I. THE ARCHIVES

The finds

The Babatha find

In the early sixties of the twentieth century, an expedition, organized by the Israel Exploration Society and led by Yigael Yadin, explored a cave north of a wadi called Nachal Chever, situated on the western shore of the Dead Sea. In this three-chambered cave, skeletons and artefacts, and letters sent by Bar Kokhba, the leader of the famous Jewish revolt of the second century CE, were discovered. The second year of the expedition brought to light another extraordinary find. I quote from Yadin’s report:

‘In one of the water skins a large collection of balls of flax thread and a well packed parcel were found. The outer wrapping of the parcel consisted of a sack carefully fastened with a twisted rope; inside there was a leather case with many papyri packed tightly together. When the parcel was opened, it was found to contain the archive of Babatha the daughter of Simeon.’

An archive is a set of documents, belonging to one family and usually named after one person, who either features in the majority of the documents or to whom most other persons mentioned are somehow related. In our case this is Babatha, the daughter of Simeon. Because the papyri were found in the original wrapping in which they were hidden, it can be assumed the archive is complete. It contains thirty-five documents, covering some thirty years (from 97-132 CE). All the documents record legal acts of various types, like sale, loan, deposit, gift and marriage contract. That these documents were of great importance for the parties concerned is evident from


See also Broshi about Babatha’s flight to the cave where the documents were found (discussing when and why; Broshi, M., Agriculture and Economy in Roman Palestine: Seven Notes on the Babatha Archive, *IEJ* 42, 3-4 (1992), 230-231).

2 This is unusual for archives, as can be seen in the example of the Salome Komaise archive, to be discussed below. Because this archive was not discovered during organized excavations its documents have become scattered, and it is still uncertain how many documents the archive originally contained. Until now six documents have been published as ‘the archive of Salome Komaise’ (see nt. 28 below), while another five or six documents are thought to have been part of this archive too. The majority of those is still unpublished (see nt. 30 below). Salome Komaise’s marriage contract (SK 65, to be discussed in detail below) was found in the same cave where Babatha’s archive was found, and was published in the edition of the Greek papyri of the Babatha archive (see nt. 4 below), as P. Yadin 37, although it was clear that it was not part of the Babatha archive, but belonged to another woman.

I note that one can of course never be completely sure that an archive is complete, nor is it always clear why certain documents that could be expected to be present are lacking. This applies to, for example, documents connected with the several law suits Babatha engaged in (see Chapter 4 and 5 below).

3 The term legal act is often used in different meanings, because it can refer to a complete transaction or to various required actions within a complete transaction. For example in a sale one can say that the sale is a legal act, but also that the offer and the acceptance as part of the negotiation process towards the sale are legal acts (since they are actions aimed at achieving a result with a legal consequence). To refer to those actions, though, it is better to use the term judicial act. I will use the term legal act solely to refer to complete legal transactions, like sale, gift etc.
the fact that they were carefully stacked together and wrapped for protection. They were probably hidden in the cave when the persons concerned fled the violence of the Bar Kokhba revolt. It is assumed that Babatha and her family died in this revolt, and Yadin even believed that one of the skeletons in the cave must have been Babatha’s; ‘an assumption which, while likely enough, can of course, in the nature of the case, not be proved.’4 Were that the case, then Babatha must have hidden in the cave and perished in an attempt to escape approaching Roman soldiers. Assuming, however, that she did not hide in the cave herself, but merely hid her documents there for safekeeping, she probably meant to retrieve the documents ‘at a later, happier time. She obviously did not live to see that happier time, and her precious papers lay for more than 1,800 years just where she had hidden them so carefully.’5

Babatha and her family
The 35 papyri of the Babatha archive were labeled P. Yadin 1-35.6 A number of them were found to be written in Aramaic; a greater number, mainly of the later papyri, were in Greek.7 Of these Greek papyri, P. Yadin 31-35 present documents in such a fragmentary state that no real sense can be made of their contents. Sometimes a name or a date is legible; a few words that seem to refer to business or to a person, but not much can be said as to their contents or the legal act at issue.8 Nevertheless, on reading the more or less complete documents, a clear picture of Babatha and her family emerges.9 Babatha, daughter of Simeon the son of Menachem, was first married to Jesus son of Jesus, and their son was named Jesus as well.10 After the death of her husband,
Babatha had a dispute with the guardians over the child, which is documented in several of the documents. It appears that Babatha disagreed with the amount of maintenance money the guardians paid her for raising the child.11 In one of the documents connected with this dispute, the child is specifically described as ‘a Jew,’12 which supports the inference already drawn from the names found in the documents that the archive belonged to a Jewish family.

