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Money Rules All – Financial Motives in the Babatha Archive

Abstract

The Babatha Archive is a collection of legal texts, procedural or personal, most of which are written in Greek and present a probe into everyday life of persons of Jewish descent living at the beginning of the second century CE in the province of Arabia. Studying the Archive is not only valuable for legal history, but it also casts light on the relationship between the Jewish population of the era and the Roman administration, which is important for the study of the Second Temple Judaism as well. In the article, we want to introduce those papyri of the Archive that are the result of the expression of the will of the parties involved, whether by contract or another legal act. For these reasons we study papyri P. Yadin 5 (*depositum*), 11 (*mutuum*), 17 (*depositum*), 18 (marriage contract), 19 (*donatio*), 20 (concession of rights), 21 and 22 (*emptio-venditio*). At times we refer to other papyri that address similar situations. We want to point out the financial motivation for drawing these documents and with it also the need for securing the validity and enforceability of the obligations included in the selected documents.

Keywords: Babatha Archive, *ius civile*, *stipulatio*, Arabia, Roman administration

Introduction

Although we often say that money is not all that important in life, unfortunately, this statement often becomes just a hopeful wish and we spend most of our time trying to accumulate enough finances to live at least a comfortable life. The situation in the ancient Roman Empire was no different and for most people even less fortunate than today, at least when it comes to the European region. The need to secure the well-being of one's family was and is a constant battle of the human race.

This motivation can also be found in the papyri of the Babatha Archive, a collection of texts found in the caves of the Judean Desert in 1960–61 by an archaeological expedition led by Yigael Yadin.[1] The Archive contains 35 documents, most of which are in the Greek language, due to political changes in the areas as a result of the transformation of the Nabatean Kingdom to the Roman province of Arabia in 106 CE. Most of the texts are administrative or litigation-related, but in our study we want to address those that were created as an expression of contractual will or relate to such. Although legal in character, these texts are deeply personal, as they touch on the very existence of Babatha and her family, showing us the most urgent matters is the life of a second-century woman.

The documents that we named "the legal acts of the Babatha Archive" are eight papyri from the Babatha Archive including contracts such as deposit, loan, purchase and sale, marriage contracts, a gift contract, and a concession of rights. The study of these contracts in this paper is the result of our research on these papyri in the past few years to investigate the legal status of foreigners in Roman law. We analysed them in the context of Roman law, but we also considered other legal systems in place, such as the Greek or Jewish legal tradition and the possible syncretism of various legal traditions. These documents were juxtaposed with the rules pertaining to contracts that were known from Roman law sources and relevant literature. We also compared them with one another, where we detected certain developments and similarities, especially relating to the stipulation clause, the use of the word *ὁμολογῶ* at the beginning, and the mention of *librarius* in some.[2]

However, in this paper we mostly wanted to introduce the economic motives behind these papyri, since, as we have already mentioned, they are not only witnesses to the legal tradition, but also to the everyday life of the parties involved.

1 Y. Yadin, *Expedition D – The Cave of the Letters*, "Israel Exploration Journal" 1962, Vol. 12, No. 3–4, pp. 227–257.

2 See V.T. Dančiaková, *The Interaction Between Roman Ius Civile and Local Provincial Legal Tradition: Papyri P. Yadin 21 and P. Yadin 22 As Roman Stipulatio*, „Bratislava Law Review" 2024, Vol. 8, No. 1, pp. 75–79.

It was these day-to-day matters and dealings with contemporaries that made their authors put these agreements on papyri and preserve them in such a way that almost 2,000 years later we have the opportunity to study them.

Two deposits and a Loan

The oldest contract that can be found in the Archive is papyrus P. Yadin 5, a contract of deposit dated 2 June 110 CE. This is also the first document written in the Greek language, although it is probably only a translation of an Aramaic original and the translation arose from having to address the changed legal situation after the area was transformed to be a Roman province.[3] Although the text is named a deposit (term *παραθήκη* is used in the papyrus), in reality it is not a contract of deposit as such, but it was used to settle affairs and especially financial claims after the termination of a partnership between two brothers (Joseph and Jesus) since one of the brothers died leaving a son as an heir to assets included in the partnership. The parties involved are Joseph, son of Joseph, and Jesus, son of Jesus, (Joseph's nephew and Babatha's son). The text names the financial value of various assets and commercial activities that Joseph confirms to hold as a deposit and promises to surrender those to Jesus upon request. Such use of a contract of deposit to govern various matters relating to finances and financial security is not something unique. In this case, what we have in P. Yadin 5 is a way to secure the management of property and its delivery after death.[4] The contract of deposit was also often used by Roman soldiers as a means to create a dowry since they were not allowed to marry until their service ended.[5] This can be seen in papyrus M. Chr. 372 from 117 CE, where the prefect of Egypt states: *νοοῦμεν ὅτι αἱ παρακαταθῆκαι προῖκές εἰσιν* (we know that the deposits are dowry).

