kind of official documents they produced, which include many summonses or depositions,⁴⁰⁸ it seems plausible that they were connected to the governor’s administration in his legal duties.⁴⁰⁹

A λιβλάριος could, then, have been an official title. It is perhaps notable that, for the most part, these two scribes do not use the title in documents which specifically refer to the governor and his court; for ease of reference ‘official’ documents. In contrast, documents which make no explicit reference to the governor or his court, ones which were perhaps drawn up in a more ‘independent’ capacity by the scribes, are those in which they do include the designation λιβλάριος. Information on the documents written by Theēnas and

⁴⁰⁶ Isaac (1992: 74). Isaac prefers something similar to the second option presented here, namely that they were “officially recognized scribes and copyists catering to the needs of local property owners.”

⁴⁰⁷ Schams (1998: 211).

⁴⁰⁸ See Table 5 (pp. 126-127) for more details on the documents these scribes produced.

⁴⁰⁹ If we follow Cotton’s proposition that there were public archives (see Cotton and Yardeni (1997: 153; 207-208)), this may have been another potential sphere in which they worked.

Germanos, including when they appended λιβλάριος to their names, may be found in Table 5 (below).

TABLE 5: IDENTIFIED SCRIBES OF GREEK DOCUMENTS WRITTEN AFTER 106 C.E IN THE BABATHA ARCHIVE.

DOCUMENT	DATE (C.E.)	DESCRIPTION	SCRIBE	METHOD OF SCRIBAL IDENTIFICATION	SCRIBE'S TITLE
P. YADIN 13	Second half of 124	Copy of a petition to the Roman governor	Theënas, son of Simon	Handwriting	None
P. YADIN 14	11 th or 12 th October 125	Babatha summons John, son of Eglas, to appear in the governor's court in Petra.	Theënas, son of Simon	Handwriting	None
P. YADIN 15	11 th or 12 th October 125	Babatha deposes both of Jesus' guardians.	Theënas, son of Simon	Scribal signature	λιβλάριος
P. YADIN 17	21 st February 128	Loan (in form of deposit) of money from Babatha to Judah.	Theënas, son of Simon	Scribal signature	λιβλάριος
P. YADIN 18	5 th April 128	Shelamzion's marriage contract.	Theënas, son of Simon	Scribal signature	λιβλάριος
P. YADIN 19	16 th April 128	Deed of gift, from Judah to Shelamzion.	An unknown son of Simon ⁴¹⁰	(Partial) scribal signature	None
P. YADIN 20	19 th June 130	The guardians of Judah's brother's orphans concede Shelamzion's right to property in Engedi.	Germanos	Scribal signature	λιβλάριος
P. YADIN 21	11 th September 130	Purchase of a date crop or a labour contract	Germanos	Scribal signature	λιβλάριος
P. YADIN 22	11 th September 130	Sale of a date crop or a labour contract	Germanos	Scribal signature	λιβλάριος
P. YADIN 23	17 th November 130	Babatha is summoned before the governor by Besas.	Germanos, son of Judah	Scribal signature	None
P. YADIN 24	Uncertain	Babatha is deposed by Besas.	Germanos, son of Judah	Handwriting	None
P. YADIN 25	9 th July 131	Babatha is summoned by Julia Crispina and issues a counter-summons.	Germanos, son of Judah	Scribal signature (mostly surviving)	None

⁴¹⁰ This is unlikely to be Theënas, as both the handwriting and Greek language differs significantly from his work: see Lewis (1989: 83).

P. YADIN 26	9 th July 131	Babatha summons Miryam before the governor.	Germanos, son of Judah.	Scribal signature	None
P. YADIN 34	c. July 131	Very fragmentary. May be a copy of a document submitted to the governor.	Germanos, son of Judah	Handwriting	None (but the document is extremely fragmentary)
P. YADIN 27	19 th August 132	Babatha acknowledges receipt of maintenance.	Germanos, son of Judah	Scribal signature	None
P. YADIN 32	Uncertain	Possibly a contract of some sort. The text is too fragmentary to make any assertions.	Theēnas, son of Simon	Handwriting	None (but the document is extremely fragmentary)

There are two possible exceptions: P. Yadin 20 and 27. The former is an acknowledgement of Shelamzion's right to certain property by the guardians of Judah's brother's orphans and is therefore strongly connected with the ongoing disputes before the governor over the late Judah's property. Germanos signs it with the title λιβλάριος. Although the guardians offer to register the property in question with the public authorities, there is, however, no suggestion that this document was specifically intended for the governor's (or, more realistically, his staff's) eyes; it is a private, though legal, acknowledgement of rights. I would therefore suggest it fits the suggested schema: scribes do not include the designation λιβλάριος when writing 'official' documents, intended for the governor's court.

The second case is slightly more problematic. P. Yadin 27 is an acknowledgement by Babatha for the receipt of maintenance from one of her son's guardians, Simon the hunchback. Germanos signs it, though not as λιβλάριος. The guardian had been appointed by the council of Petra so we might posit some 'official' function to this document. It is, however, admittedly a less certain designation than those we have here assigned to other 'official' documents – *i.e.* those destined specifically for the sphere of the governor's court – and poses a possible exception to the proposed pattern.

This exception notwithstanding, we might consider the following situation with regards to the appearance of the λιβλάριος title in the documents: the scribes working in the governor's administration, as outlined above, also drew up documents for locals in an independent capacity. When they did so, they appended their Latinesque title, λιβλάριος, to the documents as a prestige marker. In documents specifically and directly intended to be used in the governor's court, the title was not used: if of low rank, it endowed no prestige in this context and, if their job was to draw up such documents, their 'official' position was a given – they did not need to state it. It was assumed that some official had drawn up the document in question.

Theēnas and Germanos were therefore probably employed by the Roman governor, or at least some branch of the administration, but also drew up documents independently for locals who approached them. This does not rule out the possibility that there were also scribes working independently of the Roman administration, who may even have written in Greek. I would, however, suggest that people with a more 'official' role, as it has been suggested that these two had, would have been preferred by locals when their legal business dealt directly with the governor's court since their position would endow them with a certain amount of authority. They worked for the Romans so were expected to have a better idea of what was required.

Legal experts or mere hired hands?

To recap briefly: Theēnas and Germanos, the two Greek language scribes about whom we have most information in the Roman period, were probably locals employed by some

branch of the government, possibly the Roman governor or his staff. They may have previously acted as scribes locally and were employed by the Romans for both their linguistic and writing abilities. Not all scribes were necessarily in the Romans' employ and local scribes probably continued to operate independently of the Roman government, either in Greek or in the local languages.

Nothing in the foregoing analysis or in the documents themselves suggests that Germanos, Theēnas or people like them were hired by the Romans for their legal expertise. Through their work, however, they would have grown increasingly familiar with Roman legal forms and terminology. This would not make them νομικοί,⁴¹¹ and they used no such designation to indicate any kind of legal expertise.⁴¹² It would, however, have made it perfectly possible, even probable, that they brought such new terms and forms to any contracts they wrote, even those they drew up 'independently' for locals in business unconnected with the governor's court; one instance might be the *stipulatio* clause that appears in Shelamzion's marriage contract (P. Yadin 18, ll. 66-67). They brought the new forms and vocabulary that they encountered in their 'official' work to any contracts they composed. This did not necessarily make them legal experts in Roman, local, Jewish or any other kind of law though they may of course have gradually become more knowledgeable the longer they worked in such roles.

The locals' perception of their expertise, however, may have differed from this reality. The scribes' connection with the Roman administration could have given them greater

⁴¹¹ This is not to say that there were not νομικοί in Roman Arabia, simply that they were not necessarily identical with the scribal functionaries. This will be discussed in the following chapter.

⁴¹² On translators making such claims, see Mairs (forthcoming). In two slightly later examples from Egypt, each translator explicitly claims to be a νομικὸς Ῥωμαϊκός: see BGU I 326, col. ii, ll. 22-23 (194 C.E.) and SB VI 9298, ll. 24-29 (249 C.E.). No scribes use any such designations in these archives.

authority in matters connected to it – they were assumed to have better knowledge of what was required. So when Besas wanted to depose Babatha, for example, he would naturally approach someone on the Roman governor’s staff to draw up the required document (P. Yadin 23). They were familiar with the language and form that was needed in this situation and would be the natural choice for an uncertain petitioner. Thus, they were perceived to have some legal expertise even if this was not necessarily the case.

This perception may have carried over into documents which did not directly pertain to the governor’s activities. Thus, these scribes would be approached to draw up documents ‘on the side’ because they were thought to know what they were doing. Their position gave a certain degree of authority, hence the use of the title λιβλάριος in ‘non-official’ documents, even if they were not legal experts.

Concluding remarks

It is probable that the scribes had a significant impact on the formulation of these documents. Questions of the literacy levels and language competence of the commissioners mean that, in most cases, they were unlikely to have had great input into the finer details of the formulation of the contracts. This is not, however, to deny them any influence: on the contrary, commissioners could decide what language they wished to be used and might even have stated which authority they intended to approach should problems arise. Scribes could read back what was written and incorporate suggested changes. The commissioners also picked their scribe in the first place, which probably indicated some preference for the way a document should be formulated. It is, however, unlikely that the parties themselves

determined the exact legal vocabulary and formulae to be employed in the majority of cases.

These were left to the scribes. Their choices would be determined by their own experience and expertise – both as locals and employees of the Roman administration in the case of Germanos and Theënas. They were not necessarily legal experts and were not employed by the Romans for their legal knowledge, but brought the Romanised and Hellenised formulae and terminology that they encountered in their official capacity to documents they drew up for locals ‘independently’. In turn, locals may have employed them because their position with the Roman administration endowed them with a certain level of authority and perceived (though not necessarily actual) knowledge. An additional motive for approaching locals employed by the Romans would be if, as has been suggested, they were multilingual and could comfortably communicate with the commissioners of the documents in Aramaic while writing in Greek.

The commissioners would, therefore, have been able to issue broad initial orders about the kind of document they wanted written, the language in which the document should be drawn up and the court to which they wanted to have recourse. The form and details of the documents were, however, determined primarily by the scribes.

Chapter Three

Legal Advisors

While the scribes themselves were probably not experts in law, this does not preclude the possibility that there were some sort of legal practitioners operating in this area. In periods of uncertainty, it would seem a natural impulse to seek advice on matters in which one's position was unclear. This applies to the legal realm as much as any other. Seeking legal advice in the modern world has been likened to buying, "a sophisticated prediction by a professional concerning how judges in a local jurisdiction will probably apply vague legal standards to the circumstances of a particular case."⁴¹³ If we consider Babatha and Salome Komaise's situation in relation to this description, a need or at least desire for legal advice on their part seems highly probable; they were living in a province created relatively recently and in which different legal traditions appear to have coexisted for a long time. Some degree of confusion about their legal rights in one of more of these traditions would not be at all surprising. Furthermore, with regard to their options in a Roman court, these women would be dealing with a ruling power and its representative (the governor) who were both remote – to varying extents – and somewhat unfamiliar. When we add to this their probable illiteracy and perhaps a general lack of access to legal literature for laypersons (if, indeed, they had been able to read it in any case), 'vague legal standards' seems a fairly accurate description of a litigant's perception of their situation.

Moreover, it was not just the litigants who may have needed information or advice about the legal traditions and procedures in the area. The very man who was in charge of

⁴¹³ Galanter (1981: 5, n. 5), citing what would be published as Mnookin and Kornhauser (1979).

dispensing justice in the Roman period – the governor – often required this too. Romans had a tendency to consider, at the very least, the local customs and traditions in any proceedings in their legal fora.⁴¹⁴ While an official who had been in the post for a while may have become relatively well acquainted with these, a new governor, recently arrived in the area and perhaps not staying for long, would have had little or no knowledge of local practice. The need for some kind of legal information – either from literature or knowledgeable people – might appear to be something of a necessity.

Nonetheless, there is no direct mention of such people in any of the documents from the two archives. While scribes such as Theënas and Germanos sign their names, no individual is given the title νομικός or πραγματικός anywhere in these documents. Are they, then, really entirely absent from this community or can we detect their presence and even influence in spite of the lack of direct attestation?⁴¹⁵

In tackling this question, the present chapter will begin with a brief overview of the typical role and activities of such legal advisors, as known from across the empire. I shall then re-examine the two archives in order to determine whether there is any evidence for the influence of such practitioners in drawing up or using these particular documents. For the most part, the discussion in this section will centre on P. Yadin 28-30, the so-called ‘judiciary rule’, and what may be deduced from its presence. These three identical documents are probably the strongest evidence in either archive for the presence of some sort of legal practitioners in the area, rather than just scribes. Finally, the degree of overlap

⁴¹⁴ As exemplified in Trajan’s statement to Pliny: “I think, then, that the safest course, as always, is to keep to the law of each city” (*Id ergo, quod semper tutissimum est, sequendam cuiusque civitatis legem puto*) (Pliny, *Epistulae* X. 113). Throughout the thesis, the text and translation of Pliny is that of the LOEB. See Chapter Six (pp. 232-244) for an in depth discussion of this issue.

⁴¹⁵ Jones (2007: 1340-1341) has already briefly considered the possibility of the involvement of jurists in Babatha’s affairs.

between these two groups will be considered in order to try to determine whether it is useful to think in terms of two different categories of people.

Legal advisors in the ancient world

The people who are termed ‘legal advisors’, ‘practitioners’ or ‘experts’ were not in any sense a coherent, unified, professional group in the ancient world and indeed the terminology used to refer to such people is fairly wide-ranging. In the Greek sources, the designations used are typically νομικός or πραγματικός; in the Latin, we find *iuris peritus*, *iuris studiosus* and *iuris prudens*.⁴¹⁶ The most common term in the epigraphic and papyrological record is the first, νομικοί,⁴¹⁷ but the designation is less important for present purposes than the actual function, position and activities of such legal practitioners.⁴¹⁸ These appear to have been fairly wide-ranging, encompassing many activities that we could easily envisage Babatha, Salome Komaise and their fellow litigants taking advantage of in their new and multi-faceted legal situation.

⁴¹⁶ See Crook (1995: 146-158) for a survey of these terms in the sources. Nörr (1965) is an old but still very useful overview nominally of πραγματικοί but which encompasses evidence for such lower level legal operators more generally (references to older literature may be found here); cf. Robert (1960: 416, n. 1). Kunkel (1967: 267-269) provides a list of attested νομικοί; cf. Jones (2007: 1346-1358) for a more recent inventory. Kantor (2009: 262, n. 58) gives bibliography for the inscriptional evidence for νομικοί in Asia Minor, which is a good counterbalance to the general tendency to focus on their role in Egypt (due primarily to the abundance of the papyrological evidence from there); cf. Kantor (2013a: 145-152) on Roman Phrygia. For an overview of the functions of νομικοί in Roman Egypt, see Taubenschlag (1959: 161-165).

⁴¹⁷ Crook (1995: 155).

⁴¹⁸ It is worth noting, however, that designation and function were not inevitably divorced from one another in their entirety – variance in designation may indeed have indicated different functions. The point is that the following discussion is not concerned with just one particular title but all those people who may have been engaged in activities connected with offering legal advice or services.

Such legal experts were originally considered to have operated primarily at the lower level of society,⁴¹⁹ though it is more probable that there were in fact a wide range of legal services available of varying quality that ranged across societal levels. The various sources indicate that their activities were equally diverse. Let us start, however, with Cicero and Quintilian, who give a remarkably similar picture of *πραγματικοί* as assistants to orators. Cicero, in the late republican era, describes them as a phenomenon of the Greek world – *infimi homines* who had a good knowledge of the law and thus assisted orators in court.⁴²⁰ Quintilian, in a passage of the *Institutio Oratoria* (95 C.E.), goes so far as to make certain orators helpless without the assistance of the *πραγματικοί*:

quid, si forte peritus iuris ille non aderit? quid, si quis non satis in ea re doctus falsum aliquid subiecerit? hoc enim est maximum ignorantiae malum, quod credit eum scire qui moneat. neque ego sum nostri moris ignarus oblitusve eorum, qui velut ad arculas sedent et tela agentibus subministrant, neque idem Graecos quoque nescio factitasse, unde nomen his pragmaticorum datum est.

What will he do, if he has no legal expert to advise him or if his prompter through insufficient knowledge of the subject provides him with information that is false? It is the most serious drawback of such ignorance, that he will always believe that his adviser knows what he is talking about. I am not ignorant of the generally prevailing custom, nor have I forgotten those who sit by our store-chests and provide weapons for the pleader: I know too that the Greeks did likewise: hence the name of *pragmaticus* which was bestowed on such persons.⁴²¹

⁴¹⁹ Nörr (1965: 640-641) makes this judgement partly due to what he believes is the relatively sparse evidence for such people and partly, it seems, in view of Cicero and Quintilian's comments on them (see below); see also Kunkel (1967: 263-70; 354-65) on νομικοί, who mostly, he believed, operated at a lower level among *πραγματικοί* and document writers (Kunkel (1967: 365)). Jones (2007: 1343-1344) notes a disparity between Roman Asia and Egypt: whilst in Egypt legal experts appear to have been of a relatively low status, those in Roman Asia could have considerable social status (see Kantor (2013a: 151-152) for more detail on the situation in Roman Asia). Jones attributes this, however, to a difference between the source material; in reality, there may not have been such a contrast between provinces.

⁴²⁰ Cicero, *De Oratore* I. 198 (cf. I. 253): "Thus, while among the Greeks the humblest persons, 'attorneys' as they are called in that country, are induced for a mere pittance to proffer their assistance to advocates in court, it is not so in our community ..." (*Itaque, non, ut apud Graecos infimi homines mercedula adducti ministros se praebent in iudiciis oratoribus, ei, qui apud illos πραγματικοί vocantur, sic in nostra civitate ...*). Text and translation is (slightly adapted) from the LOEB. See also Strabo on Roman νομικοί (*Geographica* XII. 2. 9): "The Mazaceni use the laws of Charondas, choosing also a Nomodus, who, like the juriconsults among the Romans, is the expounder of the laws" (χρῶνται δὲ οἱ Μαζακηνοὶ τοῖς Χαρώνδα νόμοις, αἰρούμενοι καὶ νομοφδόν, ὃς ἔστιν αὐτοῖς ἐξηγητὴς τῶν νόμων, καθάπερ οἱ παρὰ Ῥωμαίοις νομικοί).

⁴²¹ Quintilian, *Institutio Oratoria* XII. 3. 3-4. Text and translation is from the LOEB.

Consequently, both in republican times and the imperial period, it appears that such legal experts sometimes worked as advisors to orators in court. It is perfectly possible, however, that the division was not quite so sharp as is suggested by these two sources and in fact the activities of such advisors may have overlapped with the advocates themselves.⁴²² In any case, the advocates and their advisors are closely linked and the *πραγματικοί* clearly, in Quintilian's eyes, play a key role in justice administration – even if he disapproves of it.

Furthermore, the papyrological evidence from Egypt frequently has *νομικοί* advising not only advocates but also judges. When they were Roman officials, these judges often seem to have used *νομικοί* to find out about local law or tradition. One such example is the well-known Dionysia papyrus, P. Oxy. II 237 (c. 186 C.E.), in which Dionysia includes an opinion of a *νομικός*, Ulpian Dionysodorus, among her supporting documentation: this man was originally consulted in a previous case by Salvidius Africanus, a military officer engaged in judicial activities. This was one of several pieces of evidence she included with her petition – the rest are citations of prior decisions. In any case, Roman officials seem to have made use of such legal experts with a fair degree of regularity and, as shown from this example, litigants were not afraid to cite their decisions.⁴²³

⁴²² Crook (1995: 154-158) details cases of 'overlap', especially with regard to *νομικοί*; cf. Kunkel (1967: 325-329) and very brief comments in Kantor (2009: 262). Nörr (1965: 646) suggests such advice to orators could encompass 'ghost-writing' speeches, though this is mainly inference. The line of reasoning seems to be that *πραγματικοί* were viewed as men who were not up to being rhetors but had been through similar training, meaning that some legal advisors could be perfectly skilled in writing, if not perhaps delivering, oratorical legal pleadings. It would not be too great a leap from this to envisage some 'ghost-writers' actually acting as advocates, since they had the legal skills if not the rhetorical ones necessary for such a role. They would not be high-level pleaders but might be perfectly capable of helping litigants lower down the food chain, or at least these litigants thought they would be. This, however, remains pure hypothesis. 'Ghost writing' might also usefully be compared to the practice in classical Athens where, "the litigant in principle appears and argues in person. What we find the Athenian doing, in fact, is delivering by heart a speech written for him, for a fee, by a rhetorical expert: the Vicarious Pen, one may say, instead of the Vicarious Voice" (Crook (1995: 30)).

⁴²³ Apart from the *νομικοί* who appear in P. Oxy. II 237, col. vii, ll. 14-15 and col. viii, ll. 2-7, further examples may be found in: M. Chr. 84, l. 5, ll. 21-25, (124 C.E.); P. Oxy. XXXVI 2757, col. ii, ll. 4-5 (after

The locating, handling and copying of relevant documentation may also have lain within this broad sphere of advisory activities.⁴²⁴ Indeed, this kind of work by legal practitioners was probably a key factor in the spread of legal literature in the provinces.⁴²⁵ It is also perhaps evidenced in the increasing tendency to include precedents and other relevant paperwork in petitions made in Egypt:⁴²⁶ litigants who were not necessarily literate and almost certainly not thoroughly acquainted with all the relevant previous decisions of Roman officials probably did not locate and copy such material themselves.⁴²⁷ Instead, this fell into the sphere of legal experts or advisors who would either have had access to archives where such precedents were kept, or to handbooks or collections of useful precedents which they could then use – probably both.⁴²⁸ Furthermore, Ulpian suggests that one way to punish provincial advocates, who may have overlapped with the *πραγματικοί* and *νομικοί* at this level, was to prohibit access to the archives where such documentation would usually be stored.⁴²⁹ *Νομικοί* may also have acted as translators; in BGU I 326, col. ii, l. 23, Lucius Geminianus, a *νομικὸς Ῥωμαϊκός*, is found translating a will into Greek. This suggests that locating, copying and even translating items such as this formula fell within their general sphere of operation.

79 C.E.); M. Chr. 372, col. iii, l. 18 (second century C.E.). See Brunt (1975: 134) on the use of *νομικοί* by Roman officials to find out about local law; Jones (2007: 1338-1339) on *νομικοί* as advisors to the Roman authorities; Weaver (2002) more generally on the composition of *consilia*. This will be discussed in greater depth in the Chapter Six (pp. 244-252). It should be noted that *νομικοί* were also consulted about Roman law: in BGU II 388 (= M. Chr. 91), in the late second or early third century C.E., a *νομικός* gives evidence about the Roman rule on *tabellae* (see especially col. i, ll. 25-26 and col. ii, ll. 30-36); cf. Crook (1995: 64-65) for comments; Taubenschlag (1959: 161-162) for further examples.

⁴²⁴ This is probably the case in part due to the skills needed in “the machinery of Roman government and the judicial system” to access such documents (Kantor (2009: 262)).

⁴²⁵ As Kantor (2009: *passim*, though especially 262-265) has argued.

⁴²⁶ See Jolowicz (1937) and Katzoff (1972) on the use of precedents in the papyri. This topic will be discussed at greater length in Chapter Six (pp. 247-250).

⁴²⁷ The citations discussed above that are included with P. Oxy. II 237 (c. 186 C.E.) are a prime example of this, as are the decisions and proceedings included in P. Oxy. VI 899 (= W. Chr. 361) (200 C.E.).

⁴²⁸ On such collections, see Katzoff (1972: 282-289).

⁴²⁹ Ulpian, *de officiis*, Book 10 (*Digest* XLVIII. 19.9.6). Isaac (1992: 66-67) assumes that such official archives existed in Rabbath-Moab and Petra: see n. 231 for possible references to public archives in these documents.

The picture we receive from the sources is thus one without clearly defined limits, in which certain people acted as a kind of legal ‘dogbody’.⁴³⁰ Their activities could include advising a range of people, and handling, copying or translating relevant documentation for their clients.⁴³¹ It is this latter practice which it is possible to identify in the Babatha and Salome Komaise archives. The nature of the evidence means that if advisory activities within a court room were occurring, such as those described by Quintilian, the documents would be unlikely to attest it – these are not trial transcripts but pre-trial paperwork.⁴³² This means we can say nothing more generally of the activities of advocates in relation to these archives, let alone their connection with legal experts.⁴³³ It is, however, possible that we may be able to detect traces of the activities of νομικοί in some of the other respects outlined above. The location of relevant documentation is a particularly promising line of investigation.

⁴³⁰ Crook (1995: 158) sums this up rather nicely: “What stands out is the untidiness of the picture, the way in which the different roles within the law were carried out in many combinations.”

⁴³¹ Their activities may have been more diverse – involvement in advocacy for example (see n. 422) – but their activities with regard to documents is generally agreed upon.

⁴³² Jones (2007: 1341) makes precisely this point on the nature of the evidence in the Babatha archive. We do have examples of trial transcripts from Egypt: Crook (1995: 60-61) gives a good introduction to the nature of these documents.

⁴³³ See n. 65.

The archives

Much of the evidence for legal knowledge on the part of the writers of the documents has already been touched upon in the previous chapter and will not be repeated here. There are, however, three near identical papyri that merit detailed consideration in their own right on this topic: P. Yadin 28-30. These provide the most compelling evidence from the two archives for the presence of some kind of legal advisors and access to legal literature in the province of Roman Arabia at this time.

The papyri themselves raise a succession of problems concerning their use and applicability, which will be considered in the following analysis. While many of these issues remain unresolved, the documents do provide a certain amount of information concerning legal knowledge and access to it in this area. This is of particular relevance to the current issue of the influence of legal advisors on the two archives and the role that such advisors may have fulfilled. Consequently, P. Yadin 28-30 will be given a more extended treatment than that which I have generally accorded the individual papyri.

P. Yadin 28-30

Description, context and problems

Among Babatha's paperwork were found three almost identical copies of a Roman formula: P. Yadin 28-30.⁴³⁴ Two of these papyri, P. Yadin 28 and 29, are written in the

⁴³⁴ Formulae were used in the provinces, though the extent of this usage is somewhat unclear and has provoked debate: see Turpin (1999: 506-514) on formulae specifically and *passim* on Roman legal procedure. The *Lex Rivi Hiberiensis*, III 38-43 (see Lloris (2006) for the text) actually provides a formula for anyone

same hand, though P. Yadin 30 appears to have been copied by someone else. Since the discussion will be focused on the details of these papyri, it is worth reproducing the text in full:

P. Yadin 29

μεταξὺ τοῦ δεῖνος [τοῦ] δεῖνος
 ἐγκαλοῦντος καὶ τοῦ [δεῖνος ἐν-]
 καλουμένου μέχρι (δηναρίων) Β]φ ξενο-
 κρίται ἔστωσαν ἐπε[ὶ] ὁ δεῖνα
 5 τοῦ δεῖνος ὀρφανοῦ ἐ[πι]τ[ρο]π[η]ν[υ]
 ἐχείρ[ι]σεν, περὶ οὗ πράγμα[α]τος
 ἄγεται, ὅταν διὰ τοῦτο τὸ πρᾶγμα
 τὸν δεῖνα τῷ δεῖνι δοῦναι ποιῆ-
 10 σαι δέη ἐκ καλῆς πίστεως,
 τούτου οἱ ξενοκρίται τὸν δεῖνα
 τῷ δεῖνι μέχρι δην(αρίων) Βφ
 κατακρινάτωσαν, ἐὰν δε[μ]ή
 φαίνεται ἀπολυσάτωσαν[ν].

P. Yadin 30

μεταξὺ τοῦ δεῖνος
 τοῦ δεῖνος ἐ[ν]κ[α]λ[ο]-
 ὑγ[τος καὶ τ]οῦ δεῖνος
 τοῦ δεῖνος ἐγκαλ-
 5 ουμέν[ου] μέχρι δη-
 ναρίω[ν Βφ] *vacat*
 ξενοκρίτε ἔστωσαν.
 ἐπὶ ὁ δεῖνα [τοῦ] δεῖ-
 νος [ὀ]ρφα[νοῦ] ἐπι-
 10 ροπ[η]ν ἐ[χ]είρ[ι]σεν,
 περὶ οὗ πράματος
 ἄγεται, ὅταν διὰ
 τοῦτο τὸ πρᾶγμα
 τὸν δεῖνα τῷ δεῖνι
 15 δοῦ[ν]αι [ποιῆσαι δέη
 ἐκ <κ>αλῆς [πίστε-
 ως, τ[ούτου οἱ ξενο-
 κρίτ[ε τὸν δεῖνα τῷ
 δεῖνι μέχρι δην(αρίων)]
 20 Β[φ κατακρινάτω-
 [σαν, ἐὰν δὲ μὴ φαίνη-]
 [ται, ἀπολυσάτωσαν.]
 ἐγγραφή διὰ]

wishing to bring an action, and IRT 304 also suggests some sort of formulary procedure (on which see Lemosse (1998: 241-242)). The *Tabula Contrebiensis* (87 B.C.E.) might also be worth considering here: this is a record of a judgement made by the senate of Contrebia Belaisca, though set up by the proconsul. It is also, as noted in Richardson's (1996: 89) discussion, "based almost entirely on the formula used by the praetors in the courts in Rome," despite the fact that Roman law is not applied. On provincial procedure more generally, see *inter alia* Hackl (1997) and Lemosse (1998); for the debate over *cognitio* and the formulary procedure in senatorial and imperial provinces see Patsch (1905: 61), and Kaser (1967) and Wlassak (1921: 4-31) for opposing views.

Between a plaintiff X, son of Y, and a defendant A for up to 2,500 denarii there shall be *xenokritai*. Since A, son of B, has exercised the guardianship of orphan X, concerning which matter the action lies, whenever by reason of this matter A is obligated to give or do [something] to X in good faith, the judges of this shall award judgement against A in favour of X up to 2,500 denarii, but if [such obligation] does not appear, they shall dismiss.⁴³⁵

The papyri were written in Greek though appear to be a translation of a Latin original. The text of an example formula in Gaius, *Institutes* IV. 47 has frequently been used as a comparison and is reproduced here for such purposes:

iudex esto. quod Aulus Agerius apud Numerius Negidium mensam argenteam deposuit, qua de re agitur, quidquid ob eam rem Numerium Negidium Aulo Agerio dare facere oportet ex fide bona, eius iudex Numerium Negidium Aulo Agerio condemnato. si non paret, absoluito.