Babatha eventually remarried with Judah, son of Eleazar Khthousion; their marriage contract is recorded in one of the documents.13 Judah also acted as her guardian when Babatha made a land declaration: a declaration of the property she owned for the Roman census of 127 CE.14 Judah had been married before and had one daughter from that marriage, Shelamzion.15 This Shelamzion appears in several documents, recording her marriage to a Judah Cimber, a gift to her by her father and the settlement of a dispute about a gift with her father’s heirs.16 In this latter instance it becomes clear that Judah had died. His death seems to have caused a lot of legal complications as not only Shelamzion was embroiled in a dispute about Judah’s inheritance, but Babatha too. Two documents indicate that Babatha sold dates from orchards belonging to her deceased husband, basing herself on claims she had to his

of spelling. Babatha is, for instance, sometimes called Babtha. This is related to the lack of vowels in Aramaic script, as the name is there written as b-b-th-’ the last sign designating an aleph, a consonant used to display certain kinds of vowel use, like an initial vowel in a word, or, as it is used here, a final a. Names like Jesus and Judah are rendered differently in Greek or Aramaic (Jesus versus Yeshua, Judah versus Yehuda’). Lewis’ edition obviously prefers the Greek versions of the names (or rather their renderings in English) which is not odd considering the nature of the documents in that edition. The editors of the Aramaic documents from the archive, on the contrary, use the names in their rendering closest to the original Aramaic, which even includes the use of ‘ and ‘ to express the presence of aleph and ayin in the names. In discussing the different papyri I will follow the convention of either edition, but for convenience’s sake I will always render Babatha as such (thus ignoring the final aleph, which should be rendered with an ‘).

11 P. Yadin 12-15 present us with the main documents pertaining to this conflict. P. Yadin 12 is the appointment of the guardians, P. Yadin 13 a letter of Babatha to the provincial governor complaining about the guardians’ behavior, P. Yadin 14 is a summons for a court case and P. Yadin 15 is a proposed solution to the dispute, probably related to the court case. Furthermore, P. Yadin 27 and 28-30 are related to the dispute. P. Yadin 27 gives a receipt for maintenance money dated some seven years after the conflict. It appears that Babatha did not receive more maintenance money than she had done before. This could indicate that she lost her case against the guardians. P. Yadin 28-30 present us with the Greek translation of a Roman formula that might have been used in the case. I will discuss these documents in detail below, see Chapter 5.

12 P. Yadin 12:7.

13 See P. Yadin 10, which is in Aramaic and presents us with a text of a marriage contract in truly Jewish style. The document contains all the elements required for a marriage contract in later normative Jewish law. I refer to my treatment of P. Yadin 10 below, 216ff.

14 Judah also acts as Babatha’s guardian in P. Yadin 14 and 15; we do not know for sure whether the couple was married yet at that time. See Lewis, 58, who assumes they were.

I do not discuss P. Yadin 16, because a census declaration is not the record of a legal act in the strict sense of the term (it is a copy of an official declaration, with its own legal implications). For more on a census and the various related issues I refer to Lewis’ treatment of P. Yadin 16, 65ff. Also see Cotton in Cotton/Yardeni on SK61 and 62, two census declarations comparable to P. Yadin 16 (174ff, see especially 175).

15 Her name ‘appears in two Greek versions: (1) Σελαµψιωτή ... and (2) Σελαµψιουζ ...’ (Lewis, 20). Lewis apparently does not follow the Greek renderings of the name in this case, but the rendering of the Aramaic Shelamzion. I follow his example.

16 P. Yadin 18, 19 and 20 respectively. It is remarkable that P. Yadin 18, the ‘marriage contract,’ is in Greek and its contents does not resemble P. Yadin 10 at all. I will come back to the meaning of this difference in my discussion of P. Yadin 18 below, 228ff.
estate. Three documents record legal procedures in the advent of a law suit between Babatha and the guardian of Judah’s minor nephews, over property this guardian claims belongs to the nephews. Another document records a dispute between Babatha and Judah’s first wife Miryam (probably the mother of his daughter Shelamzion), concerning parts of Judah’s property Miryam is holding. Whether that dispute implies Judah had divorced Miryam or that he had entered into a bigamous match with Babatha is not clear.

While this information about Babatha’s own acts, her marriage to her second husband Judah and the consequences of his death can be gleaned from the archive’s Greek documents, the Aramaic ones concern Babatha’s family and the family of her first husband, Jesus. There we find a sale of an orchard to Babatha’s father, who also made a gift to Babatha’s mother. Several other documents record business matters connected with Jesus’ family. There are, for example, arrangements between Jesus and his uncle concerning a business this uncle and Jesus’ father owned. After Jesus’ father died, a share in the business belonged to the heir, but the money due to the heir could hardly be paid without harming the business. Therefore, it was decided that the uncle would owe the heir’s share, using a deposit construction. Other documents concern a guarantor’s agreement, acknowledgements of receipt of purchased objects and a tenancy agreement.