Besides the deposit that enabled the remaining partner to continue the business he co-owned with the deceased brother by keeping the assets in the form of a deposit while safeguarding them for his nephew as the heir to the deceased party, the papyrus also includes a mention of dowry (*ἀργύριον γαμικὸν* – marriage

3 N. Lewis, *The World of P. Yadin*, "The Bulletin of the American Society of Papyrologists" 1991, Vol. 28, No. 1–2, p. 39; J.G. Oudshoorn, *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives: General Analysis and Three Case Studies on Law of Succession, Guardianship and Marriage*, Leiden 2007, pp. 117–118.

4 M.L. Satlow, *Marriage Payments and Succession Strategies in the Documents from the Judaean Desert*, in: R. Katzoff, D. Schaps (eds.), *Law in the Documents of the Judean Dessert*, Leiden 2005, p. 51.

5 N. Lewis (ed.), *The Documents from the Bar-Kochba Period in the Cave of Letter. Greek Papyri*, Jerusalem 1989, p. 35.

money) of the widow, wife of the deceased brother, in the value of 710 "blacks" (*ἀργυρίου μέλανας ἑπτακοσίους καὶ δέκα*), that was obviously used for the business purposes and she is now entitled to have it returned.

When it comes to the text of P. Yadin 5, we also want to argue that the content was secured by the use of stipulation, as at the beginning of the text relating to the deposit the party starts with words *ὁμολογῶ ἐγὼ* (I promise). The word *ὁμολογῶ* is only stated approximately 50 years later, as an equivalent for Latin *spondee*, by Gaius in his *Institutiones*:[6]

> *Sed haec quidem uerborum obligatio DARI SPONDES? SPONDEO propria ciuium Romanorum est; ceterae uero iuris gentium sunt, itaque inter omnes homines, siue ciues Romanos siue peregrinos, ualent. et quamuis ad Graecam uocem expressae fuerint, uelut hoc modo δώσεις ; δώσω· ὁμολογεῖς ; ὁμολογῶ· πίστει κελεύεις ; πίστει κελεύω· ποιήσεις ; ποιήσω, etiam hae tamen inter ciues Romanos ualent, si modo Graeci sermonis intellectum habeant; et e contrario quamuis Latine enuntientur, tamen etiam inter peregrinos ualent, si modo Latini sermonis intellectum habeant. at illa uerborum obligatio DARI SPONDES? SPONDEO adeo propria ciuium Romanorum est, ut ne quidem in Graecum sermonem per interpretationem proprie transferri possit, quamuis dicatur a Graeca uoce figurata esse.*
>
> (*Gai. Inst. 3.93*)

It is true that the contract is missing a stipulation clause that is frequent in later papyri from the Archive, but these only appear for the first time in P. Yadin 17, and I want to argue that the parties deemed the term *ὁμολογῶ* as sufficient to imply the use of *stipulatio*.

Another contract found in the Archive is a loan on hypothec in P. Yadin 11 dated 6 May 124 CE. The future (second) husband of Babatha, Juda son of Eleazar, borrowed 60 denarii from Magonius Valens, a centurion in an auxiliary army unit (First Thracian cohort miliaria), while offering a courtyard that he held in Ein-Gedi on behalf of his father Eleazar Chtusion, as a surety (hypothec) should he not return the said amount of money in the agreed time. At the same time, an interest was agreed at 1% per month (12% per year), which was the maximum interest rate

6 Now the verbal obligation in the form *Dari spondes? Spondeo* is peculiar to Roman citizens; but the other forms belong to the *ius gentium* and are consequently valid between all men, whether Roman citizens or peregrines. And even though expressed in Greek, in such words as *Δώσεις; Δώσω· Ὁμολογεῖς; Ὁμολογῶ· Πίστει κελεύεις; Πίστει κελεύω· Ποιήσεις; Ποιήσω*, they are still valid between Roman citizens, provided they understand Greek. Conversely, though expressed in Latin, they are still valid even between peregrines, provided they understand Latin. But the verbal obligation *Dari spondes? Spondeo* is so far peculiar to Roman citizens that it cannot properly be put into Greek, although the word *spondeo* is said to be derived from a Greek word. See: F. de Zulueta, *The Institutes of Gaius*, Part I: *Text with Critical Notes and Translation*, Oxford 1958, p. 181.

set by Roman law.[7] Since the courtyard offered as a hypothec in the loan is later the object of at least two other documents, we can conclude that Juda was able to pay the debt on time. This contract is also the first sign that Babatha's second husband was not as well off as the first one and needed to borrow money from someone at least twice, as we will see later.