Let X be judge. Whereas Aulus Agerius deposited with Numerius Negidius the silver table which is the subject of this action, in whatever Numerius Negidius ought on that account in good faith to give to or do for Aulus Agerius, in that do you, judge, condemn Numerius Negidius to Aulus Agerius. If it does not appear, absolve.⁴³⁶

Although the papyri are undated, the fact that they represent an *actio tutelae* (action on guardianship) means that they have typically been thought to relate to Babatha's dispute with the guardians of her orphaned son, Jesus. This case is documented in several other papyri in the archive (P. Yadin 12-15, P. Yadin 27). As far as we can make out, the details of the dispute are as follows: Babatha's first husband, Jesus, died at some point prior to

⁴³⁵ The text and translation (very slightly adapted) are that of Lewis (1989: 118-120). The texts given are just those of P. Yadin 29 and 30; the text of P. Yadin 28 is identical to that of P. Yadin 29, so there seems little reason to reproduce it here. There are a few differences between the two, though not in the text but in the spacing of the words on the papyrus; this is probably accounted for by the fact that P. Yadin 28 is 0.5 cm narrower than P. Yadin 29.

⁴³⁶ Gaius, *Institutes* IV. 47. Text and translation (slightly adapted) from De Zulueta (1976). Lewis (1989: 118) describes P. Yadin 28-30 as a Greek version of the praetor's formula in Gaius, with a few alterations – these changes and their implications will be dealt with presently. Gaius' *Institutes* is generally considered to have been written in the mid-second century C.E. It should therefore be emphasised that there is no suggestion here that the text in P. Yadin 28-30 was somehow copied from that of Gaius' *Institutes*; the passage is given as an example of a Latin formula for purely comparative purposes.

124 C.E. During the first half of that year, the βουλή of Petra appointed two guardians for her orphaned son, also called Jesus – these were Abdoöbdas, son of Ellouthas, and John, son of Eglas.⁴³⁷ Later that year, Babatha wrote a petition to the governor in which she complained that these men were paying an insufficient amount of maintenance.⁴³⁸ About a year later, on 11th or 12th October 125 C.E., she then proceeded to summon just one of the guardians, John, son of Eglas, before the governor, again concerning the payment of maintenance (P. Yadin 14). On the same day, she had a deposition written to both guardians (P. Yadin 15).⁴³⁹ In this document, Babatha repeated an offer that she had apparently made previously and asked the guardians to hand over control of her son Jesus' property to her, promising to triple the interest if she managed the property herself. As security, she offered a hypothec on an equivalent amount of her own property. She then stated that, should the guardians refuse her offer, the papyrus would serve as evidence of their profiteering from the orphan's money, presumably in the proceedings she had initiated in the governor's court, though unfortunately the papyrus here breaks off.

We are not sure how the dispute then progressed – whether it did indeed come before the governor's court and was judged by him, or was settled before it reached that stage. Our only further information comes in the form of a receipt for maintenance (P. Yadin 27), dating to 132 C.E. In this document, Babatha acknowledges having received the sum of two denarii a month in maintenance from a certain Simon the hunchback, who has taken over from his father John in his role as guardian. The amount paid is the same sum that Babatha had previously classed as insufficient, but since the receipt is issued to just one

⁴³⁷ The latter's name varies slightly across the documents: see n. 169. The appointment is recorded in P. Yadin 12.

⁴³⁸ We have a copy of this in P. Yadin 13.

⁴³⁹ This resembles a Roman *testatio* document, with the correct number of witnesses. See comments by Cotton (2007: 252).

guardian this may mean that they were now contributing two denarii per month each, doubling the previous unsatisfactory sum.⁴⁴⁰

Whilst an *actio tutelae* would therefore seem logically enough to fit into the context of this dispute, its precise applicability is rather difficult to pin down. According to codified Roman law, the *actio tutelae* could only be brought at the end of a guardianship,⁴⁴¹ usually by the ward himself when he had come of age, though sometimes by a new or co-guardian against one who had been removed.⁴⁴² Under these regulations, Babatha could not therefore bring such an action. She could bring a *crimen suspecti tutoris*, a charge against an untrustworthy guardian, asking for his removal,⁴⁴³ but this does not seem to be what is being requested by Babatha in her proceedings – at no point in the papyri does she request a guardian's removal. Her concern is rather to ensure that she received a higher level of maintenance for Jesus' upbringing.

Due to these uncertainties, the precise details of the way that the *actio tutelae* was used, or intended to be used, in the current case has remained a subject for speculation. While we may not be able to reach definite conclusions about the precise legal technicalities of the three papyri, they still provide valuable information about legal knowledge in the area and access to it. This is of prime relevance to the possible functioning of legal practitioners. The possible origins and use of the papyri will therefore be considered in the following discussion, with a view to examining the role of legal advisors and legal forms in the new province.

⁴⁴⁰ See Chiusi (2005: 116) for a discussion of this possibility.

⁴⁴¹ Ulpian, *Edict*, Book 25 (*Digest* XXVII. 3.9.4).

⁴⁴² See Oudshoorn (2007: 334-336) on the second possibility in this case.

⁴⁴³ As Cotton (1993a: 102-103) points out; cf. Justinian, *Institutes* I. 26; *Digest* XXVI. 10.

The possible origins of the formula

The *actio* is commonly thought to have been copied from a Latin original at some point, due to the close correspondence with the example formula cited in Gaius (above), and the idiosyncrasies of the Greek – for example, ἄγεται in l. 7 is not used in the Greek sense but as a “carry-over” from the Latin meaning of *agitur*.⁴⁴⁴ While, as previously observed, it has not been adapted for the specifics of Babatha’s case, it does appear to have suited its provincial context rather well. Consequently, if it had been based on a Latin guide, then it seems that either the original had a provincial setting in mind or the translator adapted it for this new situation. First, rather than a single judge, *xenokritai* are appointed. The word is rare and, based on an annotation in a late antique glossary, has two possible translations: *iudices peregrini* or *recuperatores*.⁴⁴⁵ While the former used to be favoured, the term here now generally seems to have been accepted to be a translation of *recuperatores*, a board of judges often concerned with status which may have included non-Romans.⁴⁴⁶ There are a few additional indications that the formula was intended for a specifically provincial setting.⁴⁴⁷ First, a *taxatio* was added, which was a limit on the amount for which the judges were competent and for damages they could award. This was set at an amount equivalent to the very common standard ‘fill-in’ sum of 10,000 sesterces. The monetary unit, however, has been changed from sesterces to denarii, which were commonly used in this province,⁴⁴⁸ suggesting that the eastern setting had been taken into some account. Secondly, instead of the standard Roman ‘fill-in’ names – Aulus Agerius (the plaintiff) and Numerius Negidius

⁴⁴⁴ Lewis (1989: 120).

⁴⁴⁵ CGL III 336, ll. 44-45; 528, ll. 5-6.

⁴⁴⁶ This is mainly due to the articles of Nörr (1995a), (1998: 322-326) and (1999) on the subject. As Cotton and Eck (2005: 28) point out, boards of *recuperatores* that included non-Romans would have been a good option for administering justice in a newly-acquired province where there may have been a lack of Roman citizens.

⁴⁴⁷ Nörr (1998: 319-320) has discussed these at length, so they are only summarized briefly here.

⁴⁴⁸ Nörr (1998: 320).

(defendant) – ὁ δεινα is supplied. The new blank names in the formula also follow peregrine usage – X son of Y (ὁ δεινα τοῦ δεινοῦ) – rather than Roman.⁴⁴⁹ There are therefore convincing reasons to think that the formula was particularly suited to its provincial setting, if not Babatha’s case specifically.

There are two plausible possibilities for the origin of this ‘provincial’ formula, both of which fit well with the observed indications of its specific context. The first is that it originated from a forensic handbook of formulae, written in Greek.⁴⁵⁰ Such a handbook may have been in use at the local assizes and locals, or more probably their legal representatives, could have copied from it when preparing their cases.⁴⁵¹ The use of this kind of ‘low-level’ legal literature fits in rather well with recent acknowledgements of a more widespread use of legal literature in the provinces, often, in this period, in the form of collections of precedents on specific topics.⁴⁵² Legal experts are thought to have had a key role in its distribution.⁴⁵³

Alternatively, the Latin original may have been found in the provincial edict.⁴⁵⁴ This would parallel the situation in Rome, where formulae were included in the praetor’s edict. The corollary to this is that the *actio* was therefore probably copied for Babatha by someone in the governor’s office or by a local νομικός – someone, at least, who could cope with the

⁴⁴⁹ Nörr (1998: 320).

⁴⁵⁰ This was proposed by Biscardi (1972: 140-151). He further suggested that such a Greek handbook may have been written in a nearby Hellenic cultural centre – Berytus, famous in a later period for its Roman law school, is his preferred candidate.

⁴⁵¹ Biscardi (1972: 151).

⁴⁵² See Katzoff (1972: 282-289) on this and Biscardi (1972: 141-151) for an overview of the evidence for the use of legal literature, including collections of forms.

⁴⁵³ Kantor (2009: *passim*, though especially 262-265)).

⁴⁵⁴ Seidl (1968: 348); Nörr (1995a: 89) (cf. Nörr (1998: 322) and (1999: 269-270)); Oudshoorn (2007: 323; 332) seems to subscribe to Nörr’s view.

translation of technical vocabulary such as *recuperatores* or *iudices peregrini* from Latin into Greek.⁴⁵⁵ If the former, we might thus have three ‘official’ copies; if the latter, we would now have a rather nice piece of evidence for independently functioning legal practitioners.

Procurement of the formula

Babatha was illiterate, so the possibility that she identified and copied down the formula herself should be ruled out.⁴⁵⁶ Additionally, there is no reason to suppose that Babatha was herself so conversant with Roman law and procedures that she would know to request a copy of a specific *actio*; it is supremely likely, therefore, that she relied on advice. Indeed, whether the three copies were made from the provincial edict or from a handbook, some degree of legal expertise must be posited along the way even to locate the relevant formula. This, I would suggest is one of the strongest arguments for the presence of legal practitioners in Roman Arabia at this time.⁴⁵⁷ While the locating and possibly copying of P. Yadin 28-30 could have been done for Babatha by a friendly clerk/scribe in the governor’s office, probably for a small fee, this is precisely the kind of work which falls within the general sphere of activity that has been outlined for legal practitioners from evidence elsewhere in the empire. It should, therefore, make us seriously consider the possibility of their presence here.⁴⁵⁸

⁴⁵⁵ Nörr (1995a: 94). Nörr (1995a: 89) further suggests that we are here dealing with “a standard translation – either from the governor’s bureau or from a local *nomikos*”; cf. Nörr (1998: 323) and (1999: 270).

⁴⁵⁶ For further details, see the discussion of illiteracy in Chapter Two (pp. 100-104).

⁴⁵⁷ In this, I follow on from the arguments of Kantor (2009: 262-263).

⁴⁵⁸ Lemosse (1968: 374-375) offered an alternative suggestion, based on the assumption that the governor would naturally think in terms of Roman law and so, when the case was raised, of course thought of the *actio tutelae*; Lemosse thus implies that the governor had procured the formula for Babatha. This is followed to some extent by Oudshoorn who suggested that one copy may have been provided by the governor as an addition to his *subscriptio* to Babatha’s initial petition, though Oudshoorn then proposes that another copy was provided later by a local νομικός, “in preparation for the actual suit (initiated by P. Yadin 14), or perhaps

The number of copies

A further puzzle is the fact that Babatha had three copies of the formula, which remained in her leather purse to be found in the 1960-1961 excavations. If they were meant to help her case, why did she not use them?

Here, we should perhaps pick up on how documents were handled more broadly across the archives. Babatha and her contemporaries appear to have been in the habit of keeping copies of their paperwork. Several of the documents within the archive are copies, and indeed it is sometimes explicitly stated that more than one copy was drawn up – two such cases are P. Yadin 25, a summons and counter-summons in a separate dispute, and P. Yadin 26, another summons and reply.⁴⁵⁹ P. Yadin 12 is also explicitly stated to have been copied from the minutes of the βουλή of Petra and P. Yadin 13, a petition by Babatha to the governor about the guardians, was plausibly classified by Lewis as a copy that she kept for her own records based on the fact it contains no signature.⁴⁶⁰ P. Yadin 16, a registration of land for the census, is certainly a copy – in addition to the explicit statement to this effect in the papyrus, the original Aramaic attestations have been translated into Greek; P. Yadin 11 can also be classified as a copy on this basis.⁴⁶¹ It is also stated in P. Yadin 23, ll. 23-4

even at a later stage when Babatha was convinced that the *actio* would only serve her once her son would have come of age” (Oudshoorn (2007: 323)).

My objection to the idea that the governor provided the formula (or ordered them to be provided), as set out by Lemosse, is based primarily on the fact that Babatha had three copies of it. While one would perhaps fit this hypothesis, it seems rather odd that the governor would have had three copies, in two different hands, returned along with his *subscriptio*. The case as put by Oudshoorn is more plausible. In any case, I would argue that the primary point remains: the governor was unlikely to have copied this down himself, so a clerk or scribe would have done so, and, even if we follow Oudshoorn’s theory, we are still dealing here with the additional presence of a νομικός. The point to emphasise is that there were qualified people of some sort around who were involved in formulating the documents.

⁴⁵⁹ P. Yadin 25, ll. 66-7; P. Yadin 26, l. 20.

⁴⁶⁰ Lewis (1989: 51).

⁴⁶¹ In this document, Judah’s attestation is written in Greek and marked as a translation: see P. Yadin 11, ll. 29-30.

that both parties have a copy of the document. From the Salome Komaise archive, we have two further examples: X Hēv 61 is an official copy of a land declaration,⁴⁶² and X Hēv 62, another land declaration, is explicitly marked as a copy.⁴⁶³ Both women therefore seem to have been in the habit of keeping copies of relevant paperwork on file.

It is, I would argue, therefore entirely plausible that Babatha intended to keep one copy of the *actio* for her records. The destination of the other two documents depends on the ultimate use of the *actio*, which will be discussed in more detail below. In brief, both may have been intended for the other two guardians if the papyri were used in a more informal setting. Otherwise, if Babatha was only formally suing one guardian, one copy may have been meant for that guardian, the other was to be submitted to the governor along with her petition.⁴⁶⁴ This, at least, would explain the three copies.

There is, however, the further problem of why P. Yadin 28-29 were written in one hand, P. Yadin 30 in another. It is possible that Babatha had one copy made by her legal advisor, then had the two additional copies made by a more inexpensive scribe. The two hands would therefore have an economic solution.⁴⁶⁵ Tempting as this is, it would mean that we would probably have to posit P. Yadin 30 as the original papyrus bought from the (more expensive) νομικός, since it is the only papyrus written in a different hand. This, however, appears to be a copy of slightly weaker quality than P. Yadin 28 and 29. Lewis observes

⁴⁶² This papyrus is designated a copy on the basis that the subscriptions (by two people) are in the same hand as the main text and one of these, that of the prefect, is marked as a translation.

⁴⁶³ X Hēv 62, Frag. a, ll. 1-2 / 3-4.

⁴⁶⁴ This would have been as a request for him to appoint *xenokritai* to judge the complaint, probably as supplementary paperwork, alongside the summons. The intention would be to maximise the chances of the case being allowed to proceed.

⁴⁶⁵ Oudshoorn's (2007: 232) suggestion that one was issued by the governor and another (presumably, in fact, another two) was made by a local νομικός might perhaps offer an alternative solution (see discussion in n. 458).

that the writer is given to false syllabification,⁴⁶⁶ and there are a few minor differences in the Greek from P. Yadin 28 and 29: ξεγ[ο]κρίτε (P. Yadin 30, l. 7) instead of ξεγοκρίται (P. Yadin 29, ll. 3-4) and ἐπὶ (P. Yadin 30, l. 8) instead of ἐπε[ι] (P. Yadin 29, l. 4).⁴⁶⁷ This would mean that the cheaper scribe corrected the Greek of the more expensive legal advisor; a possibility since both may have been offering different skillsets but perhaps a little surprising.⁴⁶⁸ The fact that the papyri were written in different hands therefore remains something of a puzzle.

The use of P. Yadin 28-30: three possible solutions

a) An unused option

It is possible that the papyri were intended to be submitted to the governor along with an initial petition as a request either to appoint *xenokritai*,⁴⁶⁹ if the property in question was under the 2500 denarii limit, or as proof it should be heard in a court with greater competence – perhaps that with the governor himself presiding – if it exceeded this (rather high) limit. These papyri therefore could have been used as supporting documentation,⁴⁷⁰ though with what exact intent, in legal terms, they were submitted remains unclear.

⁴⁶⁶ Lewis (1989: 118).

⁴⁶⁷ There is also an additional ἐ[γγραφή διὰ] in P. Yadin 30, though since most of this is restored I am somewhat unwilling to make any speculations on the basis of it.

⁴⁶⁸ If the handwriting in P. Yadin 30 were more professional than P. Yadin 28-30 then this would lend support to the economic theory. Unfortunately, no photograph of P. Yadin 30 has been published and we are reliant on Lewis' (1989: 118) comments.

⁴⁶⁹ Seidl (1968: 349) suggested this. There is, however, some ambiguity as to the exact nature of the 'formula' which had been categorised by Jackson (1981: 362, n. 98) as, in fact, instructions to a delegated judge issued by the governor – such instructions would resemble the formula and the difference would in fact be "extremely slight". If these were instructions from the governor to the delegated judge, it is somewhat unclear why Babatha had three copies of them in her purse. Instead, if we are to view P. Yadin 28-30 as instructions, we should instead follow Wolff (1980: 786), who describes the papyri as a set of instructions to *iudices pedanei* but also seems to have thought it was used by Babatha as a template with which to align her requests.

⁴⁷⁰ This is a fairly typical use of paperwork at this time and will be discussed further in Chapter Six (pp. 244-252).

The fact that Babatha still had multiple copies of the *actio* in her purse strongly implies that she never actually submitted them, perhaps because she never had the chance to do so.⁴⁷¹ They therefore represent the preparation for a phase of litigation that never, in fact, came to fruition. Thus, Babatha may have intended to use the *actio* to sue in the initial case but never had the opportunity, perhaps because the case was settled before reaching court.⁴⁷²

b) *Planning ahead*

The second option only slightly varies from the first. It is possible that Babatha was preparing another stage in the case as the guardianship neared an end. This would have occurred some years after the initial proceedings. In this secondary stage, she would encourage her son, if he had come of age, or another guardian to sue and the *actio tutelae* would be used as part of this process.⁴⁷³ This second stage might never have come to fruition because of the outbreak of the Bar Kokhba revolt, when she fled to the caves. The papyri therefore remained in her purse.

⁴⁷¹ If only one copy were in her purse then it would be perfectly plausible that this was a document kept simply for her own records (see the discussion in *The number of copies*, pp. 147-149), but this seems highly unlikely when the papyri exist in triplicate.

⁴⁷² From the perspective of codified Roman law, she would have had to have had one guardian removed first, possibly using the *crimen suspecti tutoris*, and then persuaded the co-guardian or new guardian to use the *actio* to sue. See Nörr (1998: 321): the *actio tutelae* was forward-looking, and intended to be used after the termination of the guardianship. Babatha may have intended to use the *crimen suspecti tutoris* to remove the guardian, then get either the other guardian or the newly appointed one to sue with the *actio*. Cf. Lemosse (1968: 375) who also thought that the *actio* was for use after the termination of the guardianship.

⁴⁷³ Chiusi (2005: 124) takes this line, arguing that Babatha intended to get her son to sue using the *actio* once he came of age; cf. Turpin (1999: 512) for an identical view. Oudshoorn (2007: 335-336) also proposed that the *actio tutelae* was intended to be used “in a second phase of proceedings,” after the removal or death of a guardian; Goodman (1991: 171) in a brief discussion of the papyri also puts forward a similar hypothesis.

c) A 'rhetorical' device

A different solution might be posited if we entertain the possibility that these three papyri were intended to be used in a rather more informal setting.⁴⁷⁴ While pursuing the dispute against Jesus' guardians, Babatha may have asked for a meeting with her opponents at which she presented each guardian with a copy of the *actio*, keeping one copy for herself.⁴⁷⁵ The purpose of this was to intimidate the guardians into settling – here, the rather high figure of 2500 denarii as a limit on potential damages becomes a key bargaining chip. This was meant to make her opponents worry about the potential sum she might be awarded if she won in a Roman legal forum. The threat, then, is: “Come to terms, or I go to court and it could cost you very dearly.”

While this remains pure hypothesis, it does fit rather neatly with the kind of legal interactions that will be suggested in subsequent chapters. The *actio*, in these circumstances, does not need to have a direct legal application to the case at hand – it is provided purely as an example of what could happen. It also, to provincials, looked ‘Roman’ and therefore legitimate – the psychological implications of this should not be underestimated. Considering the fact that this case may, indeed, have been settled,⁴⁷⁶ one can easily envisage a meeting of such a kind taking place.⁴⁷⁷

⁴⁷⁴ I am extremely grateful to Dr. David Taylor for suggesting this explanation to me when I presented a paper covering much of the same material as this chapter at the Seminar on Jewish History and Literature in the Graeco-Roman World, at the Oriental Institute, Oxford.

⁴⁷⁵ It will be argued in later chapters that there was a high probability that litigants conducted such out of court negotiations at the same time as pursuing their cases through the Roman court system.

⁴⁷⁶ See above, and also pp. 220-223.

⁴⁷⁷ One could also imagine the presence of her legal advisor at such a meeting to lend extra force to the intimidation attempt, though this is of course firmly in the realms of speculation.

In such a situation, the *actio* is no longer used in a manner that was strictly legally relevant – instead, its text is employed more as a ‘rhetorical’ device. Since such a setting would have been informal, any similar meetings in the ancient world would have left little documentary trail and so it is somewhat difficult to trace other such uses of documentation. There are, however, some parallels for a use of documents or legal citations for a rhetorical effect. The rights invoked by Dionysia’s father, Chairemon, under the name of the ‘Law of the Egyptians’ in the aforementioned P. Oxy. II 237 (c. 186 C.E.) may have been extremely archaic, and indeed this ‘law’ was only cited by him once his previous case conducted on Roman terms had failed.⁴⁷⁸ The dispute between him and his daughter as to the terms of this law may have meant that he was relying partly on the ignorance of the judge as to its exact terms and was using this appeal to indigenous law in a more ‘rhetorical’ manner in the hope it would have an effect on his Roman judge.

There are certain similar cases outside of the documentary record which attest to such a use of either paperwork or law. Pliny’s litigants frequently produce documents in court, some of which either have no relevance to his particular province or he suspects of being forgeries.⁴⁷⁹ Reading between the lines, what the litigants seem to have been doing is trying to use documentation to lend support to their cases – whether it was genuine or not – either without knowing its falsity/irrelevance or relying on Pliny’s supposed ignorance of the facts. Or rather this is what Pliny believed they were doing; he thought there was some kind of rhetorical use of paperwork at hand. Perhaps along similar lines, in his account of the trial of Piso under Tiberius, Tacitus recounts: “I remember hearing old men say that a

⁴⁷⁸ See Humfress (forthcoming: 15-20) for an analysis of the papyrus along these lines. The ‘Law of the Egyptians’ will be discussed at greater length on pp. 170-171.

⁴⁷⁹ See Kantor (2009: 258-259) for discussion. One case discussed by Kantor (2009: 260-261) is especially relevant here and provides a rather nice example of both points: in Pliny, *Epistulae* X. 65, a litigant produced a number of documents (including letters from several emperors) whose authenticity Pliny doubted. Trajan confirmed that some at least were authentic but that they had no relevance to Bithynia (X. 66).

document was often seen in Piso's hands, the substance of which he never himself divulged, but which his friends repeatedly declared contained a letter from Tiberius with instructions referring to Germanicus, and that it was his intention to produce it before the Senate and upbraid the emperor."⁴⁸⁰ There is here the idea that the mere presence of a piece of writing could have an effect on the way in which a case proceeded, or at least on public opinion, if Piso was indeed in the habit of carrying it around.

If we go back even further in the ancient world, the Attic orators also frequently misinterpreted, quoted selectively, paraphrased or added details to laws that had been read out in court, relying on the fact that their audience would have forgotten these details by the time that they engaged in such manipulation of the law.⁴⁸¹ Indeed, Demosthenes comments (in a reply to Aeschines): "Are you not ashamed to bring a charge because of envy and not because of any actual wrong, *modifying laws and removing parts from them* when they should rightly be read out in their entirety to those who have sworn to vote according to the laws?"⁴⁸² Exploiting an audience's supposed ignorance was apparently not unheard of even when the cited laws had previously been read out before the court. It is not difficult to see the scope for similar exploitation where reading of the laws was not standard practice.

⁴⁸⁰ Tacitus, *Annales* III. 16: *audire me memini ex senioribus visum saepius inter manus Pisonis libellum quem ipse non vulgaverit; sed amicos eius dictitavisse, litteras Tiberii et mandata in Germanicum contineri, ac destinatum promere apud patres principemque arguere.* Text is from the LOEB, translation (slightly adapted) is that of Church and Brodribb (1891).

⁴⁸¹ See Canevaro (2013: 27-32) for an analysis of the manner in which the orators did this, along with further examples.

⁴⁸² Demosthenes, *De Corona* 121 (my italics): ἀλλ' οὐδ' αἰσχύνει φθόνου δίκην εἰσάγων, οὐκ ἀδικήματος οὐδενός, καὶ νόμους μεταποιῶν, τῶν δ' ἀφαιρῶν μέρη, οὓς ὅλους δίκαιον ἦν ἀναγιγνώσκεσθαι τοῖς γ' ὁμωμοκόσιν κατὰ τοὺς νόμους ψηφιεῖσθαι. Text is from the LOEB, translation is that of Canevaro (2013: 29).

The use of the *actio* in such a manner, which relied on the other parties' lack of relevant legal knowledge, is therefore not alien to the use of law or paperwork in the ancient world. To explain the presence of the papyri in Babatha's purse, we would have to conclude that she collected the copies after the meeting – in such a semi-formal situation this would not have been at all impractical.⁴⁸³ Otherwise, the same solutions as were suggested for the previous two possibilities could also have applied; the case may have been settled before such a meeting, or the meeting may have been planned but failed to take place because of the outbreak of the Bar Kokhba revolt.

The implications of P. Yadin 28-30

Beyond concerns of their immediate application, the papyri offer us some information about legal knowledge, use and concepts. First, and fairly obviously, we can state that Roman legal forms were in some way accessible to provincials in Roman Arabia. This may have been from the handbook or edict but the point is they were available and they were actually used. The latter is a key point – people did not ignore what they considered to be the rules that applied to their new situation, they were determined to find out and make use of Roman forms by using knowledgeable intermediaries. Secondly, these were in all probability not located by the litigants themselves. Considering the level of expertise taken to access such literature as this, to locate it and possibly to translate it (depending on its origin), it is highly probable that there were some sort of legal experts around.⁴⁸⁴ These

⁴⁸³ Her motivation for doing so might simply have been economic – she had paid for them and therefore considered them her property, not to be given away. Alternatively, perhaps she wanted to keep them in case they could ever be used subsequently in court – in which case, why pay for even more copies?

⁴⁸⁴ Kantor (2009: 262): “Even getting access to the *exempla proconsulum*, although they would presumably be often available in the provincial archives of Pontus et Bithynia, probably involved no small difficulty for an untrained layman, to judge from the occasional problems of the governor himself.”

may have been attached to the governor's office, they may have functioned independently or both at different times.

P. Yadin 28-30 therefore seem to indicate the presence of some kind of legal advisors in Roman Arabia and their involvement in the cases in the archives. Nevertheless, we should still consider whether these were, broadly speaking, identical with the scribes discussed in Chapter Two or constituted a separate 'group'.

Scribes and advisors: a purely terminological distinction?

It would be fruitless to deny that there is a certain degree of overlap between the people considered in the previous chapter and the legal advisors of the present. It is therefore worth considering whether, in fact, this is a helpful distinction to make – were there scribes who were just scribes and advisors who were just advisors? Or were they all one and the same?

The answer probably lies somewhere between these two extremes. It was suggested in the previous chapter that knowledge of certain Roman legal forms, such as a *stipulatio* clause, and the ability to include these in the contracts they wrote did not make all writers legal experts. Instead, it put them somewhere on the spectrum of perceived legal knowledge, especially considered from the litigants' perspective. Legal advisors, in the sense considered here, were probably somewhere within this same spectrum. Their roles may have overlapped – it is not denied that such advisors may have written documents, as seems to have happened elsewhere in the empire – but the distinction is probably worth preserving, albeit with some caution. Principally, it is suggested that access to legal literature and the locating, and possibly copying, of certain relevant forms fell within the

expertise of such advisors rather than strictly scribes. While a scribe could more or less easily, depending on his experience, draw up a petition, I would suggest that locating specific Roman legal models implies a higher level of knowledge in order to access the relevant part of a very specific kind of literature.

Some 'scribes' may have had such knowledge, some may not. Equally, some 'legal advisors' may have made most of their living writing documents, some may not. But while there was certainly a degree of overlap in activities, the slight distinction is probably worth maintaining if only when considering the point of view of the litigants themselves. If they simply wanted a contract written, perhaps someone they perceived as a 'scribe' would do; if they wanted help and advice in how to conduct a more prolonged litigation procedure, or what might turn into one, perhaps instead they turned to someone who, in their perception at least, had a level of legal expertise beyond simply writing documents.

The line is a thin one and might have varied from person to person. Individuals could emphasise their capacity in specific activities. It was observed in the previous chapter that, unlike certain writers in Egypt, Theënas and Germanos make no boasts about their legal expertise, something we might expect if they considered themselves experts.⁴⁸⁵ The proposition of the current chapter is that whoever located P. Yadin 28-30 for Babatha might have been more likely to advertise his legal knowledge over his writing skills. Essentially, the scribes and legal advisors might have belonged to the same general group but individuals had different expertise and this perhaps altered how they were each perceived. It is these individual differences that should be acknowledged and emphasised. To this

⁴⁸⁵ See references in n. 412.

extent the legal advisor / scribe distinction is worth preserving for analytical purposes, though we should of course bear in mind the probable flexibility with which these people operated.

Chapter Four

The Parties

The drafting of any legal document in the ancient world was a collaborative process.⁴⁸⁶

Scribes wrote, νομικοί could be consulted, but behind all this were the parties themselves.

In litigation, they were the ones with the actual complaints – to reduce them to mere passive bystanders at the mercy of their writers and advisors would be highly misleading. Both Salome Komaise and Babatha seem to have valued their documents highly, to the extent that they took the trouble to bring them to the caves to which they fled. Their documents were obviously important to them and we would expect their attitude towards the contents to reflect this, despite the layers of mediation involved.