The relatively large number of documents in the archive dealing with the affairs of a single family, yet covering a range of topics, enables us to get a good impression of many aspects of life at the time concerned. The fact that the documents were written in a period of change – the Nabatean Kingdom became part of the Roman province of Arabia in 106 CE – raises expectations for improving our understanding of the effects of provincialization and in particular the possible influence of Roman law on legal dealings in a province. As in most of the documents women are the main actors, important information can be gathered about the position of women at the time and possible changes in this position under Roman rule. I refer here, for example, to the well known fact that in Roman law women needed a guardian to make legally valid acts, while this procedure was not known in oriental law. The archive presents us with documents involving female parties from before and after the conquest, enabling an

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17 P. Yadin 21-22; Babatha bases her right to sell crops from property that is not hers on ‘dowry and a debt.’ See detailed discussion below, 123 and 221-222.
19 See P. Yadin 26; detailed discussion below, 224-226.
20 Lewis took P. Yadin 26 to be ‘an unprecedented documentary source to the extant evidence on the subject of polygamy,’ adding further on that ‘polygamy … was indulged in as a matter of course considerably farther down the social scale than has hitherto been recognized’ (24). I am not sure that the evidence is as conclusive and univocal as Lewis concludes. Besides that, a single instance of bigamy does not justify the assumption that it was ‘indulged in as a matter of course.’ I will discuss the possible explanations for Miryam’s claims in P. Yadin 26 in my treatment of that papyrus below, 123-125.
21 P. Yadin 3 (detailed discussion on 47-49 below) and 7 (see 15, 19 and 90, and especially nts. 47, 67 and 117) respectively.
22 P. Yadin 5; this document is in Greek. Detailed discussion below, 119ff.
23 P. Yadin 4; the document is probably connected with P. Yadin 3, sale of an orchard to Babatha’s father.
24 P. Yadin 8 and 9. These documents are styled differently in their edition, see discussion below, 56-61.
25 P. Yadin 6. This document does not concern Babatha’s family or that of her first husband Jesus, but records a tenancy agreement between her second husband Judah, the son of Eleazar Khthousion and one Jochanan, the son of Meshullam, see discussion below, 50-56.
assessment of a possible direct influence of the Roman demand for guardianship of women on documents drawn up in a province.

The Salome Komaise archive

Although the Babatha archive on its own presents perfect material for a study of the relationship between local and Roman law in the time and place concerned, the information found there can actually be compared to another archive centering on a woman, dating to the same time and found in the same region. One of its documents was found in the same cave as where the Babatha archive was discovered. Lewis, who incorporated the fragments of this papyrus text in his edition of the Greek part of the Babatha archive as P. Yadin 37, already acknowledged that it was probably not a part of this archive.\(^\text{26}\) The fragments could be composed to yield a fairly legible and sensible text, constituting a document related to marriage. The name of the woman involved was restored as Salome Komais.\(^\text{27}\) Later, various other documents were discovered (in different places) that mentioned this same woman. Her name was then restored as Salome Komaise.\(^\text{28}\) Consequently, another archive has been constituted that could be called the archive of Salome Komaise.\(^\text{29}\) Although it is not clear how many documents the archive originally contained, at least seven documents have been identified as belonging to it.\(^\text{30}\) Since the documents again concern legal acts and in most cases acts that are comparable to the ones in the Babatha archive, a fruitful comparison can be made between the two. The Salome Komaise archive will accordingly be used to provide additional information in support of the findings in the Babatha archive.\(^\text{31}\)

The Salome Komaise archive consists of seven papyri and is therefore much smaller than the Babatha archive.\(^\text{32}\) The time period it spans is (almost as a consequence) shorter: from January 125 to August 131. Six of the seven papyri are in Greek, only one is in Aramaic. Contrary to what was found in the Babatha archive, the Aramaic papyrus of the Salome Komaise archive comes last.\(^\text{33}\) It is a tax receipt that closely

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\(^\text{26}\) See Lewis, 130.

\(^\text{27}\) See Lewis, 130 and 131, lines 4,13,15 with explanatory notes on 133.


\(^\text{29}\) Not all documents refer to her, some are thought to have belonged to her first husband; see Cotton in Cotton/Yardeni, 160.

\(^\text{30}\) They have been published together by Cotton/Yardeni (see nt. 28 above). Other documents identified as probably belonging to this archive are P. Chever 1 (= Papyrus Starcky; see Yardeni, A., *The Decipherment and Restoration of Legal Texts from the Judaean Desert: A Reexamination of Papyrus Starcky* (P. Yadin 36), SCI 20 (2001), 121-137) and P. Chever 2 (see Eshel, H., *Another Document from the Archive of Salome Komaise Daughter of Levi*, SCI 21 (2002), 169-171; also see nt. 147 below).