Thus, if the previous two chapters have served to place the emphasis on the less visible agents behind the documents' formulation, the present chapter will redress the balance and focus upon the parties themselves. Their perceptions of law and the available legal authorities will be considered in order to assess how this may have influenced the documents' final form. A particular focus throughout will be on their level of input into language and legal formulae, since these have been features that, in the past, have typically been taken to indicate the parties' preference for a particular legal sphere or, to put it another way, the 'operative law' of the documents. While I shall not address the latter question, my aim is to focus on those elements that would seem to be under the parties' control. In the following, then, I shall delineate the factors that may or may not have

⁴⁸⁶ See pp. 96-97 for discussion.

influenced their decisions in order to draw up a more nuanced picture of the practical workings of law in this community.

The non-Greek documents

While the primary focus of this chapter will be on the Greek papyri in these two archives,⁴⁸⁷ we should first consider the Jewish and Nabataean Aramaic documents written under the Roman administration. Why did people choose to commission scribes to write in these local languages, rather than that of the administration, well into the Roman era? And are there any other signs of Roman influence on the format or phraseology of these papyri?

The safely dated, non-Greek documents written in the Roman period are listed in Table 6 (below). Brief descriptions are given of each of the documents and the *Survey of the Documents* may be consulted for a more detailed analysis.

⁴⁸⁷ Several factors contribute to this. First, they are written in a language not native to the parties involved and so presumably determined by other factors which merit consideration. Secondly, it is a few of these Greek documents which offer the greatest diversity in terms of legal phraseology. Finally, the analysis will centre upon provincials' reaction to the Roman administration, under which the majority of documents were written in Greek.

TABLE 6: THE NON-GREEK DOCUMENTS IN THE BABATHA AND SALOME KOMAISE ARCHIVES WRITTEN AFTER 106 C.E.

DOCUMENT	DATE (C.E.)	DESCRIPTION	LANGUAGE	DATING FORMULAE
P. YADIN 6	119	Tenancy agreement between Judah and a certain Yoḥana.	Nabataean Aramaic	Consular year; province year.
P. YADIN 7	120	Deed of gift from Babatha's father to his wife.	Jewish Aramaic	Consular year; imperial year; provincial year; Babylonian day and month.
P. YADIN 8	122	Yehoseph buys or sells a donkey from/to his brother.	Jewish Aramaic	Consular year; imperial year; provincial year; Babylonian day and month.
P. YADIN 9	122	Waiver or sale (extremely fragmentary).	Nabataean Aramaic	Consular year; provincial year.
P. YADIN 10	Unknown	Babatha's <i>ketubba</i> .	Jewish Aramaic	None surviving.
X ḤEV 12	131	Receipt for dates.	Jewish Aramaic	Babylonian day and month; provincial year.

Two features of the documents reflect the new Roman presence in the area. First, P. Yadin 8 and 9 both mention payment, “to our lord, Caesar, as well” (ולמראנא קיסר כות).⁴⁸⁸ This was in all probability a government tax paid on private transactions, which seems to have corresponded to the same tax paid to the Nabataean king before 106 C.E. The latter is mentioned in P. Yadin 2 and 3, both written during the regnal period.⁴⁸⁹ The principals were therefore aware of the Roman presence, acknowledged it and paid what they owed. Mentioning and paying the tax could, however, be seen as the bare minimum of involvement with their Roman overlords and does not imply any enthusiasm for or uptake of Roman legal forms. The tax had to be paid and the conditions of its payment were therefore included in the transactions.

⁴⁸⁸ P. Yadin 8, l. 9; P. Yadin 9, l. 9.

⁴⁸⁹ P. Yadin 2, ll. 15 / 40; P. Yadin 3, l. 18 / 45-46. Both documents also refer to a leasing tax which is to be paid to the king by the seller until the land in question had been registered with the authorities: see P. Yadin 2, ll. 13-14 / 37-38, P. Yadin 3, ll. 14-16 / 40-42. See Yadin et al. (2002: 228-229 on P. Yadin 2; 116 on P. Yadin 8) for further discussion.

A second indicator of Roman presence may be detected in the dating formulae used in these documents. All those written after 106 C.E. show some Roman influence (see Table 6, above). The primary difference from the documents written in the regnal period is in the yearly dating: this changes from the regnal year to consular, provincial, imperial or a combination of these. In this, they exhibit a similar pattern to documents from Dura-Europos and Judaea, which also typically date by Roman consular or imperial year.⁴⁹⁰ Additionally, X Ḥev 12 has its date at the end of the receipt, a format more similar to Greek receipts (for example, X Ḥev 60) than the Aramaic documents from the Judaean desert. Though this is indicative of Greek or Roman influence, it does not amount to the same kind of use of Roman legal formulae as that found in the Greek documents.

Such dating changes seem nothing more than a necessity. Continuing regnal dating was not possible since there was no longer a Nabataean monarch. In light of this, dating by some kind of reference to Roman rule was probably the simplest option. Indeed, as in the case of the governmental tax, the provincials seem to have simply substituted the Romans for the Nabataean king, with little further adjustment to their documents' format or their legal transactions. Dating formulae may also have been part of the detail that was left for the scribes to determine, and so tell us little about whether the parties themselves were actively adjusting to and accommodating their new rulers' administrative forms. At best, the formulae indicate an awareness within the community of the presence of their new Roman rulers.

⁴⁹⁰ See Lewis (1989: 27-28) for details: examples of documents from Judaea include P. Murabba'ât 115 (125 C.E.) and P. Murabba'ât 114 (171 C. E.(?)), both of which date by regnal and consular year.

This seems to be the sum total of Roman influence on the format of these particular documents. Since they do not therefore seem to be particularly diverse in legal formulae or traditions, language becomes the key issue that needs to be explored. Several explanations may be offered for the existence of Jewish Aramaic and Nabataean documents in the Roman era and their commissioners' language choice. Once again, many of these factors could have operated in tandem. It is highly unlikely that there was one, single reason that explains the use of Jewish or Nabataean Aramaic in every case.

First, it is possible that the people who commissioned these documents simply did not ever expect them to be used in a Roman court and so saw no need to have them written in Greek. This might be because they preferred to use a local legal forum or because the situation in which the document was drawn up gave them no reason to think that they would ever need to go to court. This might be particularly applicable for a marriage contract, such as P. Yadin 10, or a sale between, presumably trusted, family members – for example, P. Yadin 8.⁴⁹¹ This is not to say that nothing could or did go wrong, just that because of the people involved or the nature of the agreement, the parties did not expect it to. They therefore saw no need to go to any great lengths to impress their Roman rulers.

Secondly, it is possible that people had not yet come to realise what would help their case in a Roman court. This is especially plausible if the people in question had previously had little or no contact with the Roman authorities. They therefore simply stuck to the language and forms which they knew and had previously used. In a similar vein, they might have chosen a scribe who had little contact with the Romans or did not know Greek and so did

⁴⁹¹ Notably, though, P. Yadin 17, a deposit usually taken to be a loan between Babatha and her husband Judah, is written in Greek. Obviously some family members were more trusted than others.

not consider what would help their case in a Roman legal forum. Perhaps, indeed, they did not yet have access to a scribe who could write in Greek.⁴⁹²

A third factor may have been trust. In going to a scribe who wrote in their native language – perhaps someone they had used before or otherwise already known to them – the parties may simply have been choosing to deal with a person whom they trusted.⁴⁹³ This might be a particular concern if one or more of the principals were illiterate. Familiarity could have been perceived as a bonus.

A fourth option is that there was a preconceived idea about how certain contracts were drawn up, particularly if this was connected with religious identity in some way. P. Yadin 10 is the crucial document here, and many of the problems it raises have been discussed in Chapter Two.⁴⁹⁴ It is possible that tradition and religious considerations determined how Judah and Babatha drew up this particular contract. Alternatively, Judah may simply have copied a previous document in order to save money. These issues are most evident in P. Yadin 10 though it is of course perfectly possible that they applied to other documents as well.

Finally, it is worth stating the obvious: different people within a community may come to different conclusions about what they could or should do. There may even be a generational divide in evidence here, so Babatha's father chose to draw up his deed of gift in Aramaic while Babatha and her contemporaries preferred to pander more to the Romans'

⁴⁹² X Hev 12 is the obvious exception to this, since it is the last dated document in Salome Komaise's archive. By this point, she certainly had access to a Greek scribe.

⁴⁹³ See Tables 3, 4 and 5 in Chapter Two (p. 113, 115, 126-127) for evidence of the same scribes being hired repeatedly.

⁴⁹⁴ See pp. 104-109.

expectations in their choice of language and format. In any case, the motivations suggested above probably all played some role in the decisions of people about their documents, influencing one agent or another more or less at different times.

This final point is key: we should not underestimate the importance of people's agency on the creation and operation of the documents in a community in which people had different levels of legal knowledge and awareness. Hence one might have chosen to take strong account of Roman presence, another might not. The result is a far from uniform collection of contracts and laws with regards to language, legal traditions and legal formulae.

The point of change

Undeniably, however, there is a shift in language in the Babatha archive in particular – that of Salome Komaise does not display such a definite move from local languages to Greek. As has previously been mentioned, this occurs at some point between 122 and 124 C.E.⁴⁹⁵ What happened at this time to encourage Babatha and her family to start to commission not just a few but all of their surviving documents in Greek?

The first document which was written as part of this seemingly permanent shift into the Greek language is P. Yadin 11, a loan on hypothec that Judah takes out from the Roman centurion Magonius Valens. This is not the original document but a copy, as evidenced by the fact that Judah's acknowledgement is written in Greek and marked as a translation.⁴⁹⁶

⁴⁹⁵ The last safely dated non-Greek document in the Babatha archive is P. Yadin 9, an extremely fragmentary waiver written in 122 C.E.; the next dated document is P. Yadin 11, a loan on hypothec written in Greek in 124 C.E.

⁴⁹⁶ P. Yadin 11, ll. 29-30.

The fact that a Greek copy was drawn up is significant, and strong Roman influence in the presence of the centurion probably accounts for the language choice. Judah was in the inferior position in this contract since he is the one in need of money; indeed, he seems to have taken out the loan on very poor terms,⁴⁹⁷ suggesting he was desperate and therefore in a weak negotiating position when it came to language choice, document format or anything else. If offered a copy of the contract, he may have had little or no choice about the language in which the copy was written.

The next documents are, however, of a slightly different nature. P. Yadin 12-15 all concern Babatha's dispute with the guardians of her orphan son, Jesus, from her first marriage. The first, P. Yadin 12, written in 124 C.E., is an extract from the minutes of the βουλή at Petra, in which the two guardians are appointed. The ensuing disputes are then all written in Greek as, indeed, are all the rest of the documents in the archive. This exchange represents Babatha's first recorded encounter with the Hellenised/Roman authorities in their official capacity.⁴⁹⁸ Because the original transaction (the appointment of the guardians) was conducted, or at least recorded, in Greek, this may have influenced her choice to commission a response in the same language. Her shift to Greek, at least in this initial encounter, may therefore have been less due to active or enthusiastic choice and more perceived necessity.

⁴⁹⁷ See the entry in the *Survey of the Documents* for more details (pp. 48-50).

⁴⁹⁸ By 'official capacity' I am excluding transactions such as the aforementioned loan (P. Yadin 11), which appears to have been a private arrangement between the two parties.

It is also notable that we have no record of her choosing to have the βουλή appoint guardians and it is entirely possible she had no input into this decision.⁴⁹⁹ If so, she had little option but to take her case to either the βουλή or the Roman governor's court – the latter course, which she actually took, might represent an attempt to take her case to a higher authority, whom she believed had the power to overrule the βουλή decision. It was not necessarily an enthusiastic recourse to Roman courts but the only option if she wished to challenge the repercussions of the decision by the Petra βουλή.

Additionally, this first point of contact with the Roman governor's court in all probability increased Babatha and her family's awareness of the Roman administrative system, as well as their knowledge of the way it functioned. This was the turning point after which they decided to draw up their documents with the Roman authorities more firmly in mind – previously, none of the archive documents appear to have been formulated with a view to their being used in the Roman court system. Aside from the move to the Greek language, one further example of this is the inclusion of male guardians as representatives of women in these Greek documents: Hannah Cotton has argued that this is, in fact, the strongest indication of such an intention to use them in a Roman court of law, particularly when contrasted with the absence of guardians from the Jewish and Nabataean Aramaic papyri.⁵⁰⁰ This feature of the Greek papyri suggests that members of this community had learned of Roman requirements regarding guardians for women, I would suggest through

⁴⁹⁹ On the oddity of the βουλή, instead of the municipal magistrates, appointing the guardians, see n. 156. On the nature of the Petra βουλή, see Chiusi (2005: 108), who observes that it may have been either a) a pre-existing municipal structure, unchanged by the Romans or b) a structure invented by the Romans when they annexed the area; cf. Oudshoorn (2007: 315, n. 51).

⁵⁰⁰ Cotton (2007: 247).

Babatha's personal experience, and thereafter followed them when drawing up their documents, even those which were not to be submitted directly to a Roman court.⁵⁰¹

Once she had been forced to have recourse to Roman legal procedures, Babatha was more astute in making her documents 'user-friendly' to Roman officials. This attitude affected even those papyri which were not directly intended for the eyes of the Roman administration. The shift to Greek and the changing format of the documents therefore becomes more explicable in terms of Babatha's own experience in her legal transactions.

The Greek documents

Two issues must be discussed with regards to the Greek documents: language and legal formulae. The latter is a more complicated matter in the Greek documents than in the Jewish Aramaic and Nabataean papyri: this is because the most complex and varied documents in terms of legal phraseology, and those which have therefore prompted the greatest scholarly debate, are among the Greek corpus.

Language

Language choice has already been touched upon in Chapter Two. There, we observed that the desire to have a document written in a particular language might influence the parties'

⁵⁰¹ P. Yadin 22, for example, is a 'sale' of a date crop (the nature of this transaction is disputed, see pp. 71-74) in which Babatha acts through a guardian, John, son of Makhouthas. The document does not seem to have been drawn up with the direct intention of submitting it to a Roman court but I would suggest that the use of a guardian and the choice of Greek language show that the principals were now keeping in mind Roman preferences, even in their private transactions, in case it ever needed to be used in such a forum.

decision to use a scribe and even determine which scribe they chose to approach.⁵⁰² The commissioning parties therefore probably had a fair amount of influence over the language in which a particular document was written. Equally, the principals' decision to pay a scribe to write a document because they were themselves incapable of doing so in their desired language implies that they believed that language was important.⁵⁰³ We must now reflect upon why they might have thought this was the case. Several possible reasons present themselves, which should be considered in conjunction with my previous discussion of language choice in the earlier chapter.

a) *Language of response*

The first possibility is that the provincials simply responded in the language in which they were originally addressed. This applies particularly to the case of Babatha's disputes with Jesus' guardians, as suggested above. Since the original appointment by the Petra βουλή was recorded in Greek, Babatha may simply have decided it was appropriate to make her own challenge in the Greek language.⁵⁰⁴

b) *Language as a status marker*

It is also possible that language was in some way connected with status; indeed, in Egypt, Greek was the language with the highest status.⁵⁰⁵ Use of a particular language might

⁵⁰² See the *Language* section in Chapter Two (pp. 104-107).

⁵⁰³ For example, Judah was obviously capable of writing documents in Jewish Aramaic, so the choice to commission a scribe to do so instead seems a deliberate one: see the discussion on pp. 104-109.

⁵⁰⁴ Spolsky's (1985) preference rules are here appropriate to consider; see n. 362 for details.

⁵⁰⁵ Fewster (2002: 224). See also Depauw's (2003: 80) comments on signatures in documents in the Demotic and Ptolemaic period: "One wonders if they signed in Greek for any particular legal reason or just because it was fashionable to demonstrate knowledge of the language of the higher classes." A related situation, in which different languages are accorded various statuses, is what linguists term extended di- or triglossia. One

therefore be a kind of prestige marker. Bernard Spolsky mentions this in his discussion of ‘preference rules’ for language choice in multilingual Jewish communities in the first century C.E. ‘Preference rules’ are “rules that apply typically but not necessarily, and the weighting or salience of which is dependent on situations and attitudes.”⁵⁰⁶ Of particular relevance here is what Spolsky terms, *Typicality condition 5*:

“[You] Prefer to use a language that asserts the most advantageous social group membership for you in the proposed situation.”⁵⁰⁷

In such circumstances, people choose to employ the language of the ‘dominant group,’ “as a claim to membership of that group and so to an advantageous status in the current situation.”⁵⁰⁸ Language choice then becomes a bid for power and status.

I am not suggesting that the litigants’ decision to use Greek amounted to an assertion of membership of the Roman ruling elite. By means of such a choice, people might, however, wish to signify a supposed connection with or allegiance to the Romans. Such an affinity would not be signalled by the use of indigenous languages. Their reasoning would be that the ability to operate in the language of the rulers conferred greater favour or prestige on the parties involved, since they were both able and willing to engage with the Roman authorities on their terms and in their preferred tongue – at least, as far as possible, in that the locals did not employ Latin. Using a local Aramaic dialect, in contrast, signalled their

language is used for H (high) functions, such as formal writing or public situations, another for L (low) functions, often private spheres, within a community. The mark of this is that the functions are rigorously compartmentalised (Mullen (2012: 24); cf. Langslow (2002: 26) for concise definitions of both ‘diglossia’ and ‘bilingualism’). It is not entirely clear that we have a di- or tri-glossic situation in these documents, since it is precisely the fact that different languages are used for similar functions within the archives that merits debate. The term does, however, serve to highlight the fact that one dialect or language might have a higher status than another.

⁵⁰⁶ Spolsky (1985: 44).

⁵⁰⁷ Spolsky (1985: 45).

⁵⁰⁸ Spolsky (1985: 46).

deficiency and therefore marked exclusion from their rulers' world. It placed them firmly among the 'ruled'.

c) Language determined law

The next possibility is that the principals thought language dictated law. Their decision to have a contract written in Greek, the language of the administration, would therefore be said to indicate that they wished it to operate under Roman law. Here, in the litigants' minds, language becomes the sole determinative factor of legal sphere.

Several points speak against this. The first is provided by comparison with Egypt. In the early Ptolemaic period, language was rather strictly indicative of law used: disputes among Greeks went to a Greek court and involved Greek documents; disputes among Egyptians went to the Egyptian board of *laokritai* and involved Demotic documents.⁵⁰⁹ This rigid categorisation was breaking down as early as the second century B.C.E. and the use of Demotic gradually declined in the Roman period. This did not, however, equate to a demise of Egyptian traditions: we find references to the 'Law of the Egyptians' well into the second century C.E.⁵¹⁰ This law is referred to in six papyri and appears to have allowed fathers to have their daughters' marriages dissolved and revoke wills made by their sons in order to inherit their property: as Uri Yiftach-Firanko has argued, while the former feature probably derives from Greek practice, the latter had its roots in Egyptian. The 'Law of the Egyptians' was therefore "a collection of local practices of different ethnic

⁵⁰⁹ Wolff (1970: 37-50), cited and discussed by Yiftach-Firanko (2009: 546-548), who gives an excellent summary of the Egyptian situation and its development. More generally on the linguistic and legal situation in Egypt, see Kelly (2011: 24-25; 28-31) and Fewster (2002: 224-226).

⁵¹⁰ See Yiftach-Firanko (2009: 543; 550-552) on the 'Law of the Egyptians'.

backgrounds,” which combined Greek and Egyptian precedents.⁵¹¹ Thus, what began as a system with strict associations between language and law changed rather quickly and, by the period now under discussion, had become much more complex. This may perhaps speak against an initial assumption that language was strictly determinative of law in this period, when the Nabataean kingdom became Roman Arabia.

A second factor belies the idea that the principals thought law was determined by language (as opposed to whether it really was or not): this is the multiplicity of legal traditions and influences we find in Greek documents. In essence, as is clear from the *Survey of the Documents*, we find two kinds of mixtures in the papyri. The first entails the mention of one kind of law or custom coupled with the use of a legal formula from another. This occurs, for example, in X Hev 65, Salome Komaise’s marriage certificate, where an explicit reference to Hellenistic νόμος is coupled with a Roman *stipulatio* clause. The second kind of mixture of laws or traditions involves a contrast between, to adopt Jacobine Oudshoorn’s terminology for the moment, substantive and formal law.⁵¹² This occurs when a document appears to have been drawn up with one legal sphere in mind but adopts the format of another. An example might be the series of papyri recording the disputes before the governor over Judah’s estate: the complaint seems to have been based on a claim rooted in non-Roman law, though the documents appear to be intended for a Roman court and therefore employ a format appropriate to the intended forum, with the parties summoning and deposing in accordance with the παραγγελία procedure.⁵¹³

⁵¹¹ Yiftach-Firanko (2009: 551). Yiftach-Firanko’s (2009: 552) conclusion that, “The law was a manual composed for the use of Roman judges,” is, however, less convincing (see Humfress (forthcoming: 2, n. 4) for comments).

⁵¹² Oudshoorn (2007: 195-204, especially 196).

⁵¹³ P. Yadin 20-26 relate to this dispute. The legal issue behind these documents is uncertain, though a good case has been made that it is rooted in indigenous and possibly Jewish law. See comments on each in the *Survey of the Documents* (pp. 69-78).

These two kinds of combinations can also be found within single documents. P. Yadin 18 is an obvious case in point: Greek, Roman, Demotic and Jewish parallels have been identified for various clauses and items in this marriage contract,⁵¹⁴ and indeed there is an explicit reference to ἑλληνικὸς νόμος at one point. Furthermore, the ‘substantive’ law behind the document has been a matter of much dispute, with champions for both Greek and Jewish frameworks.⁵¹⁵ The principals do not, therefore, seem to be under the impression that the choice of a language has automatically put them under the framework of a particular legal system, Roman or otherwise. Further instances of a mixture of clauses or influences from various legal traditions abound: two examples are X Hev 63, which has been compared to Greek διαλύσεις contracts but also contains a Roman *stipulatio* clause, and X Hev 65, Salome Komaise’s marriage contract, whose legal background has prompted as much debate as that of P. Yadin 18.⁵¹⁶ All this rather undermines the idea that the parties assumed language was strictly determinative of law: they were quite willing to engage with a number of laws or traditions within Greek documents.

On a final note, it is worth pointing out that Jacobine Oudshoorn has previously discussed this assumption, with a particular focus on P. Yadin 18.⁵¹⁷ She suggests that, if language was determinative of law, there was no need for the reference to ἑλληνικὸς νόμος in this contract: the employment of the Greek language should have made the legal context clear and meant that it did not need to be stated. This is compared with X Hev 64, a Greek

⁵¹⁴ See the discussion of P. Yadin 18 in the *Survey of the Documents* for a more detailed analysis of these various parallels (pp. 62-66).

⁵¹⁵ See commentary on P. Yadin 18 in *Survey of the Documents* for more details (pp. 62-66).

⁵¹⁶ X Hev 65 has been aligned in structure to a *ketubba*, though makes reference to feeding and clothing the bride, “in accordance with Greek custom and Greek manner” (νόμ[ω] [ἑλληνικ]ῶ καὶ ἑλλ[η]νικῶ τρόπῳ) (ll. 9-10) and concludes with a *stipulatio* clause. For more detailed discussion, see the entry in the *Survey of the Documents* (pp. 90-93).

⁵¹⁷ Oudshoorn (2007: 84-87).

document in which a gift is made in an extremely similar manner and which employs very similar terminology to that used in comparable Aramaic contracts (for example, P. Yadin 7). Oudshoorn uses these cases to argue that, “Instead of focussing on language in the discussion, internal evidence should be considered to see whether this indicates what law was thought applicable to the document.”⁵¹⁸ Oudshoorn’s points with regards to the non-determinative relationship of language with law are pertinent and considered. Where I differ from her, however, is in her emphasis on the internal evidence as the primary, if not sole, indicator of applicable law: the operation of law in the provinces goes beyond the formulation of the documents and must take into account personal interaction and response. Identifying ‘formal’ or ‘substantive’ law is only one part of the issue.

d) The Romans required or preferred that documents be written in Greek

There is, of course, a marked difference between requirement and preference. Nevertheless, these two considerations are closely related and raise many of the same issues so are worth examining in close succession.

First, did a document have to be written in Greek in order to be valid in a Roman courtroom? This differs somewhat from (c) *Language determined law*, as it does not assume that a certain law is applied. Rather, the document had to be written in Greek in order to be used in a Roman legal forum.⁵¹⁹

⁵¹⁸ Oudshoorn (2007: 87). Oudshoorn does not, in fact, think that P. Yadin 18 is drawn up entirely according to ἑλληνικός νόμος, but argues that this refers only to the maintenance clause and the contract as a whole came under Jewish law (Oudshoorn (2007: 398-422)).

⁵¹⁹ The Romans would not necessarily consider and judge a case strictly under the terms of Roman law, hence the separation here of forum from law. This will be discussed in greater detail in Chapter Six (pp. 232-244).

Oudshoorn has again done much work in demonstrating that the Romans did not, in fact, require documents to be written in Greek. She points out that Aramaic dialects still had an active role in legal contracts as they were frequently used in subscriptions to Greek documents.⁵²⁰ No fewer than eight of the Greek texts from the Babatha archive have Aramaic subscriptions in the form of attestations by one or more of the parties involved; two more are preserved in Greek translation.⁵²¹ In addition to this, principals across both archives often sign their name in Jewish or Nabataean Aramaic. That it was common for the principals and witnesses in this community to sign or endorse Greek documents in their native language appears to be beyond question.

Furthermore, Oudshoorn points out that Babatha bases her right to sell the date crop in P. Yadin 20 and 21 on the privileges bestowed in her *ketubba*. She took possession of the date orchards in question based on her entitlement to the return of her *ketubba* money. Her dowry, granted in her marriage contract, is referred to explicitly in these Greek documents.⁵²² P. Yadin 23-26 record the ensuing conflict about the legality of this move, but Babatha at least assumes that her *ketubba* is legally binding. This strongly suggests that there were at least some people who did not think documents had to be written in Greek in order to be used in a Roman court.

⁵²⁰ Oudshoorn (2007: 84). She contrasts this with the situation in Egypt, in which Demotic is often used to write the main body of documents but the subscriptions are written in Greek.

⁵²¹ P. Yadin 15, 17-22 and 27 have Aramaic subscriptions; P. Yadin 11 and 16 preserve Greek translations of subscriptions which were presumably originally written in the indigenous languages. In the Salome Komaise archive, we more commonly find lists of Jewish or Nabataean Aramaic signatures than attestations by the parties (see X Hev 60, 62, 64), though X Hev 61, the conclusion of a land declaration, preserves the translation of three subscriptions.

⁵²² P. Yadin 21, ll. 11-12; P. Yadin 22, l. 10.

Finally, if any language was required for certain documents, even to make them legally binding, it was most likely to have been Latin.⁵²³ Wills, for example, had to be written in Latin until 235 C.E.⁵²⁴ This, however, was only going to be a concern for Roman citizens since non-citizens lacked *testamenti factio* and so would not have been able to participate in making a Roman testament in any way, not even as a witness.⁵²⁵ Most acts which took place under the *ius gentium*, the law which would have applied to non-Roman citizens such as Babatha, Salome Komaise and their associates, were probably more flexible with regard to language by the period in question.

This does not mean that the Romans would not have had a preference for documents written in Greek. The governor and his staff were hardly going to be able to speak or read local dialects in every location to which they were posted and a Greek document would naturally be more immediately accessible to them. Provincials would have realised this fairly quickly and indeed may even have assumed it from the start: the Roman officials were representatives of a foreign power, a ‘foreignness’ which was connected with and even reinforced by the non-indigenous language they used.⁵²⁶ Provincials such as Babatha could therefore have reasoned that it would do no harm to have documents that could come before Roman eyes written in Greek.⁵²⁷ It might even stand them in good stead with the Roman authorities, since the litigants were obviously taking the trouble to appeal to the

⁵²³ See Oudshoorn (2007: 64-66) for a discussion of the use of Latin. She concludes that, “although Latin was the preferred language for legal acts, foreigners could use their own language for acts within the *ius gentium* from an early stage onwards” (Oudshoorn (2007: 66)).

⁵²⁴ Yiftach-Firanko (2009: 553).

⁵²⁵ Though we might note that copies of the *actio tutelae* (P. Yadin 28-30) were still found in Babatha’s purse despite the fact that, in strict terms of Roman law, she had no right to use it (see p. 143).

⁵²⁶ This foreignness might even have been cultivated by the Romans in order to reinforce their power. Kelly (2011: 179) observes that the use of Greek in court, a language which only some people in a multilingual society (in this case, Egypt) would have understood, added to “the majesty and terror of the occasion.”

⁵²⁷ Little is known about translation processes but if the litigants themselves had to pay for translations, should they be needed for a Roman court, having the document in question written in Greek in the first place would save both time and money.

Romans on their own terms.⁵²⁸ Language choice was part of a wider process of flattery and appeal.

It is worth briefly reconsidering (b) here: the use of language as a prestige or status marker. Under this interpretation, the principals' motivation for writing in Greek was that they believed the Romans would be inclined to accord higher status to those who had mastered the Greek language and could conduct their legal business in it. The litigants believed that they were showing an affinity with a culture closer to that of the authorities and would be viewed as more 'civilised' as a result. They therefore used the Romans' preference for the Greek language to their own advantage, employing it in their documents in the hope of being cast in a more favourable light in Roman eyes.

Language, then, was in no way determinative of law used. Nevertheless, it has become apparent that it was indicative of the authorities whom the litigants intended to approach if problems arose. The Greek language therefore becomes a mark of awareness of the Roman presence and potential recourse to Roman courts.

Legal formulae and references

First, it is worth emphasising again that the principals (for the most part) did not write these contracts themselves. They therefore assumed that the scribe whom they commissioned would use suitable forms and write an appropriate document. They might have specified to the scribe a language preference or a preferred authority – demanding, for example, a

⁵²⁸ This connects with the possibility that the litigants used Roman legal formulae in order to persuade or impress their rulers (discussed below).

loan which would be enforceable in a Roman court. This could even have been assumed if only one set of authorities was available or the Romans were viewed as the ultimate, most powerful legal enforcers.

It is not being suggested that the parties themselves would have framed the questions about legal formulae or law in following way, or even that they would have explicitly considered them. That does not, however, mean that they would not have had some underlying conception or assumption about the way the documents functioned.