\(^\text{31}\) A good introduction, giving all the basic information about the archive, its discovery etc. can be found in the edition of Cotton and Yardeni referred to above. I will just give a few relevant details here.

\(^\text{32}\) It should be noted that a number of unpublished Nabatean papyri are thought to have been part of the Salome Komaise archive as well; they are presently in the Israel Museum.

\(^\text{33}\) The papyri were designated by reference to the Seiyal collection (XHev/Se) because they were initially not related to Nachal Chever. I will use the numbering of the edition (Cotton/Yardeni, nt. 28 above): 12, the Aramaic papyrus, and 60-65, the six Greek papyri (the Aramaic papyrus is chronologically later than the Greek ones, but has a lower number, since the edition gives the Aramaic papyri first). For comments on the way the documents are designated in DJD volumes like Cotton/Yardeni, see Bagnall’s book review of the volume in BASP 36 (1999), 130-131.
resembles a Greek receipt from the same archive.\textsuperscript{34} The other papyri include two (parts of) land declarations, a dispute settlement, a gift and the marriage contract mentioned above.\textsuperscript{35} As this enumeration immediately reveals, the same acts are represented as in the Babatha archive. In fact, the land declaration fragments in the Salome Komaise archive could only be designated as such by comparison with the (more or less complete) land declaration in the Babatha archive.\textsuperscript{36} The information provided by the Salome Komaise archive is important, since comparison shows that features found in the Babatha archive do not stand alone.\textsuperscript{37} On the other hand divergences appear that could denote that the practices found in the Babatha archive were not the only ones available. The ‘marriage contract’ in the Salome Komaise archive, for instance, may provide an instance of unwritten marriage, since the bride and groom are said to continue their lives together.\textsuperscript{38} This clearly contrasts with what is found in the Babatha archive in P. Yadin 10 and 18.\textsuperscript{39} The implications of resemblances and divergences will be discussed in detail below.\textsuperscript{40}

\textit{Salome Komaise and her family}

Like the documents in the Babatha archive, the papyri from the Salome Komaise archive provide a picture of her family. Both Salome’s father and brother died during the period the archive covers.\textsuperscript{41} Salome settled a dispute with her mother concerning the men’s inheritance.\textsuperscript{42} This mother made a gift to Salome in another document. The gift could be related to either a marriage of the mother or of the daughter.\textsuperscript{43} The

\textsuperscript{34} Compare 12 to 60. The resemblances are listed by Cotton in Cotton/Yardeni, 166-167. See also my treatment (in small print) below, 61-62.

\textsuperscript{35} SK61-62, 63, 64 and 65 respectively.

\textsuperscript{36} P. Yadin 16; on its importance for our understanding of SK61 and 62, see Cotton in Cotton/Yardeni, 175, 181-182. As land declarations do not make up legal acts in the sense of the other documents in the archives, I will not treat them within the scope of this thesis (see nt. 93 below).

\textsuperscript{37} The oath by the tuche of the emperor, for example, found in P. Yadin 16, can be found in 61 as well.

\textsuperscript{38} It has also been interpreted as an instance of premarital cohabitation. I will come back to this in detail below, see 249ff.

\textsuperscript{39} P. Yadin 10 is a \textit{ketubba}, a Jewish marriage contract, drawn up at the start of marriage and in later normative Jewish law even considered constitutive for the validity of the marriage. P. Yadin 18, although not a \textit{ketubba}, explicitly styles the bride as a virgin, suggesting the document was drawn up at the start of marriage too. Further evidence for this assumption could be found in the gift the father of the bride makes to his daughter within two weeks after the drawing up of P. Yadin 18. Gifts to daughters were usually related to marriage, as I will discuss in detail in Chapter 4 below. However, P. Yadin 18 and SK65 could be connected as both representing contracts referring to dowry rather than marriage contracts in the sense of a Jewish \textit{ketubba}. Consequently, the mention of continuing a life together need not imply that the couple had not been (validly) married before. See detailed discussion of marriage contracts in Chapter 6 below.

\textsuperscript{40} See for the interpretation of SK63 for the law of succession as it appears from the Babatha archive 131ff. and for the interpretation of SK65 in connection with the evidence of P. Yadin 10 and 18 249ff. below.

\textsuperscript{41} See number 63, where their deaths are mentioned. That the brother had recently died is clear from number 61, which is most probably his land declaration. The father does not act in either of the papyri, therefore his death could have preceded that of the son by some time, and it could even have occurred before the date of the first papyrus in the archive. However, it could be argued on the basis of number 63 that it is likelier that the son had died first. That would mean that the father died in the period between the drawing up of 61 and 63, his death following that of his son. See the discussion of number 63 below, 131ff.

\textsuperscript{42} SK63. Its implications for understanding the law of succession applicable at the time is not completely clear; see 131ff. below.

\textsuperscript{43} SK64. Gifts were often related with marriage in either of the following ways: a parent who remarried made a gift to a daughter from a previous marriage probably with respect to the possible birth of an heir
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marriage contract mentioned above concerned Salome’s marriage to her second husband. This means that her first husband also died.\textsuperscript{44}

Legal implications of the finds

Women’s archives

In a brief sketch of the Babatha find it is remarked that women’s archives differ substantially from those of men.\textsuperscript{45} Examples comparing the archives of Babatha and Salome Komaise to three archives from men found in Nachal Chever and Wadi Murabbaat show that men’s archives mostly contain documents pertaining to business (military and administrative correspondence, leases) and those of women more personal documents, like marriage contracts, renunciations of claims and deeds of gift. These documents are ‘more personal’ since they often reveal personal details about the woman’s life. A marriage contract obviously reveals that the woman concerned was married, but it can also tell us something about the wealth of the family.\textsuperscript{46} Similarly, a deed of gift can reveal the relationship between family members, as in P. Yadin 7, where Babatha’s father provides his wife with a gift including a lodging arrangement for their daughter Babatha in case she should be widowed. This latter arrangement shows that Babatha was married at the time. Her marriage contract to Judah the son of Eleazar is damaged in the lines that should provide the date, but comparison with the data from other papyri shows that she must have been married and widowed before she married Judah.\textsuperscript{47} It can thus be deduced that the guardianship procedures she was caught up in concern her son from her first marriage. From Judah on the other hand we learn that he had a daughter from a prior marriage.\textsuperscript{48} His first wife was still alive at his death and goes into a dispute with Babatha about property. Whether their dispute meant they were both married to Judah at the time of his death, or that the first marriage had ended in divorce, is not clear.

from the new marriage, or the gift was made when the daughter married, probably because marriage changed the position of daughters as possible heirs to their father’s estate (see Chapter 4 below).

\textsuperscript{44} It is assumed that this first husband was the Sammouos who features in an earlier document from the archive (number 60, possibly also in number 63; see Cotton in Cotton/Yardeni, 160-161, 166). It is precisely the fact that this document was found in Salome’s archive that suggests that the marriage was ended by death and not by divorce (see Cotton in Cotton/Yardeni, 162).


\textsuperscript{46} By way of the dowry provided by the father; see, for example, the dowry Judah gave his daughter Shelamzion upon her marriage (P. Yadin 18). Lewis remarks that papyrus ‘Shelamzion’s dowry … is an impressive sum … A dowry of that magnitude attests the substantial wealth of the bride’s family …’ (77). It is not clear whether we should interpret the total sum supplied by the father of the bride to be two hundred or five hundred denarii: interpretations on that point vary; see 244-245 below.

\textsuperscript{47} P. Yadin 7 is dated to 120; Babatha was then evidently married. She must have been widowed afterwards, because her son Jesus is said to be the son of Jesus, not of Judah. The dispute about the guardians over this boy dates to 124-125. One could assume Babatha had remarried by that time since Judah acts as her guardian in P. Yadin 14 (October 125). Therefore, P. Yadin 10 is usually dated somewhere between 122 and 125. See Lewis, 29 for a table of papyri of the Babatha archive with their respective dates.

\textsuperscript{48} See P. Yadin 18, where Judah gives his daughter in marriage to another Judah, nicknamed Cimber. This contract dates to 128, which excludes the possibility that Shelamzion was a daughter of Judah by Babatha. Her mother was most likely Miryam, mentioned in P. Yadin 26. In that papyrus Judah is styled the deceased husband of both women. Whether this meant he was married to both of them at the time of his decease, is unclear. If he had divorced Miryam, she could still refer to him as her deceased husband. I will discuss all possibilities of the relationship between Judah, Miryam and Babatha (and the women’s subsequent claims) in my treatment of P. Yadin 26, 123-125 below.
That women’s archives yield more personal information than men’s is due to the simple fact that documents on personal matters like marriage, gift within a family and so on, were usually drawn up in favor of women and were therefore kept in their archives. When we find a man’s archive, the possibility remains that he may have been married and may have provided gifts to his wife or daughter, but evidence for these facts will not be found in his archive. This means that both types of archive provide their own kind of information, men’s archives focusing on military and economic matters, women’s archives on family related matters.

While the documents were in all cases important – the very idea behind retaining a written document is of course in its value in later disputes or suits – it can be concluded that for a woman, documents had an added value related to their nature. Marriage contracts, deeds of gift and comparable documents ensured the women of rights they might have to claim many years after the event. The importance of the documents seems to have been on the women’s minds when they had their documents stored, because Yadin noted in his report that:

‘Some of the documents not found in batches were wrapped, each one separately, in sacking. These documents were of special interest to the women of the family and had been wrapped up in this way to enable them to have them for their personal keeping. … [7] is a deed of gift whereby Babatha’s father made over all of his property to her mother; [10] is the ketubbah of Babatha’s second marriage; and [18] is the marriage deed of Shelamzion [Babatha’s stepdaughter].’