Concepts of law

Before moving to the legal formulae themselves, we must first consider what is meant by ‘Roman law’ (or indeed any ‘law’) in this particular context. This is not merely an academic exercise in definition: it is, indeed, a key area of contention in the study of Roman law in the provinces.⁵²⁹ We need to consider the practical application of Roman law and the way in which it was conceived by provincials and rulers alike.

⁵²⁹ Ideas on the nature of Roman law have changed dramatically over the centuries, as has been discussed in the *Introduction* (see pp. 17-20 for further details and bibliography). To summarise briefly: previously, scholars tended to see and study it as a coherent, systematised body of rules. The Roman Empire was conceived as orderly in nature, its legal system likewise. Confidence in this notion was gradually eroded. Now, under the influence of modern legal theory, sociology and anthropology on legal pluralism, our idea of Roman law, particularly in the provinces, is shifting to something more complex. The emphasis is on the actions of both the provincials and the rulers in constructing a socially-situated idea of law. This leads us far from the original conception of Roman law as a systematised body of rules, imposed from above, and means that it is much less straightforward to define exactly what is meant by the term in this context. Indeed, ‘context’ is the key to such an understanding. It should be evident from this that when we make statements such as, “the principals thought that using a *stipulatio* clause put them under Roman law,” (to be discussed below) we must instantly turn to examine how they conceived of “Roman law” or indeed law in general. Failure to do so runs the risk of imposing an anachronistic idea of the nature of Roman law on their situation.

Two recent works should be taken into account at the present juncture. The first of these is Caroline Humfress' study of forum shopping in late antiquity.⁵³⁰ Forum shopping is the ability of an individual within a society to choose in which of the several available fora s/he wished their case to be heard. Humfress uses this phenomenon as a case study to explore the "socially constructed" nature of Roman legal institutions. Legal procedures are seen as "situated practices," they are, "locally shaped and culturally entwined in place and setting."⁵³¹ The focus is thus less on law as a body of rules decreed and applied from the top and more on the uptake of law by people on the ground. This view of law and legal procedure emphasises at all times the point of view of the parties involved, their agency and choices. This leads us to a more fluid idea of legal rules as dependent on the situation and agency of the people involved in each particular case.

This stress on the importance of context in interpreting legal procedure does not, however, mean that people had a conception of law as being without any fixed rules – such a notion might in fact erode our very idea of law itself.⁵³² Here, we should turn to the second work of particular relevance to this topic: Ari Bryen's analysis of court procedure in the Eastern provinces.⁵³³ He argues that provincials had a very clear and novel idea of the law as, "a disembodied world of rules that transcended even the emperor himself."⁵³⁴ There was then a battle for control of these rules, which was played out in the courtroom: as a result, provincials saw law as, "an evolving dialogue taking place in the courtroom and as a historically evolving phenomenon constructed from individual legal decisions and vested

⁵³⁰ Humfress (2013b).

⁵³¹ Seron and Silby (2004), as cited in Humfress (2013b: 233).

⁵³² See Geertz (1983: 167-169) for a more anthropological perspective on the problems of defining 'law'; cf. Shahar (2008: 418-419) for a summary of the debate from a legal viewpoint.

⁵³³ Bryen (2012). See also Bryen (2013: *passim* but especially 126-164) and Kantor (2012) on ancient concepts of law.

⁵³⁴ Bryen (2012: 776).

in documents recoverable from local archives and public inscriptions.”⁵³⁵ A clear conception of a body of law may therefore be combined with the significance of situation. People had an idea of what the law was and sought to find out about it, apply it and contend over it in court.

A combination of these two interpretations can throw much light on the operation of law in the community we encounter in the Babatha and Salome Komaise archives and, of special relevance here, the attitudes of the parties themselves. A couple of examples will serve as illustration. The first is that of P. Yadin 25. In this papyrus, Julia Crispina, one of the guardians of Judah’s orphaned nephews, summons Babatha for seizing property “through force” (βία).⁵³⁶ Babatha then issues a counter-summons, recorded in the same papyrus, in which she complains that Julia Crispina has summoned her on a false charge of using violence.⁵³⁷ Reference to βία is extremely common in papyri from Egypt and is often used as rhetorical flourish in making claims.⁵³⁸ As Ann Ellis Hanson points out, Babatha is clearly not familiar with what is quite a standard turn of phrase, in contrast to Julia Crispina and/or her scribe.⁵³⁹ We therefore have differing levels of knowledge and sophistication exhibited within a single papyrus. This in turn leads to legal wrangling over an accusation of violence that was meant to be a standard rhetorical device. Local understandings, or misunderstandings, of legal phraseology here impact upon the course of law.

⁵³⁵ Bryen (2012: 801).

⁵³⁶ P. Yadin 25, l. 10. This is omitted from the outer text of the papyrus.

⁵³⁷ P. Yadin 25, l. 18 / l. 51: βίαν μοι χρωμένη συκο[φ]αγγοῦσά μοι.

⁵³⁸ See Hanson (2005: 102) for details on its use and frequency in Greek papyri from Egypt.

⁵³⁹ Hanson (2005: 102-103).

Another case in point is the *actio tutelae* (P. Yadin 28-30), which has been discussed at length in the previous chapter.⁵⁴⁰ These three papyri are vital in giving credence to the notion that people in this community had a defined idea of law as a body of rules. To recap: the papyri are Greek copies of a Roman formula, closely resembling the example of a praetor's formula on deposit given in Gaius, *Institutes* IV. 47 (in Latin). The formula in the archive, however, differs from the model in Gaius in a number of ways: most notably in its subject-matter, guardianship rather than deposit, and in the inclusion of a monetary limit for actions (2,500 denarii).⁵⁴¹ It is odd that Babatha had three copies of the same formula in her archive and it is unclear to what use she would have put these multiple copies; it has been suggested in the previous chapter that this model might have been used in some kind of informal negotiation for intimidation purposes, though this remains purely hypothetical. Ultimately, we know that the papyri ended up in her possession. She had gone to the trouble of consulting someone who knew about Roman law (or whom she thought did), possibly a νομικός of some sort, and having them or a scribe, or perhaps both,⁵⁴² make several copies of something that was thought relevant to her case.

The presence of these documents in her purse suggest that Babatha valued documentation and ownership of the written letter of the law. She had a conception of Roman law as a body containing definite rules, which she actively sought to learn about and apply to her own situation.

⁵⁴⁰ See pp. 139-155.

⁵⁴¹ See pp. 144-145 for more details on the changes.

⁵⁴² P. Yadin 28 and 29 are written by the same hand, though P. Yadin 30 is in a different one; see pp. 147-149 for further comments on this issue.

The translation and adaptation of a Roman formula also speaks for the importance of agency and location in the application and determining of these rules – in short, Humfress’ idea of a more socially situated law.⁵⁴³ So when Babatha consulted the writer about her situation, he copied out for her something that he thought appropriate. Yet somewhere in the writing of P. Yadin 28-30 there appears to have been either an ignorance of the regulations covering guardianship, a lack of access to them or a belief that a formulation which ‘looked Roman’ would do. This raises a further question: how would Roman judges respond to such an adaptation – would it have been accepted, reinterpreted or ignored?

The provincials in this area therefore do seem to have had an idea of Roman law as a body of rules and a desire to find out what these were. The rules themselves, however, were not necessarily as rigid as they might have thought when it came to their practical application: this differed according to the people involved, their situation and their knowledge of law.⁵⁴⁴

Attitudes towards the legal formulae

The above sketch of ideas about law might help to explain why the litigants used Roman legal formulae or formats so frequently. In some way, the formalistic elements were considered important. The question that remains is what force or effect they believed such phraseology had. Three main attitudes will be examined. These are by no means mutually exclusive. Different people may have had different opinions about the legal force of the formulae, they may have sat somewhere between two positions or have been unsure as to

⁵⁴³ The stage at which the adaptation took place is somewhat unclear: see the discussion of the origins of the *actio* in the previous chapter (pp. 144-146).

⁵⁴⁴ “The people involved” includes the Roman judges in each particular case: their influence will be discussed in Chapter Six.

their exact function, simultaneously considering all three reasons and employing the relevant legal phraseology ‘just in case’.

a) Informative

The first possibility is that the provincials viewed the legal formulae as informative in function. They therefore thought it would help the Roman authorities to understand the issue at hand better if Roman legal terms were used. Writing contracts in local formats, on the other hand, could make the matter more opaque. So, to take one example, in P. Yadin 17 Judah acknowledges a loan he has taken out from Babatha, his wife. The loan is written in the form of a deposit, a familiar contract from the Roman legal sphere which was widely adopted and adapted throughout the empire.⁵⁴⁵ Under this interpretation, the selection of this particular form would be to enable any Roman administrator or judge to view the transaction under a familiar frame of reference, rather than having to interpret the terms of a loan drawn up according to local norms.

b) Persuasive

The principals may have used Roman or Romanised legal formulae because they believed that it would increase the probability of the Romans returning a favourable verdict. Their use of such terms therefore becomes a means by which they may impress their Roman judges. This is, indeed, Jill Harries’ interpretation of the documents:

⁵⁴⁵ See pp. 39-40 for further details.

“The villagers of Maoza were not Roman lawyers. Their adoption of the language of Roman law did not imply understanding or appreciation of its content. Rather, they hoped to impress the men of power with whom they were obliged to deal.”⁵⁴⁶

The separation of this view from the former is potentially false as the two are closely connected. A desire to inform one’s judges on their own terms is naturally bound up with the hope that this will help achieve a verdict in one’s favour, should the problem come to court. Both viewpoints may also combine with the issues raised in the discussion of language choice, namely that provincials might have chosen to have their documents written in Greek because they believed this was the language preferred by the Romans. These concerns all fall within the concept of a ‘diplomatic language’ or rhetoric which parties could employ in the legal process.

c) *Transformative*

“Seen from the perspective of the individual actor, then, specific Roman legal forms might be used in particular circumstances to transform an everyday occurrence – the making of a promise, the offering of a loan, a gift of property – into something that could then be viewed (plausibly) as a Roman ‘legal’ act.”⁵⁴⁷

The provincials may have believed that using Roman or Romanised legal forms transformed their deeds into a Roman legal act. This is a stronger reading of the parties’ perception of the force of the formulae, which are now believed to determine the law used. Humfress (quoted above) suggests that the employment of the *stipulatio* clause in Greek contracts from Egypt in the third century C.E. are a possible example of this

⁵⁴⁶ Harries (2010: 96).

⁵⁴⁷ Humfress (2011: 38).

phenomenon,⁵⁴⁸ and the use of *stipulatio* in these two archives might also be considered under this interpretation. To take the same example again, this interpretation would mean that when Judah, or rather the scribe he commissioned, placed a *stipulatio* clause at the end of P. Yadin 17, he believed that he was thereby placing the entire transaction under Roman law. This would similarly apply to P. Yadin 18, Shelamzion's marriage certificate, with its vast mixture of legal references: in some sense, the principals thought that this *stipulatio* meant the contract became enforceable in a Roman legal forum.⁵⁴⁹

Authority or law?

In all these potential attitudes towards both language and law, the key underlying factor has been a concern on the part of the principals with the requirements, preferences and perceptions of the Roman authorities.⁵⁵⁰ The notion that has been posited of a kind of 'diplomatic language' used to increase one's chance of success in the legal process accentuates this: the principals' primary concern was with creating an effective appeal to an authority and not necessarily with selecting a particular 'system' of law.

Indeed, this whole notion of 'systems' to which specific rules belonged may be an anachronistic attitude to associate with ancient society.⁵⁵¹ This is not to say that provincials

⁵⁴⁸ Humfress (2011: 38). Humfress also cites the *Tabula Contrebiensis* (first century B.C.E.) as a further possible example, in which two Roman legal formulae precede a judgement that bears no relation to Roman law.

⁵⁴⁹ The other documents which contain a *stipulatio* in these archives are P. Yadin 20 (a concession of rights), P. Yadin 21 and 22 ('purchase' and 'sale' of the same date crop), and X Hev 65 (Salome Komaise's marriage contract).

⁵⁵⁰ See Cotton (2007: 247-255) for a further example: she discusses P. Yadin 15, arguing that various aspects of the documents make it clear that, "the aim was to make the contract legally valid and enforceable in a Roman court of law" (Cotton (2007: 254)).

⁵⁵¹ See Kantor (2012: 80): "It is confidently asserted in respect of modern law that 'every law necessarily belongs to a legal system'. Whether that can be said of law in Roman provinces must be in doubt ..." The citation is of Raz (1973: 1).

had no conception of Roman law as a body of rules or, for that matter, of any other kind of law that they encountered – as I have argued, it seems probable that they did have some kind of notion of law in these terms. Rather, this was not their primary concern or motivation behind seeking to find out about and apply Roman legal formulae. Instead, I should like to suggest that they thought more in terms of imposed authority and available courts. Seeking out certain legal formats and selecting a specific language was a way of appealing to these authorities.

If this is the case, we must explain the mention of other legal traditions in the documents: among them, reference to “Hellenistic law/custom,”⁵⁵² “Hellenistic law and Hellenistic custom,”⁵⁵³ and “the law of Moses and the Judeans.”⁵⁵⁴ On the face of it, these seem to be explicit references to specific systems of law. Nevertheless, I would argue that these can be interpreted within the suggested framework. They should therefore be understood as allusions to precedent, tradition or that ever elusive ‘custom’.⁵⁵⁵ They are employed and phrased in such a way in order to impress upon the Roman authorities the embedded nature of the terms of the contract in the various traditions that were in use in the local area. These specific references are therefore part of the process of negotiation of power that Bryen discusses:⁵⁵⁶ a reference to rules or traditions which may then be fought over in the arena of a Roman court. Given the tendency of Romans to prefer local custom, scribes could have gathered enough about this attitude to conclude that very specific references to

⁵⁵² P. Yadin 18, l. 16 / 51: ἑλληνικῶ νόμῳ.

⁵⁵³ X Hev 65, ll. 9-10: νόμ[ω] [ἑλληνικ]ῶ καὶ ἑλλ[η]νικῶ τρόπῳ.

⁵⁵⁴ P. Yadin 10, l. 5: אר[י]הוּי הש[ו]ת [ר]ב[ו].

⁵⁵⁵ See Humfress (2011) on the role of “custom” in antiquity and Kantor (2012: 67) on the ambiguous meaning of νόμοι.

⁵⁵⁶ Bryen (2012: 776; 800). See also Humfress’ (forthcoming) interpretation of the reference to ‘The Law of the Egyptians’ in P. Oxy. II 237, col. vii, l. 33 (c. 186 C.E.), which she argues, “tells us more about his [the litigant’s] determination to triumph over his daughter, than it reveals about the persistence of Egyptian law and legal practices in late second-century Roman Egypt” (Humfress (forthcoming: 19)).

longstanding tradition or custom, even ‘law’, might make the parties’ claims stronger in the eyes of a Roman judge.

This is where it becomes more useful to understand the parties as operating in a context more concerned with authorities and appealing to them than with systems of law. Their use of specific legal formulae or references to specific legal ‘systems’ is often motivated by a desire to appeal to their Roman overlords. As part of this, they employ Roman legal terminology or reference traditions in the hope that they will strengthen their legal claim.

Concluding remarks

It seems highly probable that the forms and formulae employed in the documents were primarily determined by scribes and/or νομικοί. The parties might have had some input into language choice or specified an authority to whom they intended to take the contracts if the transaction became problematic. As part of this, many of the litigants and their advisors began to consider how best to appeal to their Roman overlords, engaging in a language of appeal in order to maximise their chances of success. References to specific local traditions should be interpreted within this negotiation process: they are part of a bid to strengthen the parties’ claims.

Before we move on to consider the perspective of the authorities, one point should be emphasised among all this. Such a decision to frame one’s claim in terms which (hopefully) would appeal to the Romans does not amount to an enthusiastic uptake of Roman legal processes. There is a marked difference between a decision to maximise one’s chances in

the courts by employing a certain kind of diplomatic language of appeal and enthusiasm for a new legal system. The existence of legal fora other than those of the Romans will be examined in the following chapter. For the time being, we may say that if the Romans were the only authority to whom these people could appeal to uphold their legal transactions, or were perceived to be at the top of a hierarchy of courts, then the safest option for litigants was to bear in mind their preferences. Awareness and knowledge of these preferences probably grew over time, hence the general shift from writing documents in Jewish Aramaic and Nabataean at the beginning of the Roman period to Greek later on.

This amounts to a case of having little choice but to conform if one wanted to capitalize on any chance of success, rather than an enthusiastic reaction to the ruling power and legal system. The idea that provincials' keenly and voluntarily turned to Roman legal fora should therefore be tempered by considerations of the realities and necessities of their situation.

Chapter 5

Βουλευταί, rabbis and arbiters: the alternatives to the assizes?

Scribes, νομικοί and the parties themselves were responsible for the creation of these documents, yet no less important was their intended audience – Roman or otherwise. We shall therefore now concentrate upon the way in which these papyri were used and interpreted in various legal situations. This, in turn, feeds back into our original considerations of document formation. Scribes, advisors and parties, as we have seen, had an intended audience in mind – hence, indeed, the ‘diplomatic language’ posited in the last chapter. Their attitudes and perceptions of the people who could and perhaps would eventually judge them fed back into the way they wrote the documents in the first place. The question is: how much account did they take of their various options? Roman preferences, after the annexation, appear to have been greatly privileged by the parties and their associates, but what inferences should we draw from this about possible alternatives for litigants in Roman Arabia?

Evidence for local courts in these documents is, in fact, almost non-existent. Aside from a single reference to the βουλή of Petra, no courts other than the assizes are mentioned in either of the two archives. This does not, however, mean that we should automatically rule out the possibility that localized legal fora existed;⁵⁵⁷ it is possible that the operation of

⁵⁵⁷ *Contra* Schwartz (1999: 210): “As we know from the Babatha archive ... all legal authority in Roman Arabia was held by the governor and the city councils.” Indeed, there are other situations where the documentary evidence does not reflect the existence of all the operative legal institutions. See Cotton (1993: 100): “The editors of CPJ expressed their surprise at the absence of any documents reflecting the existence of Jewish courts in Egypt and of the exercise of Jewish law there; not even for Alexandria where we know that a Jewish tribunal existed, do we possess any evidence.”

local courts may simply have been taken for granted by the Roman administrators.⁵⁵⁸ If so, such fora could have been a viable option for litigants in Roman Arabia, distributing a localized form of justice that was potentially more convenient, more familiar and probably swifter than the Roman alternative.

The present chapter, then, will consider the significance of this lack of attestation for our interpretation of the documents and the legal options open to litigants in this area. The focus will primarily be upon the kinds of legal fora that might have been available to the parties, drawing on evidence from elsewhere in the empire. We shall then turn to how people might have used non-Roman alternatives, and how, if at all, their existence affects the picture of legal life that we receive from the archives.⁵⁵⁹

Βουλαί and city courts

One possible body that could have served as a source of localized justice would be a city council (βουλή) or some other form of local court based in the cities of the empire. The βουλαί, indeed, seem to have had a prominent role in local government,⁵⁶⁰ as we would

⁵⁵⁸ Cotton (2007: 236). The position is well summarized elsewhere by Cotton in Cotton and Yardeni (1997: 154): “It is a remarkable fact that no court, Jewish or non-Jewish, other than that of the Roman governor of Arabia, is mentioned in any of the documents from the Judaean Desert, a great many of which ... are legal documents. We should not therefore conclude, however, that the governor’s court was the only court in operation in a Roman province. Nonetheless, the absence of any references to other courts is disturbing, especially in view of the host of references in rabbinic sources to courts of different sizes in towns and villages.”

⁵⁵⁹ The discussion will focus on the existence (or not) of a range of legal fora, not alternative legal systems or traditions. The latter is a separate, if not entirely divorced, question that approaches the issue of what ‘operative law’ was applied in such fora. I shall also restrict my attention to courts which appear to operate separately from the Roman administration, i.e. not the non-Romans appointed by the Roman authorities as *recuperatores* in P. Yadin 28-30 (cf. Nörr (1995a) and (1999), and Cotton and Eck (2005: 28)).

⁵⁶⁰ Rogan (2011: 85) is one recent example of the prevalent opinion that local government was generally strong; Fuhrmann (2012: 66) also states that in Asia Minor the traditional βουλή retained much of its

perhaps expect from such a large empire – strong government by local elites alleviated what would otherwise be a huge demand for officials from the central Roman administration. Local co-operation in governing was, therefore, essential. It would seem perfectly logical that such competencies should extend to justice administration too; given the already large caseload of Roman governors, allowing local autonomy and strong local legal institutions would be an important way of alleviating their potential workload.

Nevertheless, knowledge of the exact competencies of such local courts is sparser than we would wish. Indeed, Joyce Reynolds' comment that, "There is much about which we could wish to know more ... notably the local courts of justice,"⁵⁶¹ made in 1988 regrettably still holds true. Over twenty-five years on, what we do know regarding the courts is still extremely limited. Epigraphic evidence has brought a little more detail to the picture: for example, a fragmentary inscription published in 2005 attests to the provisions made for the reform of the local court system in Chersonesus Taurica in the imperial period, probably dating to early in Trajan's reign.⁵⁶² This "puts Chersonesus among a small number of Greek communities where the survival of popular jurists is attested after the mid-second century BC, when civic courts proper largely disappear from our epigraphic record."⁵⁶³ Further evidence for local courts is provided by the municipal charter at Irni: while this seems to place severe restrictions on local autonomy,⁵⁶⁴ in doing so it does at least attest that some

importance, "supervising the overall maintenance of public order." In the republican era at least, communities generally seem to have been allotted a fairly high level of autonomy (cf. Cicero, *In Verrem* II. 32; Cicero, *Ad Atticum* VI. 2. 4; Augustus' edict to Cyrene along with Cotton's (2007: 237-242) discussion).

⁵⁶¹ Reynolds (1988:31). This comment is made as part of an overview of the role of the city in antiquity; see also Millar (1993b) more specifically on the Greek city in the Roman period.

⁵⁶² Originally published in Makarov (2005). See Kantor (2013b) for a more recent publication of the text and English translation, with further comments; the dating cited in the text is based upon the arguments put forward by Kantor.

⁵⁶³ Kantor (2013b: 83).

⁵⁶⁴ On the monetary limit for cases they could hear in particular. This charter has inspired a wealth of bibliography, but see especially Cotton (2002a: 17) for discussion of its implications with regard to the Judean documents.

form of local autonomy existed. We also know that the *duoviri* in many parts of the empire seem to have had some judicial functions.⁵⁶⁵ Furthermore, being able to choose one's own court seems to have been an established principle, suggesting a range of options were quite often available: Vespasian, for example, allowed teachers and doctors to sue for breaches of a certain edict in whatever court they so wished.⁵⁶⁶

Literary sources also serve to flesh out the picture. Plutarch, writing around 100 C.E., suggests that, in city-life, local courts were an arena in which politicians could make their names.⁵⁶⁷ Indeed, he sees them as a vital source of local independence that should be maintained:

ὥσπερ γὰρ οἱ χωρὶς ἰατροῦ μήτε δειπνεῖν μήτε λούεσθαι συνεθισθέντες οὐδ' ὅσον ἢ φύσις δίδωσι χρῶνται τῷ ὑγιαίνειν, οὕτως οἱ παντὶ δόγματι καὶ συνεδρίῳ καὶ χάριτι καὶ διοικήσει προσάγοντες ἡγεμονικὴν κρίσιν ἀναγκάζουσιν ἑαυτῶνμᾶλλον ἢ βούλονται δεσπότης εἶναι τοὺς ἡγουμένους. αἰτία δὲ τούτου μάλιστα πλεονεξία 1 καὶ φιλονεικία τῶν πρώτων: ἢ γὰρ ἐν οἷς βλάπτουσι τοὺς ἐλάττονας ἐκβιάζονται φεύγειν τὴν πόλιν ἢ περὶ ὧν διαφέρονται πρὸς ἀλλήλους οὐκ ἀξιοῦντες ἐν τοῖς πολίταις ἔχειν ἔλαττον ἐπάγονται τοὺς κρείττονας: ἐκ τούτου δὲ καὶ βουλή καὶ δῆμος καὶ δικαστήρια καὶ ἀρχὴ πᾶσα τὴν ἐξουσίαν ἀπόλλυσι.

For just as those who have become accustomed neither to dine nor to bathe except by the physician's orders do not even enjoy that degree of health which nature grants them, so those who invite the sovereign's decision on every decree, meeting of a council, granting of a privilege, or administrative measure, force their sovereign to be their master more than he desires. And the cause of this is chiefly the greed and contentiousness of the foremost citizens; for either, in cases in which they are injuring their inferiors, they force them into exile from the State, or, in matters concerning which they differ among themselves, since they are willing to occupy an inferior position among their fellow-citizens, they call in those who are mightier; and as a result senate, popular assembly, courts and the entire local government lose their authority.⁵⁶⁸

⁵⁶⁵ More commonly found in Western provinces: the Eastern provinces also had a range of officials. See Fuhrmann (2011: 58-61) for a description of some of their functions, also Arnold (1914: 250-253) for an old, but still relevant overview of the role of the *duoviri*.

⁵⁶⁶ FIRA I 73. See Humfress (2013b: 239-242) on *privilegium fori*.

⁵⁶⁷ Plutarch, *Moralia* 805a.

⁵⁶⁸ Plutarch, *Moralia* 814f-815a. Text and translation are from the LOEB.

Plutarch, then, clearly discourages what we appear to see in the Babatha archive: constant recourse to the Roman authorities. Yet by this very act of discouragement, he also attests the existence of the courts and local government about whose authority he is worried. Dio Chrysostom's comments echo this viewpoint, written in the second half of the first century C.E.:⁵⁶⁹

καταλείπεται δ', οἶμαι, τὸ ἐαυτῶν προεστάναι καὶ τὴν πόλιν διοικεῖν καὶ τὸ τιμῆσαι
τινα καὶ κροταλίσαι μὴ τοῖς πολλοῖς ὁμοίως καὶ τὸ βουλευσασθαι καὶ τὸ δικάσαι καὶ
τὸ τοῖς θεοῖς θῦσαι καὶ τὸ ἄγειν ἑορτήν· ἐν οἷς ἅπασιν ἔστι βελτίους τῶν ἄλλων
φαίνεσθαι.

But there is left for you, I think, the privilege of assuming the leadership over yourselves, of administering your city, of honouring and supporting by your cheers a distinguished man unlike that of the majority, of deliberating in council, of sitting in judgement, of offering sacrifice to the gods, and of holding high festival — in all these matters it is possible for you to show yourselves better than the rest of the world.⁵⁷⁰

Despite the worry about a lack of power or authority, both authors attest to the possibility of giving judgement – even if the exact sphere in which this was possible is unclear from Dio's comments. Thus local courts in certain Greek cities were seen as a distinct source of pride, even if we are not entirely sure of the scope of their jurisdiction or the extent to which they were used. Indeed, this probably varied considerably from place to place.

When we come to search for possible locations of city courts in Roman Arabia, Petra and Bostra seem the most likely candidates. Both were μητροπόλεις,⁵⁷¹ and each appear to have had a βουλή. This is directly attested for Petra in P. Yadin 12 (discussed further

⁵⁶⁹ The exact date of this speech has been disputed; see Cohoon and Lamar Crosby (1979: 4) for comments on this.

⁵⁷⁰ Dio Chrysostom, *Orationes* XXXI. 162. Text and translation are from the LOEB.

⁵⁷¹ Petra had been a μητρόπολις since Trajan's reign, rather than Hadrian's as often previously thought (see Bowersock (1991b: 18)). The important point here is that they were πόλεις; the μητρο- was purely honorific (cf. Cotton (1999: 83)).

below); for Bostra, we have a good number of inscriptions that confirm there were councillors,⁵⁷² though unfortunately none provide evidence for any supposed judicial functions of these βουλευταί. Indeed, in most of these, the title βουλευτής or βουλευτής Βοστρηνῶν, is the only mention made – a good number of the inscriptions are epitaphs, so the office is listed as one of many held by the deceased.⁵⁷³ We therefore have two cities which could potentially provide a focus for local forms of justice and which each definitely had their own βουλή, but we remain rather ill-informed about the exact function of these councils.

The archives also refer to other cities in the area to which we might look for local courts: Rabbath-Moab and Livias are both called πόλεις.⁵⁷⁴ The two land registrations in the

⁵⁷² See IGLSyr XIII. 1, 9009 (a dedication), 9374 (too fragmentary for nature to be determined), 9422 (memorial) and 9440 (too fragmentary for nature to be determined) (all mention a βουλευτής); IGLSyr XIII. 1, 9252 (epitaph), 9269 (epitaph), 9271 (probably an epitaph), 9334 (probably an epitaph), 9346 (probably an epitaph), 9349 (epitaph), 9371 (too fragmentary for nature to be determined), 9430 (dedication) (all refer to a βουλευτής Βοστρηνῶν); IGLSyr XIII. 1, 9028 (dedication) (refers to a βουλευτικός). See MacAdam (1986: 212-217) for comments on the abbreviation BB and a list of inscriptions attesting to councillors of Bostra; MacAdam (1986: 218-222) for a further list of councillors of unidentified cities that are attested in village inscriptions; further tables of these inscriptions may be found in Sartre (1985: 84-87).

⁵⁷³ See n. 572 for details of each of these inscriptions.