Due to the personal character of the evidence in the documents, our knowledge of the position of women in the area at the time is greatly improved, as can be seen in overviews on these points, for example, in several entries in the Encyclopedia of the Dead Sea Scrolls. These publications draw heavily on the documents to provide essential information on property rights for women, their participation in business (for example in sales), marriage (remarriage, divorce and indications for polygamy), and guardianship (of their children or of themselves). This information can be understood as being of social-historical importance, shedding further light on the position of women in ancient society, but it also has legal implications. The way in which women are represented as capable or incapable of doing certain things might give an indication of the legal system or law applicable in the acts. Judicial documents in which one of the parties is a woman reveal more about the law behind the documents than documents do in which all parties are male. Therefore, archives like the Babatha and Salome Komaise archives are especially suited to study the legal system(s) or law(s) used in the documents. The fact that women held another legal position to men required further arrangements in the documents and exactly these arrangements can show what law was behind the documents. I refer to, for example, law of succession that, when succession is all male, required different arrangements to have women

49 Yadin, Expedition D, 236. Note that the numbering of the papyri is adjusted to fit Lewis’ edition; the papyri were first numbered differently by Yadin.

share in the family estate. Had the archives found not been women’s archives, much of the evidence to be used in a discussion of the legal system(s) found in the documents would not be available.

Continuity and change: obtemperare legibus nostris Traianus conpulit imperator?
The period the Babatha archive covers, from 97 to 132 CE, was a period of change. The area where the parties lived was first part of the Nabatean kingdom, after 106 CE part of the Roman province of Arabia. This raises the question of whether this change left its mark in the documents. At first glance the answer is immediately obvious as the language used changes from Aramaic to Greek. This is particularly interesting as the documents reveal that the parties concerned did not know Greek. A scribe wrote the documents for them and when party subscriptions were added, they were made in Aramaic. It is even explained in one of the documents that Babatha herself was illiterate, which means she did not even know how to write Aramaic. Therefore, the question can be raised as to why the change to Greek occurred, why people began to use Greek, a foreign language, for their documents. It seems logical to relate this to the Roman conquest: the Romans used Greek as the *lingua franca* in the eastern parts of their empire.

There are more features in the documents that point at a Roman influence: the use of consular dating (even in Aramaic documents from after the conquest), the reference to parts of the Roman administration (like the city council of Petra or the prefect who signed census declarations) and the use of typical Roman phrases like ‘the most blessed days of …’ The documents related to suits indicate that these were brought to the court of the Roman provincial governor. There are no indications that there were any other (local) courts. Jurisdiction seems to have passed exclusively to the Roman rulers, and the legal documents seem to function within a Roman administrative and judicial framework. Consequently, the archives seem to provide evidence that the fourth century historian Ammianus meant more than just an

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51 Such arrangements could be made by way of gift; see the chapter on law of succession below. If we assume that the documents indeed indicate that daughters could not have a right to their father’s estate based on the law of succession, this could exclude the applicability of Roman law, which provides for equal shares for sons and daughters (see nt. 415 below).
52 See, for example, P. Yadin 17, 18, 19 and so on.
53 See P. Yadin 15:35, where it is literally said that Babatha did not know letters. This obviously denotes that she could not write Greek or Aramaic.
54 See detailed discussion of language issue in Chapter 1 below.
56 In P. Yadin 12 and 16 respectively.
57 P. Yadin 15; see detailed discussion below, 188ff.
58 'The absence of any reference to Jewish courts or local officials who might have settled financial disputes between Jews is striking. Indeed, Jewish institutions are not mentioned anywhere in the Babatha archive.' (Isaac, B., The Babatha Archive: A Review Article, *IEJ* 1992 (42), 65). See also Cotton, H.M., *The languages of the Documents from the Judaean Desert*, *ZPE* 125 (1999), 230: ‘After 70 conditions prevailing in Judaea became similar to what conditions in Arabia had always been: there was no Jewish court which had the authority to enforce its decisions. In Arabia there had never been Jewish courts of law as the exclusive use of Nabataean in the regal period demonstrates.’ and later on (231): ‘It is a remarkable fact though that no court, Jewish or non-Jewish – apart from 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.’ See detailed discussion of the possible existence of local courts below, 35ff.
eloquent metaphor when he wrote: *obtemperare legibus nostris Traianus conpulit imperator.*

Yet other features of the documents point us in another direction. The majority of the documents from the archives consists of so-called double documents, documents in which the same text is written twice. The upper version was rolled up and sealed to make sure no changes could be made in the text, while the lower version was left open for reference. Consequently, the versions can also be designated as either inner or outer versions.

In some documents, the inner version is represented by just one line, while for the text itself reference is made to the outer version. This seems odd because the inner version served as the concealed, i.e. authentic, version. It appears that those cases concern documents that refer back to originals kept by the authorities: P. Yadin 12 is a copy of an appointment of guardianship and P. Yadin 16 a copy of a land declaration. Apparently the original document kept by the authorities served as proof in case of a dispute. Indeed in Ptolemaic Egypt, where it had become customary to deposit documents in archives, the practice of using double documents had fallen into desuetude. The only double documents found in Egypt after 30 CE come from Roman military circles and testify to ‘the continued use of the Roman *diploma* form by Roman citizens and military in all parts of the empire.’ Consequently, the appearance of double documents in the archives could be associated with a Roman influence. However, it is clear that the double document structure was already in use before the Roman conquest: Nabatean Aramaic documents like P. Starcky (= P. Yadin 36; of 58-67 CE) and P. Yadin 2 and 3 (of 97 CE) are double documents. The practice was continued in the Jewish Aramaic P. Yadin 7 (of 120 CE) and eventually also in the Greek documents. Consequently, the double document structure is a remnant of Nabatean scribal practice, testifying to continuity rather than change. Furthermore, the Greek documents contain Aramaic subscriptions, and even the Greek of the documents can be said to be influenced by the local language: there are a number of conspicuous Semitisms. Lewis observed that ‘the pervasiveness of the Semitisms comes as something of a surprise, since it is in such sharp contrast with the resistance to the intrusion of native elements manifested in the Greek papyri from

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59 Ammianus 14.8.13: see Bowersock, *Roman Arabia*, 79 (‘And perhaps the most striking feature of the evidence is the thoroughly Roman character of the law which is being applied in this frontier territory of Semitic and Hellenic traditions. The designation of guardians for the son of Babatha was made by the *boule* of Petra in the form of a *datio tutoris*, and one of Babatha’s documents provides two copies of a Greek text of the Roman formula of *actio tutelae*. The litigation of Babatha under Roman law, in Greek translation but in a Semitic environment, provides new and vivid support for what had once seemed a simple periphrasis for annexation in the text of Ammianus. Writing of the creation of the province of Arabia, that fourth-century historian who came from Syria-Antioch and should therefore have known, wrote *obtemperare legibus nostris Traianus conpulit imperator* and Nörn, *Prozessuales aus dem Babatha-Archiv*, 341 (‘Wir dürfen mit einer Äusserung des Ammianus Marcellinus schliessen, die wohl nur als Metapher gemeint war, aber auch wörtlich genommen werden kann: *hanc provinciam imposito nomino rectoreque attributo obtemperare legibus nostris Traianus conpulit imperator tumore saepe contusuo, cum glorioso Marte Medium urgeret et Parthos.’).

60 See Lewis, 6-10 (also on the question of which version was written first). Not all documents retain both versions: it seems that the inner version was more vulnerable because it was rolled up and consequently, is in some cases missing (for example in P. Yadin 10, see comments in Yadin, Y., Greenfield, J., Yardeni, A., Babatha’s *Ketubba*, *IEJ* 44,1-2 (1994), 75).

61 See Lewis, 9.

62 See Lewis, 8.

63 P. Starcky is actually the earliest Nabatean document from Nachal Chever we have. See Yardeni,*The Decipherment and Restoration of Legal Texts*, 126.

Hellenistic and Roman Egypt. Sometimes, one wonders whether the scribes writing in Greek did not work from an Aramaic original: indeed, for one of the documents, SK64, a deed of gift in very poor Greek, such an Aramaic ‘Urtext’ can easily be reconstructed. Consequently, the Greek deed resembles P. Yadin 7, an Aramaic deed of gift, to a great extent.

In other acts indigenous custom is clearly maintained: there is reference to ‘a pre-Roman coinage system’ and local measurements are used for land size, even in the context of a Roman administrative affair like the census registration. The Romans ‘evidently elected not to interfere.’

Where we can maintain that the coins or measurements used did not influence the substance of the legal act, the case of SK64 is more disturbing. When a deed of gift drawn up under Roman rule results in substantially the same thing as a deed of gift drawn up before Roman rule, this seems to indicate that the legal framework had not changed. Apparently the Romans ‘permitted local custom to prevail in private law.’ Consequently, ‘the documents, now that they are fully published, do not seem to bear out the claim based on them by Bowersock, *Roman Arabia*, 79, that ‘in the most literal sense Trajan’s annexation involved submission to the Roman legal system’; on the contrary it appears that a variety of legal systems continued in operation in the realm of private law.’

The question concerning law behind the documents: ‘Reichsrecht und Volksrecht’

If this is true and the documents testify both to continuity of legal practices and change caused by a need for adjustment to a Roman context, it then falls on us to consider what this meant from a legal point of view. If local law continued to play a part in the legal context of these documents, how should this part be understood?