⁵⁷⁴ Rabbath-Moab, P. Yadin 16 ll. 11 and X Ηev 62, l. 10; Livias, X Ηev 65 l. 4; cf. Josephus, *Bellum Judaicum* II. 168, where Livias is mentioned as a city in Peraea. Roman Arabia also seems to have been divided up into administrative districts: there are, for example, plenty of references to Maoza being in the Zoara district, expressed in general in variations on two formulae: P. Yadin 5, frag. a, ll. 4-5 (ἐ[ν] Μαωζοις τῶν περὶ Ζ[οα]ρα); P. Yadin 14, l. 20 (ἐν Μαωζα περὶ Ζ[οα]ραν) (though the summons is to Petra); P. Yadin 15, l. 3 / 16-17 (ἐν Μα]ωζα περὶ Ζοαραν); P. Yadin 16, ll. 13-14 (Βαβθα Σίμωνος Μαωζηνή τῆς Ζοαρηνῆς περιμέτρου Πέτρας); P. Yadin 17, ll. 2-3 / 19-20 (ἐν Μαωζα περὶ Ζοαραν); P. Yadin 18, l. 3 / 32 (ἐν Μαωζα περὶ Ζοαραν); P. Yadin 19, ll. 10-11 (ἐν Μᾶωζας τῆς περὶ Ζοα]ρα); P. Yadin 20, l. 4 / 22-23 (ἐν Μαωζα περιμέτρῳ Ζοορων); P. Yadin 21, ll. 5-6 (ἐν Μαωζα περιμέτρῳ Ζοορων); P. Yadin 22, ll. 5-6 (ἐ[ν] Μαωζα περιμέτρῳ Ζοορ]ων); P. Yadin 25, l. 28 / 64 (ἐν Μαωζα περὶ Ζοορων); P. Yadin 26, l. 18 (ἐν Μαωζα περ[ι]μ[ε]τρ[ῳ] Ζ[οο]ρων); P. Yadin 27, ll. 3-4 (ἐ[ν] Μᾶωζα περιμέτρῳ Ζοορων); X Ηev 62, Frag. a. l. 12 (Ξαμμῶος Σιμων[ο]ς Μαωζηνὸς τῆς Ζοαρηνῆς περιμέτρου Πέτρας); X Ηev 64, l. 3 (ἐν Μᾶωζας τῆς περὶ Ζ[ο]αρων); X Ηev 65, ll. 2-3 (ἐν Μαωζα τῆς Ζο[α]ρηνῆς [...]. Πέτραν μητρόπολιν τῆς Ἀραβίας). There is also mention of Maoza being in the Petra administrative district (P. Yadin 23, l. 23 (ἐν Μαωζα τῆ περ[ι] Πέτραν)) and a couple to it being in the district of Zoar in the administrative district of Petra (see references above to P. Yadin 16 and X Ηev 62): on these divisions in Roman Arabia, see Cotton (1999: 90-91). These

archives, P. Yadin 16 and X Hev 62, appear to have been registered in the former city, but again we have no further information about any kind of court or council there. While Babatha summons Julia Crispina to Rabbath-Moab in P. Yadin 25, this simply indicates that it was on the governor's assizes' route. About Livias, we are similarly ill-informed with regards to its judicial institutions.

Despite the appearance of these other cities, we are therefore left with the only attested βουλή in the archives being that of Petra. This βουλή appointed the guardians for Babatha's orphaned son,⁵⁷⁵ as recorded in P. Yadin 12. The Greek in this document contains an interesting peculiarity: it is said to be an extract ἀπὸ ἄκτων βουλῆς (l. 1 / 4-5), "from the *acta* of the council."⁵⁷⁶ This Greek rendering of the Latin *acta* would seem to indicate an institution that was fairly Romanised, which might be explained if the βουλή were a Roman creation after the annexation of the province, rather than a pre-existing administrative structure.⁵⁷⁷ This, in turn, raises a couple of further issues: first, should we see a Roman-created, or at least highly Romanised, body as a truly 'local' option? Secondly, can we be certain that Babatha did not in fact approach the βουλή with any of her legal affairs? Considering, once again, that it may have been an extremely 'Roman' institution, or at least greatly associated with such rulers, her paperwork may not have

districts appear, however, to have been a Roman creation and indeed are only referred to in the Greek documents. They therefore do not help us in looking for local courts. Indeed, the Nabataean and Jewish Aramaic documents written under Roman rule do not refer to administrative districts (where we have the location), even though they use Romanised dating formula (e.g. provincial era, consular year).

⁵⁷⁵ See n. 156 on the council making such appointments, rather than the magistrates, as was more usual.

⁵⁷⁶ A similar phrase is found in a couple of epitaphs from Aphrodisias: in SEG LIV 1059, the epitaph of Iulia (?) dated to the second century C.E., further burials, removal of the body and moving the sarcophagus are all forbidden διὰ ἄκτου βου vacat <λ>ῆς (l. 4) (see also SEG LIV 1056, l. 4). In these, the editor suggests the formula was influenced by the phraseology of testaments or foundation documents.

⁵⁷⁷ See n. 499 on the nature of the βουλή.

differed so greatly if aimed at this institution from that designed to be submitted to the governor himself.

Nevertheless, the exact competency of the βουλή is still somewhat unclear and we cannot be certain whether it functioned as a court.⁵⁷⁸ From the available evidence, particularly that from Egypt, the βουλή does seem to have been more of an administrative body, which sometimes dealt with issues of status in later antiquity but there is little to confirm or contradict the theory this was also happening earlier.⁵⁷⁹ This does not, however, rule out the possibility that it made judicial decisions or that there was a similar city court that could: the state of our evidence on the subject simply does not allow us to advance to such a conclusion. Indeed, Babatha may just as well have decided to try to overrule the βουλή decision by invoking a higher power – the Romans. This would fit well with the idea that people may have appealed to a Roman court when they feared they would not get justice from a local one.⁵⁸⁰ Babatha may have therefore thought that the city courts or βουλή would favour those whom it had appointed and so took her appeal (from her perspective) straight to the top.

⁵⁷⁸ The comments of Kantor (2013a: 158) on Roman Phrygia are rather pertinent here: “Although our evidence for civic jurisdiction in this part of the province is very scarce and mostly inferential, it is natural to assume that city-dwellers could, as elsewhere in Roman Asia Minor, resolve minor private law disputes and pursue petty crime before civic authorities.” See Kantor (2013a: 158, n. 54) for further details on the evidence for this.

⁵⁷⁹ See Bowman (1971), who assembles a wealth of evidence for the functions of town councils (βουλαί) in Roman Egypt.

⁵⁸⁰ For this idea, see Cotton (2002a: 18) and Reynolds (1988: 41)

Villages, the law and ‘self-help’

While cities may have dominated the structure of the more Hellenised provinces, both Roman Arabia and neighbouring Judaea were areas dominated by villages. Few cities are to be found in these provinces and those described as cities in the Jewish sources may not actually have been a πόλις in the sense that either we or the Romans conceived it.⁵⁸¹ Indeed, the village seems to have been the main social and communal centre in these areas,⁵⁸² and it is perhaps here that we should look for the localized centres of justice and law.

Villages, despite their small size, often behaved with a surprising level of independence.⁵⁸³ While it is unlikely that they had their own βουλαί,⁵⁸⁴ they do seem to have had their own officials and quite frequently undertook various building schemes. Indeed, in a comprehensive review of the evidence for village life in southern Syria, MacAdam summarizes the situation as follows:

“Villages formed their own assemblies, elected or appointed boards of magistrates, managed a common fund, negotiated with the Bedouin in their vicinity, petitioned the governor for redress of wrongdoing, sent ambassadors to Rome, regulated the use of

⁵⁸¹ See comments by Cotton (2002a: 19-20).

⁵⁸² See Millar (1993a: 250): “As has been stressed many times, we can in fact assume, in general terms, that all the major cities which dominate any modern map of the Roman Near East were each individually no more than the focal point, and probably the largest single concentration of population, in an area filled with villages, which may often have been the main social units by which people identified themselves.”

⁵⁸³ See Millar (1993a: 250-256) on villages and temples in Northern Syria and Cotton (1999: 82-91) (cf. the brief comments in Cotton (2002a: 19-20)) on the toparchies and village structures found in the “Jewish region.” McLean Harper’s (1928: 145) evaluation that, “Each village seems to be a more or less independent unit, with comparatively little dependence upon a unit higher than itself, except of course the central administration of the Romans,” still holds remarkably true even if his contention that villages in Syria had their own βουλαί has been convincingly disputed (see Jones (1931b: 272-273); MacAdam (1983: 108)). This argument is based on a number of village inscriptions in which βουλευτής is attached to the name of certain men. There is, however, no reason to see this as anything other than an honorific title, designating those men who had served on a city council, and the word βουλή does not in fact appear in any village inscription (MacAdam (1983: 108)). For further information on villages in Palestine and Itrurea see Jones (1931a) and (1931b); see MacAdam (1986: 147-222) and (1983: 107-108) on villages in Roman Arabia; Grainger (1995) on Roman Syria and Arabia, with references to further bibliography therein.

⁵⁸⁴ See n. 583 for bibliography on this dispute.

common land, undertook joint endeavours with other communities, and subscribed public works projects of every conceivable type ...”⁵⁸⁵

Villages, then, were independent units, often (though not always) with little attachment to cities in the region.⁵⁸⁶ Some even have the title of *μητροκωμία*, perhaps suggesting that they were a particularly large or dominant village in their area.⁵⁸⁷ Additionally, the parties in the archives are almost always identified by their villages; this might perhaps be thought to fit well with Fergus Millar’s broader observation that villages in the Roman Near East, “may often have been the main social units by which people identified themselves.”⁵⁸⁸ In short, then, the archives appear to fit well with our general picture of this region.

In light of this apparent independence, it seems perfectly logical to think that villages might also have had their own courts or at least some means of administering justice.⁵⁸⁹ Nevertheless, the epigraphic evidence which provides us with our information about villages does not present us with a particularly detailed picture. Most inscriptions from Roman Arabia are either dedications or concern public works and building projects.⁵⁹⁰ Thus, while we possess the titles of many village officials, we know little about their duties

⁵⁸⁵ MacAdam (1983: 107).

⁵⁸⁶ In contrast to, for example, the situation outlined in the *lex Irnitana*, where the city courts had jurisdiction over the city’s territory (cf. Cotton (2002a: 19) for comments).

⁵⁸⁷ See Jones (1931b: 268) on the role of *μητροκωμία* in Iturea; Sartre (1999) on Southern Syria; Grainger (1995: 180-182) on the import of the term in the Hawran.

⁵⁸⁸ Millar (1993a: 250); see n. 582 above for longer citation. Grainger (1995: 182) echoes Millar on the subject. Against this point it could be argued that in legal documents of this nature the parties had no other option but to identify by their village; this might, however, bring us back round to the fact that villages were the primary organisational unit in the region.

⁵⁸⁹ Indeed, with regard to the “Jewish region” of Palestine, Cotton (2002a: 20) has argued that, “It is either here in the capital villages or in the smaller villages – which enjoyed a large measure of independence – that one should try to locate judicial autonomy in so far as it was allowed by the Romans.”

⁵⁹⁰ See the comments by Grainger (1995: 192): “None of these officials, apart from the early *στρατηγοί*, can be shown to be actual administrators: the inscriptions record only their building activities.” The village officials and inscriptions pertaining to them for the Northern sector of the province of Roman Arabia are comprehensively detailed in MacAdam (1986: 154-175); cf. Sartre (1993: 120-131) on village institutions in Southern Syria, which includes information on ‘magistrat villageoises’.

beyond what we can try to infer from the titles themselves.⁵⁹¹ For example, the name of the ἔκδικοι or σύνδικοι initially appear promising in a search for people associated with local justice systems. The σύνδικοι indeed are well-attested in Arabia,⁵⁹² though again in almost all attestations of the office they are connected with building and construction work. Consequently a promising title is accompanied by little evidence for the scope of the duties it involved.

Nevertheless, a village court or administrator would still seem the most convenient place to turn in case of a dispute. Yet the nature of the evidence means such behaviour remains somewhat hypothetical. We might perhaps find a glimpse of some of the possible ways in which local-level justice functioned in Apuleius' *Metamorphoses*, a second century novel and highly fictionalised account. Yet this narrative gives us a small window into certain realities of daily life in a Roman province.⁵⁹³ Here, mob mentality occasionally dominates: a crowd decides that a suspected witch should be stoned;⁵⁹⁴ after a woman is accused of killing her husband, the crowd, in their rage, react forcefully:

*Saevire vulgus interdum et facti verisimilitudine ad criminis credulitatem impelli.
Conclamant ignem, requirunt saxa, parvulos ad exitium mulieris hortantur.*

The plausibility of the deed led them to believe the accusation. They began shouting for fire, searching for stones, urging youngsters to kill the woman.⁵⁹⁵

⁵⁹¹ Grainger (1995: 183-194) gives a good overview of the titles and tabulates all their occurrences.

⁵⁹² See MacAdam (1986: 171); cf. Grainger (1995: 186; 192) on ἔκδικοι and σύνδικοι.

⁵⁹³ Millar (1981) is the authoritative analysis of the “solidly realistic background” (Millar (1981: 63)) of this fantastical text.

⁵⁹⁴ Apuleius, *Metamorphoses* I. 10: “As these acts kept occurring and many people suffered harm, public indignation grew strong and the townspeople decreed that she should be punished on the following day by the harshest means possible – stoning” (*quae cum subinde ac multi nocerentur, publicitus indignatio percrebruit statutumque ut in eam die altera severissime saxorum iaculationibus vindicaretur*). All text and translation of Apuleius is from the LOEB.

⁵⁹⁵ Apuleius, *Metamorphoses* II. 27.

The situation then further evolves and a prophet is brought in to bring the deceased man's spirit back from the dead for questioning; his accusations against his wife then lead some members of the crowd to demand the woman be burned alive.⁵⁹⁶ This is, of course, all fiction but the social dynamics that are described might perhaps give us pause for thought. In cities, towns and villages, we should perhaps allow for the possibility that forms of self-help and non-institutionalised 'justice' were a key part of the legal (or non-legal) landscape. The crowd, in this last example, are extremely keen to take matters into their own hands, performing their own investigation (calling in the prophet) and pronouncing their own judgement. Justice, at the local level, might rely on the social dynamics of the local area rather than official or even semi-official institutions.

If we return to the two archives for the moment, we can detect an element of this 'self-help' attitude in Babatha's seizure of the date orchards whose crop is the subject of P. Yadin 21 and 22, and which Besas, one of the guardians involved in the dispute, accuses her of having seized and retained by force.⁵⁹⁷ The recourse of the guardians afterwards is to more official institutions but Babatha's initial actions are separate from this. She acts based on the belief that she has a right to her dowry, but the point is that *she* acts.⁵⁹⁸ She may have expected the community to endorse her actions or just assumed that she had sufficient authority within this community to protect her against any repercussions.

With regard to the situation in smaller settlements in the Roman world, we may posit some kind of judicial institutions in villages by logical inference and probability, even if we can

⁵⁹⁶ Apuleius, *Metamorphoses* II. 29.

⁵⁹⁷ He summons her to appear before the governor on this basis in P. Yadin 23.

⁵⁹⁸ Babatha claims a right to the date orchards "in lieu of my dowry and debt" (ἀντὶ τῆς προικῆς μου καὶ ὀφειλῆς) (P. Yadin 22, l. 10); cf. P. Yadin 21, ll. 11-12. See the discussion of these documents on pp. 71-74.

say regretfully little beyond this about the realities of how they may have functioned in this region. Additionally, however, we should also perhaps allow for more informal methods of enforcement in the smaller settlements of the Roman Empire. Given enough clout, a local prominent man or group of people could probably pass judgement and enforce it fairly effectively based on local power structures and dynamics.⁵⁹⁹ This leads us neatly into the next possible givers of justice.

Religious justice

Whilst religious courts – and because we are dealing with the archives of two Jewish women, this most likely would equate to some kind of Jewish court – are never mentioned in the two archives, their existence in some form does not seem wholly out of the question. This need not have been a ‘court’ in a formal sense, but instead was formed of some situation in which parties could have submitted to the decision of a figure based on his religious authority.

In addressing the existence of local Jewish courts, it is worth briefly considering the status of Jews in the Roman Empire more generally. Jews, in broad terms, were allowed to live in accordance with their own laws and customs. Yet the exact meaning of this, especially with regard to the practicalities of legal life and administration, are less than straightforward.⁶⁰⁰ The documents on Jewish privileges preserved in Josephus’

⁵⁹⁹ Indeed, this aligns with Grainger’s (1995: 193) arguments about the functioning of villages in the Roman East: “villages were ruled by headmen, by informal gatherings of well-respected local men, and by the major landowners and their bailiffs.”

⁶⁰⁰ Discussion mostly concerns the wording of the decree issued by Caesar (Josephus, *Antiquitates Judaicae* XIV. 190-195) (cited below). See Pucci Ben Zeev (1998: 409-438) on the implications of “the right to follow Jewish customs and laws”; cf. comments by Hadas-Lebel (1987: 789) and Rajak (1985: 24), and especially Rajak (1984) more generally on the status of Jews within the Roman empire.

Antiquitates Judaicae are key to this issue and three, cited below, are particularly relevant to the existence of Jewish courts.⁶⁰¹ The first is a letter written by Julius Caesar to the magistrates, council and people of Sidon in 47 B.C.E., which contains a decree concerning Hyrcanus II. The part of the decree relevant to the current issue is as follows:

ἄν τε μεταξὺ γένηται τις ζήτησις περὶ τῆς Ἰουδαίων ἀγωγῆς, ἀρέσκει μοι κρίσιν γίνεσθαι παρ' αὐτοῖς. παραχειμασίαν δὲ ἢ χρήματα πράσσεσθαι οὐ δοκιμάζω.

And if, during this period, any question shall arise concerning the Jews' manner of life, it is my pleasure that they shall have the decision.⁶⁰²

The precise meaning of this is not clear, but it has been taken to refer to a grant by Caesar to the Jews to use their own laws in line with those accorded to other conquered peoples.⁶⁰³

The next document is a letter from Lucius Antonius, dating to 49 B.C.E., to the magistrates, council and people of Sardis. The relevant portion states:

Ἰουδαῖοι πολῖται ἡμέτεροι προσελθόντες μοι ἐπέδειξαν αὐτοὺς σύνοδον ἔχειν ἰδίαν κατὰ τοὺς πατρίους νόμους ἀπ' ἀρχῆς καὶ τόπον ἴδιον, ἐν ᾧ τὰ τε πράγματα καὶ τὰς πρὸς ἀλλήλους ἀντιλογίας κρίνουσι, τοῦτό τε αἰτησαμένοις ἵν' ἐξῆ ποιεῖν αὐτοῖς τηρῆσαι καὶ ἐπιτρέψαι ἔκρινα.

Jewish citizens of ours have come to me and pointed out that from the earliest times they have had an association of their own in accordance with their native laws and a place of their own, in which they decide their affairs and controversies with one another; and upon their request that it may be permitted them to do these things, I decided that they might be maintained, and permitted them so to do.⁶⁰⁴

⁶⁰¹ See Pucci Ben Zeev (1998: 6-10) for an overview of past scholarship on the authenticity of these documents.

⁶⁰² Josephus, *Antiquitates Judaicae* XIV. 195. Texts and translations of all the documents preserved in Josephus are those found in Pucci Ben Zeev (1998).

⁶⁰³ See Pucci Ben Zeev (1998: 413-415) for a discussion of the various parallels.

⁶⁰⁴ Josephus, *Antiquitates Judaicae* XIV. 235.

Finally, we have a decree passed by the council and people of Sardis, dated tentatively to 47 B.C.E.:

ἐπεὶ οἱ κατοικοῦντες ἡμῶν ἐν τῇ πόλει ἀπ' ἀρχῆς Ἰουδαῖοι πολῖται πολλὰ καὶ μεγάλα φιλάνθρωπα ἐσχηκότες διὰ παντὸς παρὰ τοῦ δήμου, καὶ νῦν εἰσελθόντες ἐπὶ τὴν βουλὴν καὶ τὸν δῆμον παρεκάλεσαν, ἀποκαθισταμένων αὐτοῖς τῶν νόμων καὶ τῆς ἐλευθερίας ὑπὸ τῆς συγκλήτου καὶ τοῦ δήμου τοῦ Ῥωμαίων, ἵνα κατὰ τὰ νομιζόμενα ἔθνη συνάγωνται καὶ πολιτεύωνται καὶ διαδικάζωνται πρὸς αὐτούς, δοθῆ τε καὶ τόπος αὐτοῖς εἰς ὃν συλλεγόμενοι μετὰ γυναικῶν καὶ τέκνων ἐπιτελῶσι τὰς πατρίους εὐχὰς καὶ θυσίας τῷ θεῷ: δεδόχθαι τῇ βουλῇ καὶ τῷ δήμῳ συγκεχωρηῆσθαι αὐτοῖς συνερχομένοις ἐν ταῖς προαποδεδειγμέναις ἡμέραις πράσσειν τὰ κατὰ τοὺς αὐτῶν νόμους, ἀφορισθῆναι δ' αὐτοῖς καὶ τόπον ὑπὸ τῶν στρατηγῶν εἰς οἰκοδομίαν καὶ οἴκησιν αὐτῶν ...

Whereas the Jewish citizens living in our city have continually received many great privileges from the people and have now come before the council and the people and have pleaded that as their laws and freedom have been restored to them by the Roman senate and the people, they may, in accordance with their accepted customs, come together and have a communal life and adjudicate suits among themselves, and that a place be given them in which they may gather together with their wives and children and offer their ancestral prayers and sacrifices to God, it has therefore been decreed by the council and people that permission shall be given them to come together on stated days to do those things which are in accordance with their laws ...⁶⁰⁵

These decrees strongly suggest that, in these particular communities at least, there were functioning Jewish courts and Jews had the right to take their cases to them.⁶⁰⁶ Beyond this, there are further references to non-Roman courts in Judaea in particular: the Sanhedrin was the highest non-Roman body pre-70 C.E., though its exact nature and competency is

⁶⁰⁵ Josephus, *Antiquitates Judaicae* XIV. 260-261.

⁶⁰⁶ For an example of Jewish jurisdiction in diaspora communities, we may look to the evidence of Strabo *apud* Josephus (*Antiquitates Judaicae* XIV. 117): “In Egypt, for example, territory has been set apart for a Jewish settlement, and in Alexandria, a great part of the city has been allocated to this nation. And an ethnarch of their own has been installed, who governs the people and adjudicates suits and supervises contracts and ordinances, just as if he were the head of a sovereign state” (ἐν γοῦν Αἰγύπτῳ κατοικία τῶν Ἰουδαίων ἐστὶν ἀποδεδειγμένη χωρὶς καὶ τῆς Ἀλεξανδρέων πόλεως ἀφώρισται μέγα μέρος τῷ ἔθνει τούτῳ. καθίσταται δὲ καὶ ἔθναρχος αὐτῶν, ὃς διοικεῖ τε τὸ ἔθνος καὶ διαιτᾷ κρίσεις καὶ συμβολαίων ἐπιμελεῖται καὶ προσταγμάτων, ὡς ἂν πολιτείας ἄρχων αὐτοτελοῦς) (LOEB text and translation). See Gruen (2004: 71) on the implications of this passage, and indeed more generally on the Jews’ political situation in Alexandria (Gruen (2004: 54-83)). We know that Augustus appointed a γερουσία (see Philo, *In Flaccum* 74) though it is difficult to say whether this replaced or coexisted with the ethnarch.

much disputed.⁶⁰⁷ At a more localized level, certain passages in the New Testament seem to indicate a Jewish criminal jurisdiction in Judaea at least,⁶⁰⁸ and Josephus mentions local courts of seven magistrates.⁶⁰⁹ The exact competencies of such courts is unclear, yet in light of the evidence it seems highly probable that Jewish tribunals of various kinds operated across the Roman Empire and were used by Jews to a greater or lesser extent.

It is worth considering briefly the later situation and in particular Origen's comments on the authority of the patriarch, written in the mid-third century C.E. In the midst of a discussion about the story of Susannah in the Book of Daniel, Origen makes the following comments:

Καὶ νῦν γοῦν Ῥωμαίων βασιλευόντων, καὶ Ἰουδαίων τὸ δίδραχμον αὐτοῖς τελούντων, ὅσα συγχωροῦντος Καίσαρος ὁ ἔθναρχος παρ' αὐτοῖς δύναται, ὡς μηδὲν διαφέρειν βασιλεύοντος τοῦ ἔθνους, ἴσμεν οἱ πεπειραμένοι. Γίγεται δὲ καὶ κριτήρια λεληθότως κατὰ τὸν νόμον, καὶ καταδικάζονται τινες τὴν ἐπὶ τῷ θανάτῳ· οὔτε μετὰ τῆς πάντη εἰς τοῦτο παρ' ῥησίας, οὔτε μετὰ τοῦ λανθάνειν τὸν βασιλεύοντα· καὶ τοῦτο ἐν τῇ χώρᾳ τοῦ ἔθνους πολὺν διατρίψαντες χρόνον μεμαθήκαμεν καὶ πεπληροφορήμεθα.

Now, for instance, that the Romans rule and the Jews pay the two drachmas to them, we, who have had experience of it, know how much power the ethnarch⁶¹⁰ has among them with the acquiescence of the emperor and that he differs in little from a king of the nation. Secret trials are held according to the Law, and some are condemned to death. And though there is not express permission for this, still it is not done without the knowledge of the ruler, as we found out about this to our certainty when we spent much time in the country of that people.⁶¹¹

⁶⁰⁷ This ranges from dispute on the very existence of the Sanhedrin (denied by Goodblatt (1994: 130)) to the idea that there were multiple Sanhedrins (see, for example, Büchler (1902) and Mantel (1961: 54-101)). See Grabbe (2008) for a recent survey of the evidence, with references to earlier scholarly debates on the subject.

⁶⁰⁸ See Schürer (1973-1987: III.1, 119-120) for a discussion of these, namely *Acts* 9:2; 22:19; 26:11, 18:12-16 and 2 *Corinthians* 11:23.

⁶⁰⁹ Josephus, *Antiquitates Judaicae* IV. 214; IV. 287. The fact that these do not appear in the Pentateuch suggests that Josephus may here be reflecting practice in his own time: see Schürer (1973-87: II, 187) for comments on this.

⁶¹⁰ Origen uses the terms Ethnarch and Patriarch interchangeably: see Levine (1996: 16).

⁶¹¹ Origen, *Epistola ad Africanum* 14. Text from *PG* 11, cols. 82-84. The translation is that in Appelbaum (2013: 112-113). For translation issues, see Jacobs (1995: 251) and Appelbaum (2013: 112, n. 159).

If such a large role was accorded to a Jewish justice system after the *Constitutio Antoniniana* in 212 C.E., when citizenship (and therefore at least theoretical access to Roman law) was granted to all the empire's inhabitants, this could have interesting implications for Roman policy in the earlier period when such universal citizenship was not in place. Therefore, despite the differences in situation, Origen's comments merit some consideration.

This passage has attracted a great deal of scholarly attention for the information it provides about the patriarch in a period when the evidence that we have for the office is primarily rabbinic.⁶¹² Origen's statements may not reflect a precise reality, but it is notable that he illustrates the king-like authority of the patriarch through a reference to his power to execute people.⁶¹³ The patriarch's position with regards to the Roman authorities is left somewhat unclear. While the emperor was not unaware that the capital punishment was being practised,⁶¹⁴ Origen is also explicit that "there is not express permission for this" (οὔτε μετὰ τῆς πάντη εἰς τοῦτο παρ' ῥησιας). The most probable explanation is that the Romans allowed this state of affairs to go on without giving any official sanction for it; as de Lange puts it, they "turned a blind eye."⁶¹⁵ In some ways, however, the issue of whether

⁶¹² Levine (1996: 1-4) offers a concise overview of the various types of evidence on the patriarchate that dominate in different periods, along with reactions to it (cf. Levine (1979: 651-654)). In addition to these two articles, for more general discussion of this passage and its implications (with further bibliography), see also Oppenheimer (1998: 185), Jacobs (1995: 248-251), Goodman (1992), de Lange (1976: 33-34), and particularly Habas-Rubin (1991: I 64-71; II 265-273) and Appelbaum (2013: 112-116).

⁶¹³ It should be noted that this appears to be contradicted by Origen elsewhere (*Commentaria in Epistolam ad Romanos* VI. 7): "They [the Jews] may not punish a murderer or stone an adulteress" (*homicidam punire non potest, nec adulteram lapidare*). Text from *PG* 14, col. 1073; the translation is that of Levine (1979: 662, n. 75). See also Goodblatt (1994: 131, n. 2) on allowing for "hyperbole" in this passage, as well as Jacobs (1995: 249-251) on whether the patriarch really did have the right of pronouncing capital punishment.

⁶¹⁴ Jacobs (1995: 251) points out that Origen does not expressly state that it was the patriarch who presided over capital cases: "Τίγεται δὲ καὶ κριτήρια (C) hat kein persönliches Subjekt. Ein inhaltlicher Rückbezug auf B) [the latter part of the previous sentence] wird nicht eindeutig erkennbar." Thus, on this reading, capital cases were heard among the Jews, but not necessarily by the patriarch. Appelbaum (2013: 113) disputes this interpretation.

⁶¹⁵ De Lange (1976: 34); cf. Goodman (1992). For a contrasting view, see Goodblatt (1994: 131-175), who argues that the patriarchs derived their authority from Roman appointment.

capital punishment specifically occurred is not the important point here – this is rather that Origen perceived and presented the patriarch as exercising considerable judicial authority. In this later period, then, we seem to have a Jewish patriarch exercising considerable, informal jurisdiction over Jews in Palestine, who appear to have submitted to his authority voluntarily.⁶¹⁶

Obviously, the situation cannot be transferred directly onto the earlier period;⁶¹⁷ it is not in any way being suggested that we should assume patriarchal jurisdiction in Maoza in the early 2nd century.⁶¹⁸ The principle, however, that the Romans may have allowed certain religious courts to function without officially endorsing them is a relevant one. We do not have to go so far as to posit powers of capital punishment in order to allow for the possibility of the existence of unsanctioned but tolerated Jewish courts in the earlier period. The point to note is that, even when Roman law supposedly became more universally accessible, there appears to have been considerable scope for people to seek justice in a Jewish framework.

We also find numerous references to Jewish courts operating and being consulted in the rabbinic literature.⁶¹⁹ The problems with using these texts as historical sources are manifold,⁶²⁰ yet the references to rabbis as judges in the literature is often noted and

⁶¹⁶ Goodman (1992: 138).

⁶¹⁷ First, while opinions vary on the rise in importance of the Patriarchate, it is unlikely that the patriarchs had any real influence before the third century C.E. (see Schwartz (1999: 208)). Furthermore, we have little information as to the level of patriarchal influence outside Palestine and, indeed, the office has traditionally been seen as a primarily Palestinian institution. See Schwartz (1999: 214-221) for the evidence on this, and an argument, against the prior *consensus*, that the patriarchs had more considerable influence in the diaspora than in Palestine (see Goodblatt (1994: 133-135) on the evidence that the patriarchs appointed judges and local leaders in the diaspora, with references to previous scholarship).

⁶¹⁸ See n. 617 on the later influence of the patriarchs in the diaspora.

⁶¹⁹ On such courts see Oppenheimer (1998); cf. Rabello (1996a) and (1996b).