In his classic study of 1891, Mitteis had already investigated the relationship between ‘Reichsrecht’ and ‘Volksrecht’ in the eastern provinces. Where scholars had previously assumed that in the Roman empire one legal system, that of the Romans, prevailed, Mitteis sought to prove that the law of the indigenous population, ‘das Volksrecht,’ continued playing an important part, in any case until the *Constitutio Antoniniana* effected Roman citizenship for all free inhabitants of the Empire. He concluded that despite the influence of Roman law and the fact that jurisdiction was completely in Roman hands, local custom and traditions were maintained in such areas as personal status, marriage and law of succession. The overall idea of Mitteis’ presentation is that even though people in the provinces went to a Roman court, cases

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65 Lewis, 13; also see Goodman, M., Babatha’s Story, *JRS* 81 (1991), 172.
66 See Cotton in Cotton/Yardeni, 207.
67 See Cotton, Survival, Adaptation and Extinction, 9, n. 41: ‘See DJD XXVII, p. 207 for my exercise in translating the Greek deed of gift back into Aramaic. I plundered for parallels P. Yadin 7, an Aramaic deed of gift executed by Babatha’s father in favour of her mother.’
68 See Goodman, Babatha’s Story, 173 (referring to the ‘blacks’ mentioned in P. Yadin 5 and the measurements used in P. Yadin 16).
69 Idem.
70 Idem.
71 Idem. I note that Goodman’s examples from which he derives this conclusion are not well chosen: P. Yadin 20-25 do not concern a case of two guardians for orphans (Julia Crispina is not a guardian but a supervisor) and the fact that in P. Yadin 26 two women claim to have been the wife of one deceased man need not imply the second marriage was bigamous. On other grounds, using other examples, however, I will support Goodman’s conclusion that ‘it appears that a variety of legal systems continued in operation in the realm of private law.’
in certain areas of law would be judged on the basis of indigenous law. Mitteis even believed that the indigenous laws influenced Roman law to a certain extent. Mitteis’ research could naturally not take into account the evidence found in the Babatha and Salome Komaise archives. Nevertheless, the documents from these archives provide the perfect material for an investigation into the relationship between Reichsrecht, Roman law, and Volksrecht, local law, in the newly founded province of Arabia. Although previous research into the Babatha archive sometimes touched upon matters of law\(^73\) and attempts at identification of the applicable law in these archives have been made for specific issues,\(^74\) as yet no study has been devoted to a full investigation of all documents from the Babatha and Salome Komaise archives with a specific view to determining the relationship between Roman and local law in the province of Arabia as it appears from these documents. The question of what law can be thought to apply to these documents is especially interesting since we are dealing with documents by Jews. This means that besides the supposed influence of Roman law, being the law of the new dominant power in the area, it could also be assumed that there was an ongoing, perhaps even a lasting influence of Jewish law, which was connected with the parties’ identity. Jewish law was codified in the Mishna by the end of the second century CE, that is, some seventy years after our documents were composed. Consequently, it can be assumed that part of the rules that were later laid down in the Mishna were already in force at the time of the papyri.\(^75\) Indeed in P. Yadin 10, the marriage contract for Babatha’s second marriage, the arrangements follow the requirements of the Mishna and even present us with a very early example of a ketubba, a Jewish marriage contract including the Mishnaic court stipulations.\(^76\) This very obvious example in the archive of adherence to what became normative Jewish law not much later, raises expectations about the applicability of Jewish law to other legal acts in the archive. Consequently, the archives provide a perfect opportunity to investigate the relationship between local

\(^73\) See for instance Lewis, 48: ‘The naming of two guardians was presumably dictated by local custom as the Greek and Roman practice was normally content with a single guardian …’ Lewis also frequently refers to a discussion of legal matters in a section V of his General Introduction, to appear in the second volume (with the Aramaic documents of the Babatha archive); ultimately, this section never appeared, see 27ff. below.


\(^75\) The Mishna is a codification of Jewish law, dated to the late second century CE. It consists of six books, or rather orders, which are all divided into tractates. I will come back to the Mishna in detail below, 22-24. For a wealth of general information on the Mishna, its contents, contributors and so on, see Jewish Encyclopedia, s.v. Mishna (also available on the Internet).

\(^76\) Before P. Yadin 10 and other comparable Aramaic documents from the Judaean Desert were found, the earliest example of a ketubba incorporating the Mishnaic clauses dated to 417 CE. See 216ff. below.
and Roman law in the province of Arabia, or to be more precise, to investigate this relationship as it appears from these documents by Jews.\textsuperscript{77} 

\textsuperscript{77} I will discuss the problem of what can be regarded as Roman and Jewish law at the time below, 22ff.