⁶²⁰ These will be discussed in detail in Chapter Six (pp. 237-239); see also the comments in the introduction to the *Survey of the Documents* (p. 29).

certainly merits discussion. In a study of the rabbis in their Roman context, Hayim Lapin has recently re-analysed the actual number of case narratives, which are surprisingly low: “rabbinic traditions attributed to individuals or groups run to the many thousands in the tannaitic corpora and the Yerushalmi, yet there are only some 220 cases, spanning a putative period of over more than three centuries.”⁶²¹ Additionally, most of these cases in the tannaitic corpora concern issues of ritual and purity, and those that do concern property and status are such that they mainly relate to very specific rabbinic interests.⁶²² Therefore even if such courts were operating, the available evidence seems to suggest that they would be consulted primarily on religious matters. Their presence may not, then, be expected to loom large in the kinds of disputes documented in Salome’s and Babatha’s paperwork.

This is, of course, if they would be consulted at all and if they were even operating in the area where Babatha and Salome Komaise were living. Babatha’s *ketubba* may suggest some kind of awareness of the same tradition that is reflected by the later rabbinic texts; such an argument would be based upon the inclusion of the mandatory *ketubba* components that are listed in the Mishnah, redacted c. 200 C.E.⁶²³ These, however, can just as easily demonstrate that rabbinic sages incorporated existing Near Eastern or Jewish custom into their own law, rather than that Babatha and Judah were living under some kind of rabbinic influence (direct or indirect) at this time. Yet we do not have to dismiss the possibility of Jewish courts – with ‘courts’ understood in the loosest sense – altogether, we must merely be cautious about labelling these ‘rabbinic’ in this earlier period.

⁶²¹ Lapin (2012: 104). See Tables 4.1 and 4.2 in the same author for further analysis of the cases (Lapin (2012: 100-101; 103).

⁶²² Lapin (2012: 105-109). Ritual and purity issues constitute about two thirds of the cases; the remaining third refer to property and status.

⁶²³ *m. Ketub.* 4:7-12. See Friedman (1996: 71-74) and p. 47 for a summary of these clauses.

Arbitration

We now come to the final category in our consideration of non-Roman options for litigants in Roman Arabia: arbitration. In its formal sense, arbitration was constituted by an agreement between the disputants in a law suit to abide by a third party's decision.⁶²⁴ The third party could be almost anyone – a Roman official, a centurion, a village elder or a rabbi, for example.⁶²⁵ The key thing was that he would be nominated and the parties would abide by his judgement.

This category, from the perspective of those in the Roman government, could encompass many of the others that have been considered above. This would allow for 'courts', or at least legal fora of some kind, to exist and operate within the empire without the Roman government giving them any kind of formal recognition. The agreement to abide by the decision of a village court could easily fall into this category and the idea of rabbis as arbiters in antiquity has won some respected recognition in modern scholarship.⁶²⁶ Such arbitration would rely on the agreement of the parties to abide by the decision of their nominated third party and, in all probability, localized power structures: the nominated party may have some authority in the community, whether religious, economic, political

⁶²⁴ See Méléze-Modrezejewski (1952) on the formal process of private arbitration in Egypt, with plenty of examples that range from the Ptolemies to Byzantine times. On arbitration in late antiquity, see also Harries (1999: 175-184) and Gagos and van Minnen (1994).

⁶²⁵ Nevertheless, patterns in whom you would choose as arbiter were likely to emerge. For the Egyptian papyri, Méléze-Modrezejewski (1952: 249) makes the following observations: "The sources indicate clearly that arbiters were chosen from among prominent and esteemed persons, trusted by the parties, well disposed towards them and versed in law."

⁶²⁶ See Cotton (2002a: 20): "Whatever courts we hear about in the rabbinic sources, I suggest, may have been no more than forms of private arbitration, not backed up by the powers that be, i.e. the Roman authorities in the province." Indeed, Lapin (2012: 98-124) devoted an entire chapter to the idea of rabbis as arbiters. Kelly (2011: 330) has also suggested, in relation to the petitions of Roman Egypt, that the legal apparatus provided by the state could "underpin various 'informal' methods of control."

or otherwise, and relied on that to guarantee compliance with his decision.⁶²⁷ This would present us with a picture of justice administration that was extremely localized, based as it was on social power dynamics in the immediate area.⁶²⁸

There is some scattered evidence for the practice of arbitration from across the empire,⁶²⁹ and indeed it seems to have become more popular – or at least we have better evidence for it – in later antiquity.⁶³⁰ In general, we can see fairly readily how this might not leave much of a trace: parties could make an oral declaration that they would abide by a judgement and take it from there. Hannah Cotton has, however, suggested that three of the documents from the Judaean desert may have been the result of a settlement by arbitration, two of which are from these archives: X H̄ev 63, P. Yadin 9 and X H̄ev 13.⁶³¹ Since this pertains so greatly to the subject at hand, it is worth setting out in a little more detail.

P. Yadin 9 is extremely fragmentary and Cotton's conclusions about its nature rest on the use of the Nabataean Aramaic phrase in ll. 6-7: [ולא שגיא] ולא זעיר עמך מנדעם לא זעיר ("nothing whatever ... remains of mine with you"). X H̄ev 13 was written in Jewish Aramaic in 134 or 135 C.E. under the Bar Kokhba regime; it thus provides us with little information about the operation of arbiters under the Romans though might be useful as a comparative example. Indeed, Cotton observes that it contains three variations on the above formula,

⁶²⁷ For an examination of the way this kind of localized power, or "local indigenous ordering", works with imperial institutions and practices, see Humfress (2013b).

⁶²⁸ It may prove fruitful to consider this alongside the picture of justice and policing constructed by Millar (1981) in his examination of Apuleius' *Metamorphoses*; cf. pp. 198-200.

⁶²⁹ For example, in addition to the papyri cited in Méléze-Modrezejewski (1952), there is an early Chian decree, dating to the third century B.C.E., on arbitration of the dispute between Lamsakos and Parion (see Matthaïou (2013)).

⁶³⁰ Of particular note is the growing number of Greek διαλύσεις contracts from late antiquity, when arbitration seems to have grown much more popular in the Roman provinces. It is unclear whether arbitration and settlements suddenly become more popular in late antiquity or whether we simply have better, or at least more, evidence for it in this period (see n. 624 for introductory bibliography on this, especially Harries (1999: 179-184) on διαλύσεις).

⁶³¹ Cotton (2002a).

therefore categorising it as one of the settlement documents.⁶³² Her concentration, however, is on X Hev 63. This was labelled in its publication as a “Waiver of Claims”. It dates to 127 C.E., so firmly within the Roman era, and is written in Greek. In this waiver, Salome Komaise acknowledges that she has no claims against her mother, Salome Grapte, regarding the estate of her father and that of her brother. There is a possible reference to a now-resolved controversy but the text is uncertain at this point. Cotton, to my mind convincingly, argues that this represents a settlement of the apparent controversy – one particularly convincing feature is the repetition two to three times of the equivalent to the above Aramaic formula: μηδένα λόγον ἔχειν πρὸς αὐτήν, “[she] has no claim against her.”⁶³³

Whilst I certainly agree that this is a settlement document, the notion that it is a result of arbitration – if we define this in its strict formal sense, with all the necessary documentation this entailed – needs further examination.⁶³⁴ More specifically, we need to consider the exact role of the arbiter in the process. The document itself is of little help for his role in this particular case but the question is still a relevant one with regard to a more general framework of the legal dynamics that operated in this area. Jill Harries has already set out something like this for arbitration cases in late antiquity.⁶³⁵ Harries drew on Philip Gulliver’s model of dispute settlement, which divides into two main branches: adjudication

⁶³² Cotton (2002a: 23).

⁶³³ X Hev 63, l. 4, 8 and possibly 11, of which only the end survives (ε πρὸς αὐτήν).

⁶³⁴ If we abide by the strict definition of both Méléze-Modrezejewski (1952: 240) and Harries (1999: 179), then we should expect to see two formal agreements, laid out in deeds, for an arbitration: 1) an agreement between the parties to choose and abide by the decision of an arbiter (*pactum compromissi*); 2) the arbiter’s acceptance of his office (*receptum arbitri*). Harries (2001: 76) points out, however, that “in informal cases, where the agreement of the parties was deemed sufficient, it would have been dispensed with and the law rendered irrelevant”; cf. Harries (2003: 65). We should, therefore, explicitly allow for a ‘formal’ and ‘informal’ process of arbitration. Since in the Salome Komaise archive we do not have the luxury of a confirmed, unified find-spot for the archive, the fact we do not have the formal documents is not necessarily conclusive – they may very well have been lost. Equally, practice may have varied from place to place with regards to the precise documents required.

⁶³⁵ Harries (2001).

and mediation/negotiation.⁶³⁶ An arbiter who was an adjudicator would apply “the rules” more strictly, while the negotiator or mediator would be more flexible and take context into greater account.⁶³⁷ Gulliver himself concedes that the boundaries between the two could break down,⁶³⁸ and Harries is careful to point out the problems involved with such a model,⁶³⁹ but the distinction between adjudication and mediation may be a useful one for analysing the situation in these archives. When we discuss arbitration, we need to consider the exact sense in which the word is being used and the kind of process we imagine that we are describing. So when Salome Komaise and her mother were in dispute, a dispute which we have suggested was settled by some sort of arbitration, the exact nature of the process to which we are referring could vary. A third person may have been approached to pass judgement or to act as ‘facilitator’.⁶⁴⁰ Alternatively, perhaps we could add a third option to the mix: that of negotiation without a third party’s involvement, based on a series of interactions or disputes between the parties themselves. While this may not have occurred in this case – indeed the presence of a settlement document as a result of the process might suggest a third party helped reach the terms laid out in this document – it is a possible course of action that we should consider when examining the rest of the archives. Indeed, this will be discussed at greater length in the next chapter with regard to the documents attesting litigation before the Roman governor. For the moment, however, the point to note is that ‘arbitration’ is a term that encompasses a wide field of dynamics and may, indeed, leave out even less formal negotiations between litigants.⁶⁴¹

⁶³⁶ Gulliver (1979). See also the summary of his model by Harries (2001: 73-74).

⁶³⁷ Harries (2001: 74).

⁶³⁸ Gulliver (1979: 209-210).

⁶³⁹ Harries (2001: 74-75).

⁶⁴⁰ Gulliver’s (1979: 209) vocabulary; cf. Gulliver (1979: 219-228) more generally on the role of the mediator.

⁶⁴¹ In this, I echo comments by Harries (2003: 66): “We should not, therefore, seek to categorise too rigidly the way dispute-settlement worked in the Roman world. While it is possible to identify and discuss a set of models of judgement by an individual empowered by the state and adjudication by a formal arbitrator enforceable by the state, if required, in practice there was movement between the two and beyond into the informal and often unwritten operations of, say, the village headman or the episcopal mediator.”

To return briefly to the specifics of X Hēv 63, Cotton adds a further observation:

“The fact that the deed was written down in Greek and the use of the *stipulatio* imply to my mind that the parties left themselves the option of going to court – to a Roman court – in case one of them did not stand by the terms of the arbitration.”⁶⁴²

This introduces a further question of power dynamics and authority in the community and allows us to make a couple of observations about the arbiters and local-enforcers who operated in this area. If we accept that X Hēv 63 is the result of some kind of arbitration then some of these arbiters must have been willing for the resulting documentation to be written in Greek, whether or not they themselves operated in the language.⁶⁴³ As Cotton points out, this was probably to allow for easy recourse to the Roman system should something go wrong in the settlement.⁶⁴⁴ This, however, leads us to conclude that provincials expected Romans to enforce a decision (if necessary) made by a localized authority or, indeed, even by an informal settlement.⁶⁴⁵ It reduced the authority of local courts or arbiters since even those who may have used them still relied on an external authority, or the threat of recourse to the external authority, to enforce the resulting decision.

There is a further corollary to this ‘keeping their options open’ theory. If this is correct, then any documentation that was the result of arbitration might have looked extremely

⁶⁴² Cotton (2002a: 23).

⁶⁴³ Local arbiters may have operated in Greek, but if the documentation was written by a scribe, as was normal practice, there is no necessity to assume this.

⁶⁴⁴ If this is accepted, the issue could also be turned on its head: does the presence of non-Greek documents suggest the existence of non-Roman courts? Cotton (2002a: 19) seems to argue for this hypothesis: “Although, as pointed out before, no courts are ever mentioned in the Aramaic documents from the Judaeian Desert, the existence of legal contracts anticipates the possibility of legal proceedings.” While this is true, I am not sure that the existence of legal contracts in a particular language anticipates the possibility of legal proceedings in a particular court, as seems to be implied in Cotton’s statement. The language issue is a little more complex, since there is some role for local languages in Roman courts (subscriptions at least): see the discussion in Chapter Four (pp. 167-176); cf. Chapter Two (pp. 104-107).

⁶⁴⁵ See Harries (2003: 64-65; 74-75) on the governor as upholder of arbitration settlements (the work is in relation to a text from late antiquity, but has wider implications).

similar to that which was intended for a Roman court: in both cases, people would keep in mind Roman preferences when drawing up their documents. This might, to a certain extent, explain the lack of evidence for this kind of legal negotiation.

All this suggests that the arbitration process could work alongside the court of the Roman governor and indeed the two could perhaps even be used in tandem.⁶⁴⁶ It is also plausible that people might have gone to a local arbiter during the potentially interminable wait between sessions in the hope of reaching a settlement ahead of the next hearing before the governor. Or indeed that an individual would go to the local arbiter/judge first and then appeal to the Roman authorities for help imposing his judgement or in the hope of getting a different decision if the case had not gone his way.⁶⁴⁷

What we seem to come back to is that, although local arbiters or judges may have existed, people still relied on the Roman authorities, implicitly or explicitly, in order to enforce their decisions. Conversely, they might also have used the Roman authorities to overturn such decisions. We can imagine that this could have led to an erosion in use of these local authorities, since they might not have seemed as powerful and effective as they had been previously. Nevertheless, it should be noted that a decline in authority does not necessarily equate to a decline in use. It has been suggested throughout that local power structures and legal mechanisms were in all probability employed alongside those of the Roman authorities. As such, rather than positing inevitable decline into non-existence with the

⁶⁴⁶ See Kelly (2011: 329-330) on the interaction between ‘informal’ and ‘formal’ methods of control. Indeed, it will be suggested in the next chapter that people negotiated constantly whilst also pursuing their cases with the Roman governor.

⁶⁴⁷ The example in *y. Meg.* 3:2 might be relevant, despite the later date of the text; the Jerusalem Talmud’s final redaction probably occurred in the late fourth century C.E., although the head of the Caesarea rabbinic academy, Rabbi Abbahu, who is mentioned in this example was active in the third century. In this case, a woman called Tamar complained to the governor of Caesarea about a decision made by rabbinic sages; this implies just the kind of manipulation of one’s legal options suggested above.

advent of the Romans, we should instead consider how the local legal fora and their use may have been affected by the new Roman presence and interacted with it.

Concluding remarks

It seems plausible that, at least early on in the provincial era, local courts of some sort continued to exist.⁶⁴⁸ This was probably just something of a default position. While the locals in small, possibly remote villages gradually became aware of and adjusted to Roman presence,⁶⁴⁹ the most practical approach would be to use existing structures until other options became available. This could include the continued use of local courts in whatever form these existed.

We know little about the form or use of what I have termed ‘local courts’. Whether they were city courts, village courts or simply the ruling of some kind of religious or secular authority figure is unknown. Our general impression from the above analysis is that village ‘courts’ were probably more significant than those of cities: the general organisation of the Roman Near East, and this area in particular, with its high proportion of villages (as opposed to cities) supports this hypothesis. Their official status is, however, unknown and in Roman eyes they may simply have come under the heading of ‘arbitration’ – if, that is, the Roman administration ever even thought about the classification of such indigenous operations in this area. Similarly, it seems probable that some sort of arbitration processes

⁶⁴⁸ See Chapter Four for relevant arguments about the continued use of non-Greek documents (pp. 159-164).

⁶⁴⁹ How quickly new provincials became aware of this is rather difficult to determine, partly because of the obscurity of the circumstances of the annexation: if this was a peaceful takeover after Rabbel II’s death then, in smaller villages, it may have taken more time for Roman presence to make itself felt; if a full military invasion were involved, then they would perhaps have noticed their new rulers more quickly. See pp. 4-5 for discussion and bibliography on this subject.

were common – whether these involved a rabbi, a village elder or even a member of the Roman authorities. It is also difficult to tell what kind of dynamics such arbitration involved – whether it constituted a definite form of adjudication or amounted more to negotiation or agreement between parties. Indeed, these options are not mutually exclusive and both were probably available to litigants.

It is possible that increasing awareness of and use of Roman courts eroded the authority and the use of non-Roman legal fora. If people like Babatha preferred the assizes because of the perceived greater power of Roman courts, and indeed if the Romans were relied upon to enforce the results of private settlements, this might have eroded local court power – both perceptions of it and in reality. In turn, this *might* have led to some decrease in use. A similar pattern might have occurred with regards to city courts, as we see when Babatha appears to go straight to the governor with her complaints against the guardians appointed by the βουλή of Petra. Nevertheless, we cannot tell whether there were appropriate courts at Petra to whom she could theoretically have taken her complaint; thus this line of thought must not be pushed too far.

We should sound a further note of caution here. Just because Babatha frequently turned to the Roman assizes does not mean all did. Others in the province may have been perfectly happy to participate only in a localized justice system, without recourse to their Roman overlords. While the remoteness of the governor might increase his perceived majesty, it made it more inconvenient to go to him all the time. In light of this, a local enforcer would seem more effective, as well as more convenient.

All this should, indeed, be considered alongside the observations that will be made in the next chapter about how the parties pursued their cases in a Roman court. Parties may have used local courts as a preliminary to the Roman system – a first option – or indeed used arbitration processes at the same time as taking their cases to the Roman governor in order to try to reach a settlement or achieve a favourable decision more quickly. This would mean that although the power of local courts and judges might have been eroded by the presence of the Roman system, this did not necessarily equate to a corresponding decline in use. Rather, parties could pick and choose which ‘system’ to employ and when, and indeed picking one would not necessarily rule out the use of another. While Roman authority was probably seen as the ultimate one, this could influence how and when people used local legal fora rather than eliminating the latter altogether. Local and imperial structures therefore worked and were made to work by provincials in conjunction with each other.

Chapter Six

The Roman Officials

The Roman governor and the officials associated with him have loomed large over much of this thesis. This is to be expected, given that he was the representative of the ruling power in the province. A concern with Roman preferences on the part of the litigants was natural. Indeed, it has been suggested throughout that their perceptions of their new rulers probably played a large part in how the principals conducted their legal lives. Time now, then, to give these Roman officials a more extended treatment.

Much of the archival material, on a surface level at least, appears to have been aimed at the governor's court. This, however, does not mean that his was the only legal forum available, as has already been demonstrated. Indeed, in light of the various processes of arbitration and negotiation touched upon in the last chapter, we should consider very carefully whether these cases really did end up before Roman judges. If various options were available to litigants, then just because they availed themselves of one of these – i.e. the governor's court – does not mean that they had automatically opted out of others. Thus any examination of the Roman officials must go beyond examining what happened in a Roman provincial court and consider the wider implications of the Roman presence on provincial legal life.

To this end, two cases from the Babatha archive will be examined in order to determine the way in which the litigants proceeded with their disputes. By sketching this process, we

shall be able to isolate the points of actual contact with the governor or his representatives. Such an examination should also allow us to detect the effect that Roman presence had on the way in which people pursued their claims and conducted themselves in legal cases. Indeed, it is on this point that the archives are most informative.

Once the effect of the Roman presence on the manner in which the cases proceeded has been outlined, we shall then need to consider why it had such an effect. For this, we need to look outside the archives and examine the wider evidence for the administration of justice by Romans in the provinces. Some basic factors that may have influenced Roman judges in their decision-making process will be laid out. Nevertheless, there was a fundamental lack of predictability about the whole situation, and this predictability factor is key to understanding the way in which the litigants pursued their cases.

The Roman governor in the archives

The governor is often mentioned in the Babatha archive. There are two particular cases in which he appears regularly and which therefore seem to be destined for his court: Babatha's battle with the guardians of her son, Jesus, over his maintenance and the dispute over the property of her husband, Judah, after his death. Consequently, although we do not know how, or indeed even if, any Roman official eventually judged in these cases, we can say something about the initial decisions in allowing the cases to proceed. More significantly, however, by noting his presence and involvement, or lack thereof, in these two cases we can start to determine the effect that he had on the way that the disputes progressed. This, I would argue, is the most significant point: the availability of the Roman

judicial system had an effect on the way that people conducted their legal disputes before they even reached a Roman courtroom.

In the following, I wish to highlight the interactions of the various people involved in these cases, with a particular focus on the effect of the presence of the governor and his court in their exchanges. The ensuing analysis will therefore focus on the manner in which the two cases proceeded in order to trace Roman involvement in and effect on how these provincials conducted their disputes.

Before proceeding any further, a couple of clarifications should be made. First, the governor was not the sole official responsible for the administration of justice in the provinces. He could delegate others to hear cases – tribunes and prefects from the army, for example. Furthermore, procurators and their juniors had jurisdiction over cases which fell within their administrative sphere. Non-Roman judges, *recuperatores*, could also be appointed – an attractive solution, as Cotton and Eck have pointed out, in an area where there was a lack of Roman citizens.⁶⁵⁰ In short, although the governor was the supreme representative of justice in the province (with the emperor himself of course available for appeal in Rome), he was not the sole administrator. This is worth clarifying both as a general point and in reference to the documents themselves, which present a false image of the Roman governor in “splendid isolation”.⁶⁵¹ If the governor is referred to in the

⁶⁵⁰ Cotton and Eck (2005: 28). Indeed, see *passim* for an excellent analysis of the roles played by other Roman officials in administering justice in Roman Arabia and a thorough de-bunking of the “splendid isolation” impression. See also Lewis (1981) on the work of the prefect of Egypt, on which Lewis (1981: 128) concludes: “Whatever could not be processed without the prefect’s personal attention would be set aside for his consideration; everything else would be delegated to an appropriate agency.” This seems like a reasonably sound working hypothesis for the involvement of governors more generally.

⁶⁵¹ Cotton and Eck (2005: 24); cf. n. 650. Cotton and Eck (2005: 42-44) believe that they have identified a possible *iudex datus* in P. Yadin 14, though I am wary about the certainty of this identification: see pp. 56-57 for further discussion.

analysis below, it is because he is mentioned in the papyri. This is no guarantee that he actually saw the paperwork or heard the case.

Secondly, it is worth outlining the litigation procedure in Roman Arabia, as far as we may determine it from the Babatha archive. In Egypt, the plaintiff who wanted to bring his rival before the governor would send a petition to the official most accessible to him or her. Very often this was the στρατηγός. If this was accepted as a valid complaint, an officer of the στρατηγός would issue a summons to the defendant and the case would be put on the list to be heard or delegated at a forthcoming assizes session.⁶⁵² This does not seem to have happened in Roman Arabia, probably due to the lack of officials.⁶⁵³ Jill Harries has suggested a reasonable pattern: first, the party or their representative would send a petition to the governor; the governor would then hopefully (from the petitioner's point of view) issue a subscription allowing the case to continue; the original petitioner would subsequently issue a summons to the defendant, demanding that they attend the governor's court.⁶⁵⁴ Although there is no explicit mention of the governor's subscription in the dispute over Jesus' maintenance, this pattern fits well with the evidence of the papyri about how the cases were conducted in both disputes. It will therefore be accepted as the procedural pattern in the following analysis.

⁶⁵² See Burton (1975: 100) on this; Taubenschlag (1955: 499-502) and Lewis (1983: 187-190) offer more detailed accounts.

⁶⁵³ Burton (1975: 100) in fact suggests this as a possible reason why the process in Egypt would not be followed elsewhere – it seems perfectly plausible for this case.

⁶⁵⁴ Harries (2010: 97), summarizing the process described by Cotton (1993a: 106).

Babatha vs. the guardians⁶⁵⁵

Pertinent documents: P. Yadin 12-15, 27, probably 28-30.

At some time before 124 C.E., Babatha's first husband, Jesus, died. The βουλή of Petra then appointed two guardians for her orphaned son, also called Jesus, in the first half of 124 C.E. The guardians were called Abdoöbdas, son of Ellouthas, and John, son of Eglas.⁶⁵⁶ This appointment is recorded in P. Yadin 12, a copy of part of the minutes of the βουλή. Later that year, Babatha petitioned the governor to complain that these men were paying an insufficient sum; we have a copy of this petition in P. Yadin 13, and although the papyrus is rather fragmentary, the relevant section of the complaint is clear enough. Approximately one year on, she then proceeded to summon before the governor just one of the guardians, John, son of Eglas, about the payment of her son's maintenance: this summons is recorded in P. Yadin 14, written on 11th or 12th October 125 C.E. On the same day, P. Yadin 15 was written to both guardians. Babatha here repeated an offer that she claims to have made previously and asked the guardians to hand over control of Jesus' property to her, promising to triple the interest. As security, she offered a hypothec on an equivalent amount of her own property.⁶⁵⁷

The manner in which the case proceeded is not entirely straightforward, nor is determining the governor's reaction. From the fact that the summons (P. Yadin 14) was written, it seems as though the governor granted Babatha's petition for a hearing in P. Yadin 13. There is a

⁶⁵⁵ This case has already been detailed in Chapter Three (pp. 141-143); much of the description that follows will be familiar from that chapter.

⁶⁵⁶ The latter's name varies slightly across the documents: see n. 169.

⁶⁵⁷ On the legalities of this case, see in particular Chiusi (2005) and Cotton (1993a), and the relevant entries in the *Survey of the Documents* for further comments and bibliography (pp. 50-59, 79). Indeed, Chiusi (2005) in particular finds parallels with Babatha's proposed solution with later cases that appear in Roman law, though stops short of asserting straightforward Roman influence.

lengthy delay between the petition and the summons. This may be accounted for in the time it took for the governor to respond, followed, perhaps, by negotiation between Babatha and the guardians before she resorted to summoning John, son of Eglas. Abdoöbdas in the meantime may have come to some arrangement with her, meaning that she did not include him in the summons.⁶⁵⁸ Indeed, it seems clear that only one guardian was called:⁶⁵⁹ not only is he the only one mentioned in P. Yadin 14 but P. Yadin 15 confirms that only John has been called before the governor,⁶⁶⁰ “for his refusal of disbursement of the maintenance money,”⁶⁶¹ even though Babatha had deposed both ἐπίτροποι. The fact that she did not summon Abdoöbdas suggests that he had agreed to raise the maintenance, while John was still refusing to pay an amount that Babatha considered appropriate. Why, then, did she address her deposition to both guardians?

This, in fact, is a fairly logical move if she had previously had a private arrangement only with Abdoöbdas. The offer of the hypothec might therefore constitute a change in her arrangement with him as well as with John. Indeed, by deposing both guardians Babatha may have hoped that Abdoöbdas would exert some pressure on his colleague to accept and thereby perhaps improve his own position: it is possible that under the new arrangement he would have had added security.

⁶⁵⁸ See P. Yadin 14, ll. 26-29: “On account of your not having given ... to my son, the said orphan ... just as Abdoöbdas son of Ellouthas, your colleague, has given by receipt” (διὰ τό σξ μη δε[δωκέναι τῶ] υ[ί]ῳ μου ± 10 τῶ αὐτῶ ὀρφανῶ ἔξ οὔ .[.].[.].εστ.[καθάπερ δέδωκεν Ἀβδοῦβδασ Ἐλλο[υ]θα ὁ κολλή[γ]ρας σου) δι ἀποχῆς). A comparison is therefore drawn between the two guardians, and Babatha emphatically only summons one before the governor.

⁶⁵⁹ Lewis (1989: 54) is equivocal about the summoning of just one guardian: while he notes that, “there may be a suggestion in lines 28-29 here that the other guardian was willing to accede to Babatha’s demand,” he also suggests that naming just John, son of Eglas, may have been “simply a procedural technicality.”

⁶⁶⁰ While Babatha deposes both guardians, P. Yadin 15 is clear that she has only summoned John (ll. 11-12 / 28-29).

⁶⁶¹ P. Yadin 15, l. 11 / 28: περὶ τῆς ἀπειθαρχείας ἀποδόσεως τῶν τροφίω. See n. 181 for comments on Lewis’ (1989: 61) translation.

We do not know how the case was decided or, indeed, if it ever reached the governor's court. P. Yadin 27, written on 19th August 132 C.E., provides us with a little information: it is a receipt for maintenance given by Babatha to Simon the hunchback, who has taken over from his father John, son of Eglas. The amount of maintenance paid is two denarii a month; this is the same amount that Babatha had once classed as insufficient. It is, however, a receipt issued to one guardian and therefore may mean that each of the guardians were now contributing two denarii per month, doubling the previous sum that Babatha had once deemed unsatisfactory.⁶⁶² Indeed, I am inclined to think that this receipt does suggest an alteration had been made. We cannot, however, say that this was the result of a decision made in the Roman court to which Babatha had previously appealed. It may just as well have been an arrangement reached by arbitration or similar negotiations between the parties, a process which seems to have been occurring around the time that P. Yadin 14 and 15 were written.⁶⁶³ Indeed, these ongoing negotiations may lend slight weight to the idea of a settlement outside of the Roman system.

What, then, may we say about the role of the governor in this process? We do not know whether he ever issued a judgement on the case and, indeed, I have suggested above that there is slight reason to think that he did not. We do know, however, that he allowed the complaint to proceed. This was not, in fact, strictly in line with Roman law, under which complaints against a *tutor* were only allowable once the minor had come of age.⁶⁶⁴ I would

⁶⁶² See discussion in Chiusi (2005: 116).

⁶⁶³ Further support might be added to this hypothesis if we accept the view that P. Yadin 28-30, the copies of the *actio tutelae* discussed at length in Chapter Three, were intended to be used in informal negotiations as a bargaining chip (see pp. 151-154). It should, however, be noted that this is only one possible way in which these papyri may have been used (see pp. 149-150 for others).

⁶⁶⁴ Paul, *Sabinus*, Book 8 (*Digest* XXVII. 3.4.pr.) See Cotton (1993a: 105) for comments. The remedy available against such a fraudulent guardian was that of removal; this would be instituted by the praetors at Rome and the governors in the provinces (cf. Ulpian, *Edict*, Book 35 (*Digest* XXVI. 10.1.3)). As far as we can tell from the fragmentary P. Yadin 13, this does not seem to be what Babatha is requesting. This may therefore be something of a departure from strict Roman legal regulations in even allowing the case to continue.

therefore argue that we have here an example of the governor deciding on the basis of evidence provided and the rhetoric of the petition – the case sounded like a plausible complaint and so was allowed to continue.

The primary point, however, is that his presence and Babatha's invocation of him was meant to influence proceedings. She did not follow up her petition with a summons for about a year – some of this time may be accounted for in waiting for his response, but it also seems probable that some portion was spent in negotiation, during which an arrangement was reached with Abdoöbdas though not John. Indeed, the fact that she states in P. Yadin 15 that she had made her proposition before also implies ongoing discussion.⁶⁶⁵ Additionally, she implicitly suggests in this papyrus that, should the guardians agree to her offer, she would not proceed with the summons: “Otherwise [i.e. if the guardians do not agree] this deposition will serve as documentary evidence of [your] profiteering from the money of the orphan by giving ...”⁶⁶⁶ The threat is: agree, or I shall proceed. Thus, the governor's presence and the possibility of proceeding to his judgement casts a shadow over the way the case progresses. His presence is used in this dispute at least as a threat and a bargaining chip.

Judah's estate

Pertinent documents: P. Yadin 20-26, P. Yadin 34 (fragmentary).

At some point after P. Yadin 19 was written on 16th April 128 C.E. and probably before P. Yadin 20 was drawn up on 19th June 130 C.E., Babatha's husband Judah died.⁶⁶⁷ Jesus, his

⁶⁶⁵ P. Yadin 15, ll. 8-10 / 24-26.

⁶⁶⁶ P. Yadin 15, ll. 29-30: εἰ δὲ μή, ἔσται τοῦτο [τὸ μαρτυρο]ποίημα εἰς δικαίμα κέρδους ἀργυρίου τοῦ ὀρφανοῦ εἰ διδόντες ... (cf. ll. 12-13).

⁶⁶⁷ See p. 70 on the issue of dating Judah's death.

brother, also died at some point before 19th June 130 C.E. Each brother left behind dependants: besides Babatha, Judah was survived by his married daughter, Shelamzion, and another wife, Miriam; Jesus had two, now orphaned, children. The guardians of these children, Besas, son of Jesus, and Julia Crispina, were involved in a legal dispute with Babatha and Shelamzion over some of Judah's property, to which they claimed the orphans had a right. Their dispute with Shelamzion seems to have been settled fairly quickly, as in P. Yadin 20 they concede her right to a courtyard that they had presumably previously claimed.⁶⁶⁸ Their battle with Babatha, however, was more prolonged. In addition to this, there was also another dispute between Babatha and Miriam, documented in P. Yadin 26 and P. Yadin 34. Not all of these documents relate to or mention the governor's court directly. Some simply pertain to the property involved in the dispute. My focus will be on those in which the governor is directly invoked and the remaining documents will be mentioned when relevant.

The first document in this series in which the governor is explicitly mentioned is P. Yadin 23, written on 17th November 130 C.E. In this papyrus, Besas summons Babatha over a date orchard which he claims she has taken by force (βίβα);⁶⁶⁹ this is presumably the same property whose crop is the subject of P. Yadin 21 and 22, and which Babatha in these documents claims she owns, "in lieu of my dowry and my debt."⁶⁷⁰ He orders her to attend

⁶⁶⁸ As part of their concession in P. Yadin 20, they offer to register the courtyard to her διὰ δημοσίων / διὰ δημοσίων (l. 13 / 35-36), translated by Lewis (1989: 92) as "with the public authorities" (see n. 231 for an alternative interpretation) and offer to defend her against any counterclaims for the courtyard. It seems, then, that they had previously challenged her right to the property and had later backed down. This represents some kind of negotiation between the parties, though we cannot tell whether the guardians ever went so far as to petition the governor on the matter before relinquishing their claim.

⁶⁶⁹ P. Yadin 23, l. 6 / 17.

⁶⁷⁰ P. Yadin 22, l. 10: ἀντὶ τῆς προικὸς μου καὶ ὀφειλῆς; cf. P. Yadin 21, ll. 11-12: ἀντὶ τῆς σῆς προικὸς καὶ ὀφειλῆς. The nature of the transaction in these two documents has been much disputed. See the relevant entries in the *Survey of the Documents* (pp. 71-74) for further comments.

the governor's court in Petra or elsewhere every day until they are heard. This gives a brief glimpse into the aforementioned hassle of taking cases to the governor, which potentially involved substantial travel and time.

Besas had presumably submitted a petition to the governor which had been allowed to proceed, though there is no mention of his subscription in this papyrus. The phraseology of P. Yadin 23, which refers to unlawful possession by force, is hardly an unfamiliar concept to Roman law.⁶⁷¹ If, then, Besas, or rather his scribe/advisor, had phrased his petition to the governor in a similar manner to the way in which he did in this summons, the official who read it would have been dealing with a fairly familiar complaint and probably allowed the claim to continue on this basis, regardless, indeed, of the operative inheritance law upon which Besas' contention was founded.⁶⁷² The rhetoric therefore seems to have been designed to appeal to a Roman mentality.

In conjunction with P. Yadin 23, we have P. Yadin 24, a deposition. The two documents seem to have a similar relationship to P. Yadin 14 and 15, discussed above. Besas demanded that Babatha say by what right she held the date orchards, though also acknowledged that Judah had registered them to her. He threatened to re-register them instead in the orphans' names, should she refuse to state the basis of her claim to them. Once again, what we seem to have here is evidence of ongoing discussions at the same time as the case proceeded through the Roman system. Indeed, the negotiations might even be somewhat more hostile than the previous example: Besas not only summoned Babatha before the governor (P. Yadin 23) but also threatened to re-register what she considered

⁶⁷¹ Roman legal remedies to reclaim such property were interdicts *unde vi* and *de vi armata*: see Justinian, *Codex* VIII. 4; *Institutes* IV. 15.6; *Digest* XLIII. 16.

⁶⁷² This does not appear to have been in harmony with Jewish law: see n. 44 for bibliography on the operative law of succession and n. 235 on the apparent differences to Jewish law.

her rightful possessions unless she cooperated. This appears to be a bid on Besas' part to resolve the matter more quickly than the Roman system might allow. So the appeal to the governor's court is used in tandem with other threats and negotiations and indeed the lengthy process it involved might have led to Besas escalating his threats against Babatha in order to attempt to resolve the issue more swiftly.

Despite this apparent wish for speedy action, there is then an interval of eight months before the next document, P. Yadin 25, was written on 9th July 131 C.E. This is possibly accounted for by the fact that Besas had fallen ill, as mentioned in this papyrus, although again we might allow for the possibility that the parties had perhaps been continuing the dispute out of court for a while. Consequently, Julia Crispina alone summoned Babatha, "pursuant to the subscription of his Excellency the governor."⁶⁷³ This, then, is clear evidence that a petition had reached the governor or his staff and they had decided to let it proceed – this might have been either the original petition, submitted by Besas prior to writing P. Yadin 23, or a subsequent one in between. The summons is to attend in Petra until the case is heard and, again, is on account of holding by force what Julia Crispina claims are the orphans' properties. Crispina added a further warning: if Babatha does not appear, she will be answerable to the governor.

Remarkably, the papyrus then records a counter-summons by Babatha herself, who stated that Julia Crispina had summoned Babatha on a previous occasion. Babatha had submitted a "memorandum" (πιττάκιον) against her and the governor "instructed me (Babatha) by his subscription to perform the legal formalities with you in Petra."⁶⁷⁴ Babatha then goes on:

⁶⁷³ P. Yadin 25, ll. 6-7 / 38-39): κατὰ τὴν ὑ[πογραφή]ν τοῦ κρασίστου ἡγεμόνος.

⁶⁷⁴ P. Yadin 25, ll. 53-55: ὑπέγραψέν μοι εἰς Πέτραν σὺν ὑμῖν τ[ὰ ν]όμιμα χρᾶ[σ]θ[αι] (cf. the badly fragmented inner text at ll. 20-21).

“now therefore I summon you first before his Excellency the governor in Rabbath-Moab.”⁶⁷⁵ She rejects the basis of Julia Crispina’s summons, who replies that if Babatha has any complaint she should attend before the governor.

This papyrus contains the most mentions of the governor and concrete citations of his subscriptions of any document in the two archives. There were at least two petitions to him, including Babatha’s ‘memorandum’, both of which he allowed to proceed. This may have been on account of the aforementioned familiarity of the complaint about unlawful possession and the fact that Babatha could claim in response that the lands were in fact registered to her. As such, the case was not clear-cut and merited a hearing.

What comes out of this papyrus most strongly, however, is the way in which the parties seem to use the power to summon each other in a game of one-upmanship. Babatha is emphatic that she summons Julia Crispina first, and changes the place from Petra to Rabbath-Moab. The governor may have been due there sooner than in Petra (or later, if Babatha was trying to delay matters), making this an attempt to control the timing of the dispute. Rabbath-Moab was, in any case, closer to Maoza and therefore probably more conveniently situated for Babatha. The important point, however, is that she wished for the dispute to come before him on her terms. Indeed, both she and Julia Crispina seem determined to be the one in control of the situation – the one who summons rather than who is summoned. They will each attend court on their own terms, not that of their rival. The summons procedure and the appearance before the governor is therefore used as part

⁶⁷⁵ P. Yadin, ll. 21-22 / 55-57: καὶ τὰνῦν παραγγέλλω σοι πρώτως πρὸς τὸν κράτιϛ[τ]οῦ ἡγ[εμό]να εἰς Ῥαββαθμοαβα.

of a power-play in negotiations. Both attempt to deploy it as an intimidation tactic and therefore become engaged in a rhetorical battle over who is controlling whom.

The final papyrus relating to Judah's estate is P. Yadin 26, written on 9th July 131 C.E., the same day as P. Yadin 25. Here Babatha summons Miriam before the governor over the items she has seized in Judah's house, again stating that she should attend until judgement. The papyrus also records that Miriam had previously summoned her not to go near Judah's possessions, stating that Babatha had no claim. Once again, summonses seem to be flying back and forth: presumably each had previously also had their cases approved by the governor.⁶⁷⁶

It seems apparent that the parties to this particular case use the governor's court as a threat and intimidation tactic in conducting their negotiations. This is why there is such a battle in P. Yadin 25. The issue is less how the governor reacts to the documents and more how the provincials react to the governor.

Preliminary conclusions

In both cases, we can see the provincials using the presence of the governor's court in their negotiations with their opponents. In each dispute, this is deployed as an intimidation tactic. Additionally, in the dispute over Judah's estate, each side clearly wished to take control of the summoning procedure and thereby exert control over the opposing party. The documents therefore suggest that the spectre of the governor's court loomed over the

⁶⁷⁶ P. Yadin 34 preserves remnants of what seems to be a petition by Babatha against Miriam, addressed to the governor. It is, however, so fragmentary that it offers us little further information.

cases as they progressed. Provincials pursued claims through it in addition to negotiating on the side.⁶⁷⁷ They always, however, had to allow for the possibility that they might eventually end up in court, even if they were trying to avoid that eventuality. Thus, the Roman court becomes something which is used as part of the negotiation process, though litigants may have hoped and even earnestly intended that cases were never actually decided in that forum.⁶⁷⁸

The question that then arises is why they would negotiate on the side and hope to avoid the court. Moreover, why would they think that the threat of coming before the governor would be an effective intimidation tactic? As has become clear from the above discussion, the two archives provide little to no information about the governor's decision-making processes. As such, we shall have to look elsewhere in order to determine how Roman judges made their decisions.

⁶⁷⁷ A similar pattern has already been observed in certain cases in the Egyptian material: see Kelly (2011: 244-286) on this, particularly his concluding remarks: "The evidence therefore tends to suggest that in some cases, the processes of petitioning and litigation could have an impact on dispute resolution even if the matter never reached the stage of final adjudication by the judge. Far from purely being the last resort of the desperate, used only when all other mechanisms of dispute resolution had failed, the legal system in some cases was used to help bring about a private settlement" (Kelly (2011: 285)). This is in contrast to the model earlier advanced by Hobson (1993: 199-200), who described seven stages in disputation but argued that, "Any one dispute may involve more than one of these methods of settlement, but there is a clear progression from the informal to the formal, with recourse to the law at the pinnacle of the process" (citation from Hobson (1993: 200)).

⁶⁷⁸ The behaviour described here bears comparison with that involved in modern divorce settlements, as analysed by Mnookin and Kornhauser (1979). In particular, the following analysis of the influence of the uncertainty principle in encouraging (some) people to settle also owes much to the ideas on "bargaining in the shadow of the law" in that study.

The Roman governor in the provinces

A brief overview

The administration of justice was one of the prime duties of a governor. To this end, he would tour the designated assize-centre cities of the province and, when he or his delegated official was in the area, provincials could seize the opportunity to have their cases heard by him.⁶⁷⁹ The Roman judge would then decide how to proceed or judge the case there and then.

While this process may appear fairly simple, problems could easily arise, not least with the practicalities of conducting one's case in a court which did not stay in a single location. As

Burton commented:

“The organization of the assizes ... did not necessarily provide for a fixed order of cases even though petitions had been delivered beforehand; there was no assurance either that all litigants who gathered at an assize would gain a hearing; above all there was no formal machinery or procedure for the presentation of petitions (*libelli*) to the proconsul.”⁶⁸⁰

Litigants would have to travel to the assize centre and then wait around until their cases were heard, with no guarantee that they actually would be. The costs could presumably spiral: aside from travelling expenses, the parties would be staying in rented lodgings if they did not happen to own property or live in the assize-centre.⁶⁸¹ This is without factoring

⁶⁷⁹ In Asia Minor at least, the governor seems to have been able to choose which areas he would visit personally and to which he would send his legates instead: see Kantor (2008: 195). Whether the situation was identical in imperial provinces is a matter of debate: see Weaver (2002) on differences in practice across the three categories of provincial governors.

⁶⁸⁰ Burton (1975: 101).

⁶⁸¹ Parties might have to or chose to travel to an assize-centre in a different area from that which they lived: see Kantor (2013a: 148-149) on litigants travelling to assize-centres in Roman Phrygia.

in the costs of bribing officials to try to get one's case bumped up the theoretical list, or indeed the governor himself: Pliny records the case of Marius Priscus, proconsul, who was accused by the people of Africa of taking bribes to condemn and even put to death innocent people.⁶⁸² Litigants would also have to reward, if not pay, their advocate.⁶⁸³ If the process at first seemed straightforward, it soon begins to look complicated, troublesome and expensive for the parties involved. Ari Bryen has recently summed up the process in Egypt rather succinctly: "To an individual petitioner, trying to force officials to do things must have felt like pushing a large rock uphill, with the coordinate threat that the rock might at any moment roll backward and squish him."⁶⁸⁴

All this gave litigants even more incentive to maximize their chances of winning or do their very best to avoid the court altogether – otherwise, they could incur considerable expenditure for an unfavourable outcome. In trying to avoid the court, they might, as suggested above, engage in out-of-court negotiations. The trouble and expense could, however, also be used as a weapon against opponents in such bargaining: if it is assumed that the other party would also prefer to avoid all the waiting around, threatening to make them do so by pursuing matters through the Roman system might help force a settlement, even one in your favour. The fact that it would inconvenience you too is part of a calculated bluff that is hoped to benefit your case.

⁶⁸² Pliny, *Epistulae* II. 11.

⁶⁸³ The rules regarding payment of advocates were subject to some change throughout the early empire. In Rome, under the *Lex Cincia* of 204 B.C.E., advocates were supposed to be unpaid in the Republican period. Augustus re-enacted this law (see Dio Cassius, *Historia Romana* LIV. 18. 2), which Crook (1967: 90) sees as evidence that, "the rule was constantly being infringed and as constantly reiterated." Under Claudius, a maximum fee of ten thousand sesterces was allowed (see Tacitus, *Annales* XI. 7). Tacitus (*Annales* XIII. 5) states that Nero abolished fees once again, though Suetonius (*Nero* 17) reports him as allowing them "a fixed and reasonable fee" (*certam iustamque mercedem*) (text and translation from the LOEB). See Crook (1967: 90-91) for further comments on this issue.

⁶⁸⁴ Bryen (2013: 127).

Nevertheless, starting the Roman court process meant that litigants also had to allow for the very real possibility that they might end up there if negotiations failed. It was therefore natural for the parties to try to find out about and conform to the preferences of Roman officials, as has been suggested they often did. Information about the criteria under which they made their decisions was particularly valuable as it enabled parties, or more probably the *νομικοί* consulted by them, to make a prediction about whether a case was likely to be decided in their favour. The parties could then decide: a) whether it was worth the expense of proceeding in a particular legal forum; and b) if they did proceed, how best to frame their complaint.

This leads us to the question of how Roman officials made their decisions. Did they attempt to follow a particular body of law, Roman or local, for example? Was there any consistent ‘policy’ in decision making, or were they influenced by any particular factors? In short, how consistent were Roman governors in the criteria they used to judge cases and so how able were litigants or their advisors to predict the likely outcome of a particular dispute?⁶⁸⁵

Roman legal decisions – which law?

In the following, I shall assess the picture of the Roman governor that we receive from various bodies of evidence and identify the potential sources of law available to him. From this survey, we should then be able to establish some of the possible influences on his decision-making processes and, consequently, come to a few preliminary conclusions about how consistent these might have been.

⁶⁸⁵ More generally on the “schizophrenia” with which law functioned in the classical period, simultaneously “working at once to universalize norms but also along multiple axes to fragment the empire,” see Ando (2011: 22-27; citation from 23).

The law of the province and provincial edicts

In theory at least, the governor decided cases in line with the principles laid out in the *lex provinciae* and his own edict upon entering the province. From the late Republican era, a *lex provinciae* was drawn up by a board of ten senators when the province was created. This law would therefore be, “similar to, but not exactly the same as the law he [the new governor] might have come across in Rome.”⁶⁸⁶ A *lex provinciae* was not, however, a necessary condition for the creation of the province: while Sicily had the *lex Rupilia* and Pontus et Bithynia a *lex Pompeia*, Egypt does not seem to have had a provincial law and Germany also appears to have been incorporated into the empire without one.⁶⁸⁷ Consequently, there may or may not have been one for Roman Arabia and so the governor did not necessarily have this to guide him. Additionally, the *leges provinciae* typically dealt more with determining the kinds of cases the governor could or would hear;⁶⁸⁸ when faced with a case which cited or was framed in competing laws or traditions, it would not necessarily have given him stringent guidelines for proceeding.⁶⁸⁹

Aside from the *leges provinciae*, we also have provincial edicts:⁶⁹⁰

“On taking up the post in his province, the governor issued an edict, stating the grounds on which he was prepared to hear cases, just as the praetors in charge of the courts in Rome had to do. A certain amount was probably handed on from one governor to the next, but each had a fairly free hand in what he added or subtracted.”⁶⁹¹

⁶⁸⁶ Richardson (1976: 34).

⁶⁸⁷ On Egypt, see Bryen (2012: 790) and Méléze-Modrzejewski (1970); on Germany, Lintott (1981: 60). For further examples of provinces for which we have no evidence of a *lex provinciae*, see Lintott (1981: 59-60).

⁶⁸⁸ See Richardson (1994: 583): the *lex* “determined the extent of the governor's powers, including his jurisdiction.”

⁶⁸⁹ Laws of individual towns were sometimes specific as to the applicable law: see, for example, the *lex Irnitana* (the text may be found in González and Crawford (1986)).

⁶⁹⁰ This was similar to the praetorian edict, whose form became fixed under Hadrian. See Turpin (1999: 514-522) on the edict; also Katzoff (1980: 825-833) for a brief summary of the issues and bibliography on this subject with particular reference to Egypt.

⁶⁹¹ Richardson (1976: 34).

On entering his post, the governor therefore set out the principles by which he would govern and administer justice.⁶⁹² He could add clarifications to this throughout his time in office, producing *edicta* on a wide variety of subjects as they came to his attention.⁶⁹³ The “fairly free hand” that Richardson ascribes him in this process means there may have been little uniformity from province to province or, theoretically at least, from governor to governor. Thus, while Cicero had once allowed his subjects to use their own laws and judges in Cilicia,⁶⁹⁴ future governors of the same province would not be bound to do the same.

If a *lex provinciae* existed, governors would have to rule in accordance with it but ultimately it seems that they could decide their own terms upon entering their province. Once they had set these out, they were theoretically bound to abide by them. In fact this was probably more than theoretical, as provincials would often seek out the edicts of current and previous governors in attempts to give weight to their arguments, trying to bind governors to their own rulings and those of their predecessors.⁶⁹⁵ Provincials at least believed governors were bound by their edicts as well as, indeed, their prior decisions (more on this below).

⁶⁹² Urch (1929: 94) comments that this was usually “drawn from the *lex provinciae*, the edicts of former governors, and, in points of civil law, the edicts of the urban praetors,” though also included “original provisions.”

⁶⁹³ For a collection of edicts from Egypt, which give a good impression of the range of subjects, see Katzoff (1980: 809-819). Katzoff (1980: 821) observes that while they vary enormously, most “lay down general rules relating to matters of religion ... fiscal administration ... general administration ... measures to check governmental abuse ... criminal law ... and private law and procedure.”

⁶⁹⁴ Cicero, *Ad Atticum* VI. 2. 4: “All have come to life again with the acquisition of home rule under their own laws and courts” (*omnes suis legibus et iudiciis usae αὐτονομίαν adeptae revixerunt*). Text and translation are that of Shackleton Bailey (1968).

⁶⁹⁵ See Bryen (2012: *passim* but especially 776) for an extended consideration of this idea, by which provincials attempted to manipulate their governors by controlling texts and, through them, legal rules.

Roman legal literature

One key passage in Roman legal literature seems to lay down specific guidelines on how

Romans should decide cases:

De quibus causis scriptis legibus non utimur, id custodiri oportet, quod moribus et consuetudine inductum est: et si qua in re hoc deficeret, tunc quod proximum et consequens ei est: si nec id quidem appareat, tunc ius, quo urbs Roma utitur, servari oportet.

What ought to be held to in those cases where we have no applicable written law is the practice established by customs and usage. And if this is in some way deficient, we should hold to what is most nearly analogical to and entailed by such a practice. If even this is obscure, then we ought to apply law as it is in use in the City of Rome.⁶⁹⁶

The passage is attributed to Salvius Julianus, a second century jurist, and collated in Justinian's *Digest* in the sixth century. Here, we seem to have a set of guidelines for ambiguous cases: where there is no statute covering the case, *mores* and *consuetudo*, i.e. that presented as local tradition, custom or law (whichever terminology we wish to use),⁶⁹⁷ should be obeyed; if this was no help, then judges should reason from *mores* and *consuetudo*; if still at a loss, then, as a last resort, they were to use the law of Rome. On the surface this seems extremely useful for our enquiries: one Roman jurist at least, during our period, had thought about the problem of ambiguous or unclear cases and attempted to come up with guidelines for how judges would deal with them.

⁶⁹⁶ Julianus, *Digest*, Book 83 (*Digest* I. 3.32.pr). Text and translation is from Mommsen, Krueger and Watson (1985). On the same subject, see, for example, Celsus, *Digest*, Book 23 (*Digest* I. 3.39) (regarding the problems on reasoning from custom). On taking "custom" into account in specific cases, see Papinian, *Questions*, Book 2 (*Digest* XXII. 1.1.pr) (on assessing interest in a *bona fide* action) and Ulpian, *Edict*, Book 24 (*Digest* XXV. 4.1.15) (on cases where a woman claims pregnancy after the husband has died). For an excellent recent discussion of the role of custom in Roman law, see Humfress (2011).

⁶⁹⁷ The emphasis here is on *presented* – what provincials claimed was longstanding tradition, law or custom may not have been quite as established as they suggested. For the idea of 'custom' as a more fluid construct, see Humfress (forthcoming: 10-11) and (2011: 42-43).

Now, however, comes the ‘but’. This passage goes on to give a more thoroughgoing definition of “custom,” one which is very frequently cited in scholarship as a prime example of a *postclassical* definition. This is our key problem: this useful passage has frequently been classified as subject to heavy postclassical interpolation, mainly due to the fact that, “it seems to understand custom as *ius non scriptum*, custom as existing *pro lege* etc.”⁶⁹⁸ It is, however, usually the latter part of the passage that is thought to be an interpolation: the prologue (cited above) has generally been left untouched.⁶⁹⁹ Moreover, the extract has recently been relocated in its original second century context: Caroline Humfress re-examines the passage at length, going on to argue that, “Julian’s discussion of custom probably originally responded to a technical and precise legal problem that arose under the early empire.”⁷⁰⁰ She emphasises that all the prologue part of the text states is that, in the specific situation where there is no statute, custom and practice should be taken into account. This passage therefore becomes, “a dynamic, problem solving text – oriented ultimately towards resolving specific difficulties from city-state to empire.”⁷⁰¹

We may perhaps, then, cautiously take this text as a way in which certain governors may have decided cases in which there was no written law to enforce. In such circumstances, they would attempt to abide by established indigenous customs or reason out from these wherever possible. This need not, however, have been universal. One text in the *Digest*, even if it is authentically from our period, does not mean that this was standard practice for all governors across the empire.

⁶⁹⁸ Humfress (2011: 26).

⁶⁹⁹ Steinwenter (1930) suggested that the first sentence might have been a gloss, but was primarily concerned with categorising everything beyond this as interpolated. Solazzi (1929) argues that, unlike in this passage, custom could not override statute, even if the latter had fallen into disuse; Schiller (1938: 282) agrees.

⁷⁰⁰ Humfress (2011: 26; see 26-29 for the full discussion of *Digest* I. 3.32).

⁷⁰¹ Humfress (2011: 29).

Rabbinic literature

There are several passages from the rabbinic corpus which imply that Roman courts sometimes judged according to Jewish law. Any attempt to analyse these, however, brings us squarely up against the problems of using such texts as evidence in historical discussions.⁷⁰² The standard cautions are worth repetition. First, as in the case of the Roman legal writings, many of the works in question were redacted much later than our current period and while they may attribute traditions to past sages, this does not guarantee the dating of a particular passage. Secondly, the rabbinic authors of such passages were not necessarily interested in presenting an accurate reflection of their contemporary society. Indeed, the preferences and aims of the rabbis and compilers must always be kept in mind, as well as the purpose of any particular work. This, of course, is an issue which is not unique to rabbinic material but due to the nature of these texts it is particularly pertinent in relation to them.

The key passage on this subject is from the *Mekhilta de Rabbi Ishmael*, a halakhic midrash on Exodus, redacted in the third or fourth century C.E. This saying is attributed to the late first century sage, Rabbi Eleazar ben Azariah. It appears to give some information about non-Jewish courts deciding on the basis of Jewish law:

⁷⁰² For an excellent summary of the problems, see Alexander (2010).

רבי אלעזר בן עזריה אומר והרי הגוים שדנו בדיני ישראל שומע אני יהיו דיניהם קיימים ת"ל ואלה המשפטים אשר תשים לפניהם אתה דן את שלהם והם אינן דנין את שלך מכאן אמרו גט המעושה בישראל כשר ובגוים פסול אבל גוים חובטין אותו ואומרים לו עשה מה שישראל אומרים לך

R. Eleazar the son of Azariah says: Now suppose the gentile courts judge according to the laws of Israel. I might understand that their decisions are valid. But Scripture says: "And these are the ordinances which thou shalt set before them." You may judge their cases, but they may not judge your cases. On the basis of this interpretation the sages said: A bill of divorce given by force, if by Israelitish authority is valid, but if by gentile authority is not valid. It is, however, valid if the Gentiles merely bind the husband over and say to him: "Do as the Israelites tell thee."⁷⁰³

A corresponding passage from the *Mishnah* offers a similar interpretation: a bill of divorce given by force is valid if ordered by a Jewish court, invalid if by that of the gentiles.⁷⁰⁴

Alfredo Rabello, in an article on Jewish and Roman jurisdiction, interprets the *Mekhilta* passage as follows:

"Thus we understand from Rabbi Eleazar's words that non-Jews (i.e. Roman courts) were indeed allowed to judge Jews. According to which law did the Roman courts judge the Jews? The answer to this question can also be found in Rabbi Eleazar ben Azariah's words: generally they had to pass judgements according to the local law, i.e. in this case the national laws of the Jews (*iudaei*): 'The non-Jews passed judgments according to the laws of Israel'."⁷⁰⁵

This may sometimes, even often, have been the case but it is not the only available interpretation of the above passage and indeed the text does not support such a definite conclusion in and of itself. Underlying the passage is a sense of encouragement of separation: Rabbi Eleazar is attempting to discourage Jews from using gentile courts.⁷⁰⁶

Consequently, even if these courts give their decisions according to Jewish law, there is still no excuse for using them. This may be a theoretical idea: Rabbi Eleazar, in discouraging Jews from having recourse to gentile courts, anticipates any possible excuse that might be offered – he is arguing all angles in an attempt to achieve his purpose and

⁷⁰³ *Mekhilta de Rabbi Ishmael*, Exodus 21:1-3, *Nezikin* 1. Text and translation from Lauterbach (2004).

⁷⁰⁴ *m. Giṭ.* 9:8. For instances in which Roman courts seem to be enforcing the decisions of Jewish ones, see Levine (1979: 656, n. 36).

⁷⁰⁵ Rabello (1996a: 146).

⁷⁰⁶ Indeed, Jewish law did not allow non-Jews to be judges (cf. *m. Sanh.* 4.2; *b. Sanh.* 36b, *b. Kid.* 76b.)

safeguard the primacy of Jewish courts. In other words, the prescriptive purpose of the passage is more important than a concern to describe realistically. Alternatively, as Rabello reads it, this might be a reflection of historical reality. Perhaps some Jews were turning to gentile courts and those courts, on occasion, might give judgement according to what they saw as local law or custom – Jewish law. It should, however, be noted that the text refers to gentile – not specifically Roman – courts; Rabello, in his interpretation, goes a little too far.

The point is that such passages are far from conclusive and we cannot rest much upon them. About as far as we may go is that certain rabbis could conceive the possibility that gentile courts in Palestine might have taken Jewish law into account when making their decisions. Pinpointing this to a particularly period or broadening its application beyond Roman Palestine would create still further problems.

Pliny's letters

Long beloved of provincial historians, Pliny's letters to Trajan during his governorship of Pontus et Bithynia (111-113 C.E.) offer valuable insight into the everyday running of a province, including the administration of justice. While these letters provide a certain amount of evidence of real decisions, Pliny is also concerned to project an image of a good, conscientious governor in his correspondence and this must at all times be kept in mind. It is, for example, notable that many of the cases on which Pliny consults the Emperor relate to prestigious individuals or entire towns, rather than to the everyday petitions of those lower down the social ladder. Nevertheless, they still offer us a window into the process used by one particular Roman official in making his decisions.

Trajan's preference for allowing local custom or law to prevail is well known and there are indeed a number of cases where Trajan replies to Pliny's queries by referring him to the practices of the particular place.⁷⁰⁷ Nevertheless, the letters reveal that Trajan's decisions are far from uniform on this point. A couple of examples will serve to make the point: in *Epistulae* X. 114, Pliny consults the emperor over an ambiguity in the *lex provinciae* about whether citizens of other Bithynian cities may become members of the senate,⁷⁰⁸ stating that several people in each city were in such a situation. Trajan effects a compromise between custom and law: existing senators who were citizens of other cities may retain their position, but in future the law should be enforced.⁷⁰⁹ This is not quite as simple as deciding in favour of local practice: instead, it is a pragmatic resolution of the current problem, taking into account actual practice but also enforcing what Trajan understands as the letter of the law. In another case, when Pliny consults Trajan about whether a temple in Nicomedia, dedicated in local fashion, may be removed,⁷¹⁰ Trajan has no hesitation in allowing it: "as the soil of an alien country is not capable of being consecrated according to our laws."⁷¹¹ This is hardly a prime example of respect for local traditions; local consecration practice is set at naught.

⁷⁰⁷ For example, in *Epistulae* X. 75-76, Pliny is to decide how to administer an estate "according to what will suit the conditions of both places" (*secundum cuiusque loci condicionem*) (X. 76); in X. 92-93, Trajan allows the city of Amisus to have a benefit society because the town "enjoys the privilege of administering its own laws" (*Amisenorum civitas et libera et foederata beneficio indulgentiae tuae legibus suis utitur*) (X. 92), although he is explicit that in other cities without such a privilege the society would be prohibited; in X. 112-113, Trajan refuses to lay down general guidelines about whether those on councils should pay an admittance fee, stating, "I think then that the safest course, as always, is to keep to the law of each city" (*id ergo, quod semper tutissimum est, sequendam cuiusque civitatis legem puto*) (X. 113).

⁷⁰⁸ The *lex Pompeia* allowed Bithynian cities to bestow citizenship upon whomever they wished, as long as the person in question was not a citizen of another city in the province, and also laid out the rules for expelling members of the senate. The question was whether being a citizen of another city disqualified senate membership (not explicitly stated in the *lex Pompeia*). According to Pliny, there were several members of the senate in all the cities who would be affected by any decision (Pliny, *Epistulae* X. 114).

⁷⁰⁹ Pliny, *Epistulae* X. 115.

⁷¹⁰ Pliny, *Epistulae* X. 49.

⁷¹¹ Pliny, *Epistulae* X. 50: *cum solum peregrinae civitatis capax non sit dedicationis, quae fit nostro iure.*

Most interesting, however, is the case of the Christians (*Epistulae* X. 96-97). The legality of Pliny's actions has been frequently discussed and will not be the primary concern here. What is of issue is the way in which he proceeds. As Georgy Kantor has recently pointed out, the question is:

“What was the notion of legality and the functions of legal administration which, on the one hand, allowed a painstakingly conscientious man (as Pliny appears to be throughout the rest of his official correspondence) to pass a death sentence without ascertaining the precise state of the law on the matter, and on the other, from well before Pliny's time, gave a significant place to legal rules and their interpretation?”⁷¹²

Pliny does not know the legal position; he admits this much to Trajan. Yet he still proceeds as he sees fit, even to the point of having some provincials executed, consulting Trajan only after the fact about whether he has acted correctly. In this instance, then, the governor has proceeded entirely on his own terms. He makes an effort to find out about correct procedure, if there is one, only after he has made certain initial decisions on the problem. Ignorance of the law is no bar to action.

This may be a rather extraordinary case but it does demonstrate that even a seemingly conscientious governor could sometimes make decisions entirely of his own will. Pliny frequently consults both people (including Trajan) and documents, and even consults people about documents in his correspondence, but he is still willing to proceed unilaterally here. This demonstrates the lack of predictability in a governor's actions. He may try to find out about and take into account local practice or precedent, but he was also willing to proceed without cognizance of it. Conscientiousness was not guaranteed and litigants could find themselves with an unexpected verdict.

⁷¹² Kantor (2012: 55-56).

Papyri

There are countless legal papyri from Egypt which bear upon our problem. These papyri differ slightly from our previous categories of evidence, with the exception of Pliny, in that they offer a definite record of real decisions. This does not stop people from using rhetoric in their appeals or in discussing such judgements but we can at least separate some of this from the actual decision given.

Nevertheless, the papyri also have their limits, not least in the fact that there was no necessity for the official in question to explain his reasoning in deciding one way or the other. Often, all that is recorded is the decision – allowing a petition to proceed, for example. We are therefore left to try to draw out the reasoning that led to it, which can often prove a rather tricky task. In general, however, we may say that there is a tendency on the part of Roman officials to try to find out about local custom or law and thus consider it in pronouncing judgement. This is particularly apparent in the frequent consultation of *voμικοί* that we find in the sources:⁷¹³ the judges make a very real effort to learn about ‘normal’ practice in the area by consulting those who may know about it (more on this below).

This does not, however, mean that they would necessarily judge in accordance with it. A notable case in which indigenous law is rejected is that of the ‘Law of the Egyptians’, cited in the previously discussed Dionysia papyrus, P. Oxy. II 237, written around 186 C.E.⁷¹⁴

⁷¹³ See n. 423 for examples.

⁷¹⁴ The bibliography on this papyrus is extremely large and constantly growing. A couple of recent contributions which relate well to the themes of the current discussion are Humfress (forthcoming), Kreuzaler and Urbanik (2008) and Bryen (2013: 144-146; 192-199).

In repudiating her father's attempt to invoke this 'law' and forcibly remove her from her husband, Dionysia cites several previous cases. One of these is a case from 128 C.E., in which the prefect, T. Flavius Titianus, overrules the Egyptian law that permitted a father to remove his daughter from her husband, stating that it should depend upon the desire of the wife. Here, then, we have a clear case of the prefect being made aware of local custom/law (or what was claimed to be local law) and nevertheless deciding to disregard it. This decision was subsequently used as precedent in another case in 134 C.E., also cited by Dionysia, and she in turn attempts to use both cases as precedent for her own situation.⁷¹⁵ The reason for this judgement was possibly that the tenor of the law was antithetical to those governing Roman marriage, where the presence of *affectio maritalis* was sufficient to affect or dissolve the nuptials. Indeed, Claudia Kreuzsaler and Jakub Urbanik have pointed out that there is some hint by the advocates of Heron, the husband in the 134 C.E. case, that this was so: when citing the prior decision, they state that Titianus, "did not follow the inhumanity of the law."⁷¹⁶ The argument, then, seems to be that if a law was considered to embody *inhumanitas* , as exhibited by its opposition to Roman law on the subject, it may be overruled.⁷¹⁷ What was presented as indigenous law could, then, be overturned if it did not sit well with Roman legal or indeed cultural ideals.

This lent a definite element of unpredictability to the process. Litigants were left somewhat uncertain about the way their case might go. Pleas citing local tradition, custom

⁷¹⁵ On precedent in the Roman legal process, see Katzoff (1972); especially Katzoff (1972: 257-268) on this papyrus and the cases therein. A further example, also cited and discussed by Katzoff (1972: 265), is constituted by the unsuccessful attempts to oppose custom with tax law: P. Phil. 1 (c. 103-124 C.E.), SB V 7601 (135 C.E.); SB V 7696 (250 C.E.).

⁷¹⁶ P. Oxy. II 237, col. 7, ll. 34-35: μή ἠκολουθηκέναι τῇ τοῦ νόμου ἀπανθρωπίᾳ. See Kreuzsaler and Urbanik (2008: 141) for this interpretation.

⁷¹⁷ See Kreuzsaler and Urbanik (2008) for a study of the rhetoric of this plea and role of *humanitas* / *inhumanitas* in Roman law.

or law were likely to carry some weight with Romans but there was no guarantee that they would prevail.

Levels of knowledge: How did Roman judges find out about the law?

It has been observed in the above discussion that, in cases where they were unsure how to proceed, governors might attempt to find out about the law. It is worth pointing out that the Roman judges were never guaranteed to be legal experts. They may have had more or less experience in this field from their career in Rome: from an earlier period, of course, we have the prime example of Cicero, who would have brought his legal experience with him to his province.⁷¹⁸ Some Romans may have known their legal literature well and drawn upon this when judging: one inscription from Ephesos, admittedly from the late third century C.E., records a letter that is probably from the Roman governor, in which he refers provincials explicitly to Ulpian's *De officiis*.⁷¹⁹ On the other hand, as Brunt has observed, the vast majority of prefects of Egypt probably had very little legal experience.⁷²⁰ Even when officials did have previous experience, the law they now had to apply was probably different from that which they had been used to in Rome.⁷²¹ It is therefore worth examining in more detail exactly how Roman judges in the provinces came by their legal knowledge and whom or what they consulted when their own knowledge failed them. This in turn may further illuminate the decision-making process.

⁷¹⁸ Indeed, in an article which focussed on Cicero's era, Urch (1929: 94) confidently observed that, "The governors were invariably familiar with the law and procedure of the courts at Rome, as a result of actual experience as presidents of those courts." More recently Ando (2011: 10-11) has suggested that, "Roman magistrates, schooled in Roman law and culture and alien, as it were, to the local cultures that they governed, would have turned quickly to the familiar over against the foreign."

⁷¹⁹ Keil and Maresch (1960) no.8, ll. 8-10. See Kantor (2009: 250-255) for comments.

⁷²⁰ Brunt (1975: 132-136).

⁷²¹ Richardson (1976: 34). See above comments on the *lex provinciae* (pp. 233-234).

The governor had a *consilium*, whose members were normally picked by him and could advise him when making decisions.⁷²² The evidence for the composition of such *consilia* is sparse and, indeed, probably varied from province to province.⁷²³ The level of legal expertise on the *consilium* will therefore likewise have differed. Paul Weaver’s analysis of the available evidence suggests that members were often relatively young and of low status (though were Roman citizens)⁷²⁴ – this does not necessarily lend itself to the theory that *consilia* always provided a wealth of legal experience.⁷²⁵ To take one example: in a papyrus from Egypt that preserves the court records of three decisions of the prefect Sulpicius Similis (late second century C.E.), Similis is said to have consulted both a legal expert and his advisors.⁷²⁶ This suggests that additional legal advice was needed besides the *consilium* and indeed that the ἐξηγούμενος τοὺς νόμους was not included among the *consilium* members. As such, *consilia* may not always have been a source of specific advice on points of law.

As suggested by this papyrus, however, there were others who could provide such expertise. The consultation of legal experts, or νομικοί, is fairly well attested in the Egyptian papyri and was seemingly normal practice.⁷²⁷ Brunt suggests that these were

⁷²² See Weaver (2002) on the composition of *consilia*. It seems that governors were expected to consult their *consilia*: one of the points of censure against Piso in his trial for the murder of Germanicus is that he had condemned people to death without consulting his *consilium* (*senatus consulta de Cn. Pisone patre*, ll. 49-51. The text is published in Eck, Caballos, and Fernández (1996) and an English translation may be found in Griffin (1997: 250-253)).

⁷²³ Hadrian is reported to have included jurists on his *consilium*, instead of just friends and staff-members (*Historia Augusta XVIII* 1). The fact that this inclusion was noted may imply that it was an unusual step.

⁷²⁴ Weaver (2002: 51-59).

⁷²⁵ Although, conversely, see Kantor (2013a: 150-152) on the young age of certain legal practitioners in Roman Phrygia – youth did not necessarily equate to a lack of legal knowledge.

⁷²⁶ P. Oxy. XLII 3015, ll. 8-11: “Sulpicius Similis, after talking with his advisers and referring the case to Artemidorus the interpreter of the laws ...” (Σουλ(πίκιος) Σίμιλις πυθόμενος Ἀρτεμιδώρου τοῦ ἐξηγουμένου τῶ[υ]ς νόμους περὶ τοῦ πράγματος καὶ συναλήσας τοῖς συμ[β]ούλοις). Text and translation (slightly adapted) from Parsons (1974).

⁷²⁷ See n. 423 and n. 726 for examples. See Kantor (2009) more generally for the argument that these advisors and legal literature played a large role in transmitting knowledge of law in Asia Minor.

mainly consulted about local law, in earlier instances at least, and did not supplement the Roman officials' knowledge of Roman law.⁷²⁸ In fact, we do have examples of νομικοί being consulted on Roman law.⁷²⁹ In any case, as previously suggested, consultation about local law implies interest in it. This did not mean that governors were guaranteed to judge in accordance with local custom, but it suggests that it was taken into account when they were coming to their decisions.

Aside from consulting people, Roman officials also seem to have had frequent recourse to documents.⁷³⁰ Indeed, Pliny often refers to documentation in his correspondence: in the case of the foundlings, for example, he claims that, before consulting Trajan, he has heard the rulings of previous emperors read out in court and has searched for those relevant to Bithynia.⁷³¹ Furthermore, litigants often bring documents to him: the case of Flavius Archippus is a particularly nice example of this. Archippus was a philosopher who claimed the right of being excused from acting as a juror due to his profession. He was then accused of having escaped when he was previously tried and condemned for forgery. His sentencing by the proconsul Velius Paullus was read out. In response, Archippus produced a petition to Domitian, honorific letters from the latter, a decree of the Prusensians, a letter from Trajan, and an edict and letter from Nerva confirming Domitian's grants to him. Some

⁷²⁸ Brunt (1975: 134): "The papyri show prefects under Vespasian and Trajan discussing their judgements with νομικοί, but in the earlier instances the lawyers are Greeks concerned with local laws – the prefects appear to be entirely dependent on them for knowledge of what these laws prescribe – and in the last the issue is elementary."

⁷²⁹ For example, BGU II 388 (= M. Chr. 91) (late second or early third century C.E.). See n. 423 for further discussion.

⁷³⁰ For an overview of the use of *tabulae* and other documents in Roman courts, see Meyer (2004: 216-249).

⁷³¹ Pliny, *Epistulae* X. 65: "I have heard the orders of your predecessors read in court, but was unable to find either a particular case or a general rule which could apply to Bithynia" (*in qua ego auditis constitutionibus principum, quia nihil inveniebam aut proprium aut universale, quod ad Bithynos referretur*). Trajan, in turn, claims to have examined the archives in Rome on the subject (X. 66). Pliny also expressed concern that the documents in question are badly copied and might be forgeries; this seems to reinforce the idea that governors placed great store in documents, to the extent that Pliny wished to check their authenticity. See also *Epistulae* X. 72 for another case in which Pliny seems to have consulted archives and, indeed, Trajan requests a copy of a decree under discussion (X. 73).

of these are included in Pliny's letter to Trajan. All this amounts to a large amount of documentation supplied both by the prosecution and by Archippus in order to support his case.⁷³² While such paperwork is not always included in Pliny's letters to Trajan, this presentation of supporting paperwork by the litigants is not unusual. And whilst in this instance Pliny referred the matter, Trajan, in his response, seems to have based his decision on an interpretation of the documents supplied. It therefore appears that such documentation could be extremely useful to a Roman official in making decisions, even to the ultimate judge – the emperor himself.

This is supported by the papyrological evidence. Both Herbert Jolowicz and Ranon Katzoff have made compelling cases for the importance of precedents in the Egyptian papyri, which the latter observes are usually cited as part of a “law and application” pattern.⁷³³ The manner in which these precedents were cited often amounts to the inclusion of records of previous decisions, petitions or even the opinions of νομικοί. The Dionysia papyrus is, once again, a lovely example of this, where, as discussed above, Dionysia is careful to collect previous decisions that support her case and include these in her petition. Although we do not know how her own case turned out, we can make certain inferences from when the original decision of the prefect T. Flavius Titianus was cited in the subsequent case heard by Paconius Felix in 134 C.E. This was brought forth by the advocates for Heron (the husband), when his wife's father was trying to invoke the Egyptian law and remove his daughter from her husband. Felix, upon hearing the law, decides in Heron's favour and explicitly states that this is in accordance with the decision of Titianus.⁷³⁴ This means that

⁷³² Pliny, *Epistulae* X. 58. Trajan's response, *Epistulae* X. 60, is in favour of Archippus.

⁷³³ Jolowicz (1937) and Katzoff (1972). See also Anagnostou-Canas (2004) and Metzger (2004: *passim* but especially 250-260) for an overview of previous scholarship.

⁷³⁴ P. Oxy. II 237, col. vii, l. 37.

the documentation brought forth by Heron's advocates had some effect on how the judgement was made. Such documentation did not have to be limited to past decisions: it could, for example, include the opinions of νομικοί. The point, however, is that judges seem to have used, and even heavily relied upon, the information presented to them in making their decisions.⁷³⁵

This information could, however, be conflicting. P. Mich. Inv. No. 148, another papyrus from Egypt, dated to the late second or early third century, includes on the *verso* a series of three ὑπομνηματισμοί which relate to the purchase-rights of partners when a piece of jointly-held property was sold.⁷³⁶ These appear to cite conflicting rules: we have statements to the effect that the seller must grant the first right of refusal to partners; that he is allowed to sell to whomever he so wishes; and finally that he must sell to partners. The most interesting pieces of evidence from this papyrus, however, concern how judges should deal with such conflicting precedents. In one of the ὑπομνηματισμοί, both the advocate for the plaintiff and the judge himself attach great importance to a recent decision made by a higher official. As Herbert Youtie has observed, "There [is] thus evidence that a recent precedent set by a high official might be greatly welcomed, especially when earlier

⁷³⁵ Unfortunately, as in the case of Dionysia, we do not often have a record of these decisions or, when we do, the judgement alone is recorded without any reasons for it, which judges were by no means obliged to provide. This limits our ability to assess how they interpreted such documents. For example, in P. Ryl. II 76 (late second century) an offer is made to read out precedents, yet no decision on the case is recorded; thus, we can say little about the effect of such citations. We know a little more for Sel. Pap. II 260 (173 C.E. (?)), in which copies of prior decisions are included; this petition was indeed approved by the ἐπιστράτηγος but no reason for his decision was given. Similarly, the precedent that Apollonarian cited in P. Oxy. VI 899 (= W. Chr. 361) (200 C.E.) in order to gain an exemption from cultivating crown land seems to have had a favourable effect; we may infer this from the fact that the διοικητής, to whom the papyrus was addressed, agreed to pass it on to the acting στρατηγός rather than dismissing it outright (cf. Katzoff's (1972: 268-269) discussion of this papyrus). Thus, though our information is limited, documents do seem to have had an impact on certain judges.

⁷³⁶ Youtie (1977: 126) is clear on the nature of these records: "These documents were of course intended to assist a judge in arriving at a decision favourable to an advocate's clients; they are offered as precedents supporting the desired judgement."

judgements, as could be expected, were not uniform.”⁷³⁷ Furthermore, in the final ὑπομνηματισμός, we find specific guidelines for dealing with such conflicting precedents. These were requested by Apollonius from the prefect Mamertinus (133-137 C.E.). Apollonius was advised to follow the majority of the precedents.⁷³⁸ This seems, indeed, a sensible course that may even have been something of a default for judges without similar instructions from a superior. The point remains, then, that presenting relevant information – and apparently as much of it as possible – was vital in swaying a judge one way or another.

The time-pressures that governors faced offer further support for this hypothesis. P. Oxy. XVII 2131, a petition from an Oxyrhynchite that was submitted at an assize session in 207 C.E., has the file number 1009, suggesting a huge number of cases. Another papyrus from 209 C.E. records that a prefect in the Arsinoite nome received 1804 petitions in a three day period.⁷³⁹ Naphtali Lewis calculated that, based upon a ten hour working day, this means that the petitions were handed in “at a rate of better than one a minute for the entire ten-hour period.”⁷⁴⁰ His officials, of course, would have handled the majority of these on the day, referring to him only those which were particularly unusual or important, though he and his staff had to answer them subsequently. This still probably leaves an immense workload and we may wonder how this translated in a newer, perhaps less demanding, but certainly less well-staffed province like Roman Arabia. Faced with this sheer volume of work, it is doubtful how much careful consideration each case was really given. Governors, especially those with some legal experience, may have relied on their own knowledge,

⁷³⁷ Youtie (1977: 126).

⁷³⁸ Youtie (1977: 127) points out, however, that an imperial edict trumped all.

⁷³⁹ P. Yale I 61, l. 7.

⁷⁴⁰ Lewis (1983: 190).

however limited, to decide cases quickly and therefore made mistakes – both from the point of view of the litigants, the νομικοί who knew the law better, and indeed from our own perspective in light of the codified bodies of Roman law we now possess. Additionally, I would argue that this time-pressure makes it even more likely that the officials relied on information provided to them by eager petitioners and litigants in order to make a decision quickly – so precedents and other helpful documents were very important in influencing this decision-making process.⁷⁴¹

This in turn also makes it probable that litigants would try to take into account the Romans' perceived preferences when drawing up their documents – presentation was important. Even those contracts which provincials did not originally intend to come before his court might be drawn up with this possibility at the back of their minds. They might need to be cited in future cases. As such, a Greek or Romanised document would be more immediately comprehensible to the governor and his staff than one written in an indigenous language and would probably speed up the potentially long court process. Given the importance of documentation in court, it made sense to start to factor their preferences into any documents in case they ever ended up being instrumental in a complaint.

⁷⁴¹ Jolowicz (1937: 14) reached a similar conclusion: parties had to produce “authority” because their judges were not professional lawyers. Ando (2000: 380) argues from the evidence of court proceedings and personal archives in Egypt that, “Individuals kept such documents because they had faith in the rationality of the Roman administration. They believed that it would abide by its established rules, whether they liked those rules or not.” I would suggest that this belief was coupled with a fear of the result had litigants failed to produce such supporting paperwork; doing so was an attempt to bind and control the Roman officials. As observed above, there was, however, no guarantee that the Roman official in question would indeed abide by the rules – this might be a probability but not a certainty. Furthermore, it may be that while such a strong faith in Roman rationality existed in an older province such as Egypt, it was yet to be so firmly established in the more recently annexed Roman Arabia.

General observations

A few points about how governors went about deciding cases emerge from this overview. First, if petitioners or litigants made an appeal to local custom or law, then judges would often try to find out about it and take this into account in making a decision. The *Digest* passage suggests that, in the absence of statute, they might even do so without an explicit reference to local tradition. This was not, however, a principle that was uniformly applied and governors could, if they wished, override local law. Secondly, governors and their delegates were certainly not experts in indigenous law and their knowledge of Roman law presumably varied. This means that they could make mistakes, from our point of view at least, when judged against the codified bodies of Roman law.

The above points, especially when considered alongside the potentially huge workload, mean that Roman officials probably relied heavily on the information provided to them by advisors and by the litigants themselves. It was therefore clearly in the interests of provincials to bear in mind Roman preferences when drawing up their legal documents in case they ended up before the governor's eyes. He could still, however, decide to rule against the precedents or traditions cited by petitioners – this is a crucial point to remember. There was a large amount of flexibility in the decision-making process and this, of course, led to uncertainty about how a judge would rule in a particular case. For litigants considering whether it was worth pursuing a complaint, this meant predicting an outcome was made rather tricky.

The uncertainty, however, opened up space for negotiation in a courtroom situation. In Ari Bryen's words: "When no one is precisely sure what is happening, a space is opened up in

which provincial populations can assert their own understandings of the system itself, and how it should work.”⁷⁴² The parties themselves, as we have seen in the two archives, did not have a thoroughgoing knowledge of law. The governor likewise had his own pockets of knowledge and ignorance. He would therefore assess the competing claims and understandings of the litigants as and when he was confronted by them in light of his own knowledge (or lack thereof), advice and interpretations.

Concluding remarks

Roman officials who exercised jurisdiction in the provinces were unlikely to be legal experts. Even if they had experience in Roman law, this did not make them skilled or knowledgeable in that of the province in which they operated. They relied on the documentation presented to them, the advice of others and their own cultural preconceptions in order to judge cases. This was done almost (though not entirely) on an *ad hoc* basis. Sometimes they might take into account local law or circumstance, sometimes they would disregard it. This made the courtroom a place of uncertainty and meant that litigants, even with legal advice, would have a hard time predicting the outcome of their cases.

I am suggesting that this atmosphere of uncertainty, coupled with the cost and inconvenience of the Roman system, explains the apparent effect of the assizes on the way cases progressed in Roman Arabia. In this area of the empire, Babatha and her opponents appear to pursue their own discussions while they simultaneously make use of the Roman system. They deploy the threat of the governor’s court in negotiations, with a view to

⁷⁴² Bryen (2012: 801-802).

intimidating the other party into submission. This was supposed to be effective because, even if the other party believed they were in the right, they would not necessarily obtain a favourable judgement from the unpredictable Roman judge. Of course, the same was true of both sides, but litigants still appear to have employed the Roman process as an intimidation tactic, presumably hoping that the other side would back down before they did or before the case actually reached the governor's court.

The archives do not offer us much in the way of evidence for how Roman officials reacted to the documents but do provide information on the effect of the presence of the Roman court system and its officials in Roman Arabia. This chapter has focused primarily on how this influenced the manner in which cases progressed, both inside and outside this system. While the provincials did have regular recourse to Roman justice, as has frequently been observed, their reasons for doing so may have been more complex than they first appear. They constantly had to allow for the possibility that cases could well end up being judged by a Roman magistrate, and therefore take into account their preferences in drawing up their documents, but this did not necessarily stop them trying to avoid this eventuality by negotiating at the same time. Their use of the Roman courts was therefore probably more nuanced than straightforward appeal in the hope of eventual judgement.

Conclusion

The two archives that have formed the basis of this thesis consist of legal and administrative documents. Yet at the heart of this study is the small community in which these papyri were produced – two Jewish families and the people, both Jewish and non-Jewish, with whom they came into contact. Thus, while the documents are legal, my examination of them has been rather more social and cultural, focussing upon the different groups and individuals whom we may detect in their composition. To reduce this to its most fundamental element: this thesis has been about the people behind the papyri.

What has emerged from this is that the law(s) of these documents is not necessarily a distinct, disembodied entity, and nor can it be analysed as such. How it was understood was contingent on a number of factors. These include the background and status of those individuals involved and that which they wished to project. This might vary depending upon with whom they were dealing and in what particular situation. Further factors were the attitude of litigants and their advisors to the court they chose to approach and to their ruling power – which were not necessarily synonymous. Above all, the skills and knowledge of all involved, from the scribes up to and including the Roman officials, were key to the way in which law was understood and made to function. This, indeed, makes the operation of law within this area not just localized and socially-situated but highly personal. Different perceptions and understandings on the part of all involved may have clashed and had to be adjusted. A Roman official might have interpreted a document in a different way from that in which a litigant intended; another official might even have come to a different conclusion based on his own background, knowledge, advice and

understanding. This means that in seeking to establish the ‘law of the documents’ we must narrow our field of vision: the law from whose perspective? And how does this fit with others’ understanding?

Beyond this, we might perhaps call into question how concerned litigants in Roman Arabia really were with spheres or systems of law at all. This is not to say that they had no conception of law as a set of rules – it has become apparent throughout that this was not the case. Rather, we should carefully consider whether this was really their primary concern, especially in their litigation. Surely when Babatha demanded more maintenance for her son or fought over Judah’s property her overriding concern was to win and win effectively, with the assurance that the terms of her victory would be enforced upon her opponents.⁷⁴³ So long as she achieved her goals, did it really matter all that much to her under which legal framework this came to pass?

Yet just because exact legal frameworks may not have been at the forefront of Babatha’s mind does not mean that this should not matter to us. How people drew upon traditions, customs and law has, indeed, been of the utmost importance throughout this thesis. And the point has not been to undermine the previous work on the documents that has sought to establish the diversity of these traditions, but rather to build upon it and use it in considering how law functioned on a practical level within this community. Fundamentally, I have sought to consider how so many and so diverse traditions could come to be encapsulated within these archives.

⁷⁴³ Cf. Humfress (forthcoming: 19) for a similar interpretation of the conflict documented in the Dionysia papyrus.

Indeed, these archives are something of a boon to us for such a perception-based, individual-orientated study of the operation of law in a new Roman province. Here, I have attempted to give a impression of what life in such a newly established province may have looked like and how law functioned in this small community within the empire. The specificity of this inquiry should not be under-emphasised – this is a small study of a particular community and of course cannot be taken as representative of every village in every province from Roman Britain to Roman Egypt. But equally its wider relevance should not be overlooked. There is no reason to think that Babatha, Salome Komaise and their fellows were especially unusual. Their legal lives can serve as a comparison for elsewhere and the experience of their community can be added to the increasingly nuanced picture that we have of the process of ‘provincialization’ and the operation of law within the Roman Empire.

Furthermore, we should not overlook the fact that these are two Jewish families. Indeed, to a certain extent, it can be easy to do so. Babatha’s *ketubba*, a few Jewish Aramaic documents, the nomenclature of many of the principals and Jesus’ designation as a Jew are all obvious in their import, but otherwise the Jewish nature of this community is not always immediately evident in the documents. This makes them no less Jewish,⁷⁴⁴ and in fact means that the archives provide a window into a further aspect of the ancient world: the lives of Jews, on the border with Judaea, in the inter-revolt period. Furthermore, these were Jews who would be caught up, in one way or another, in the Bar Kokhba revolt. Yet neither this revolt nor that in the diaspora (115-117 C.E.) are evident in the archives, no portents of doom or even discrimination loom. Good relations between Jews and non-Jews seem to

⁷⁴⁴ Nor are they Hellenized Jews: see comments by Cotton (1993a: 101) and (1997c: 267). See also Cotton (1998b: 172): these Jews did not constitute a “fringe group” and were “representative of Jewish society as a whole” in this period.

be in evidence, both with respect to the non-Jews in the local community and to the Roman administration. As far as we can tell, these two families seem fully active in the life of the province and take full advantage of the range of legal options open to them, whether from enthusiasm, necessity or a combination of the two.

To conclude, then: within the limits of the scope of this thesis also lie its strengths. Such a small-scale study is, of course, restricted in how representative it can be. But it does also allow for a different understanding of the function of law in a community – what we have here is an opportunity to write a history that emphasises attitudes and approaches to the law. In undertaking this task, I have laid out a web of perceptions and nuances which compete and combine to produce a picture of the operation of law in this community which is extremely nuanced and, at base, thoroughly pragmatic. It is this approach to law that may perhaps be useful in thinking about the dynamics that we may find elsewhere within the Roman Empire.

Texts and Translations

A list of the editions of all texts and translations that I have referenced is given below. Where comments or analysis in these editions are also cited in the thesis, the entry is repeated in the bibliography.

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