An interesting question concerning the papyrus is the legal tradition that was used for loans. According to Roman law a loan is a real contract, meaning that drawing up a contract does not constitute the loan as such. Besides, it was a lucrative contract, and should there be interest, it had to be stipulated separately. For this reason, we would like to point to the beginning of the contract, where we can find the word *ὁμολογῶ* (*ὁμολογῶ ἔχειν καὶ ὀφείλειν σοι ἐν δάνει* – I promise (acknowledge) to have and owe you in a debt), which, as we have already signalled, could point to the use of Roman *stipulatio* to secure the obligations within the contract. The question is whether this constitutes the claim to the money that should be delivered by Magonius Valens, or simply acknowledges the debt and perhaps stipulates the interest, which would be in line with the practice in Roman *ius civile*. Looking at the contract in this way, this may be the most Roman contract present in the Archive.

A series of interesting interactions that are mostly interconnected starts with the papyrus P. Yadin 17 dated 21 February 128 CE named as a deposit (*παραθήκη*). This is also the first of a series of papyri that not only includes the term *ὁμολογῶ* (*ἐπὶ τῆς θελήσεως καὶ συνευδοκήσεως ὡμολογήσατο… ὥστε τὸν Ἰούδαν ἀπεσχηκέναι παρ' αὐτῆς εἰς λόγον παραθήκης ἀργυρίου*) at the beginning of the contract itself but also a stipulation clause it the end. In P. Yadin 17 we also find a mention of a legal representative for Babatha, which as a woman she would need according to Roman standards. What is also striking is the term used for a scribe who wrote the document in Greek, which is not the Greek word *ὁ γραφεύς*, as we would expect, but rather the Roman term *librarius* transcribed into Greek in the form of *λιβράριος*. The use of this term would suggest that it was not an ordinary scribe available in the settlement, but perhaps a scribe employed in the Roman administration[8] who would be then familiar with the Roman law and could advise on how to secure the contracts so that they would be more easily enforceable before Roman authorities.

Should we examine the contract under Roman *ius civile*, it would be *depositum irregulare*, since the thing deposited is determined in kind, namely money (*ἀργυρίου*

7 M. Silver, *Finding the Roman Empire's Disappeared Deposit Bankers*, "Historia" 2011, Vol. 60, No. 3, p. 9.

8 For this argument see also: K. Czajkowski, *Localized Law: The Babatha and Salome Komaise Archives*, Oxford 2017, pp. 79–86.

καλοῦ δοκίμου νομίσματος δηνάρια τριακόσια – 300 silver denarii of a high title), and not as an individual thing. Of course, we could argue that the money was in some kind of pouch or treasure chest, but we do not know that for sure and it seems that the depositor was allowed to use the money. Yadin as well as Yiftach–Firanko even argue that P. Yadin 17 could be a creation of dowry via deposit,[9] a practice that we have already mentioned before. However, as Katzoff points out, we have a marriage contract in the form of *ketubah* between Babatha and Juda in P. Yadin 10 (Aramaic),[10] so there was no need to create another one masking as a deposit. Considering the legal traditions behind the contract most scholars tend to argue for Jewish law, although the argumentation is not always convincing. Oudshoorn argues that in the case of P. Yadin 17, there is no transfer of ownership, which was necessary for Roman *depositum irregulare*, which he supports with the mention of Babatha's claim in P. Yadin 21 and 22 where she talks of a debt. However, a debt would be claimable from the deposit itself since it was supposed to be returned upon request and the return of the deposited thing was a contractual obligation, whereby, transfer or not, she would be entitled to get the deposit back. Perhaps the only convincing argument is the mention of *duplum* in case of breach of the obligation to return the deposit, which was not in line with Roman law, as the *duplum* was to be paid in case of *depositum miserabile* (*necessarium*). On the other hand, again, the deposit as a real contract was created upon delivery of the thing; therefore, there was no need for a written agreement, and it seems that the document serves as proof of obligations that were even stipulated by the promise at the beginning and the stipulation clause at the and (*ὡμολογήσατο... πίστει ἐπηρωτήθη καὶ ἀνθωμολογήθη ταῦτα οὕτως καλῶς γείνεσθαι*).

When it comes to financial motives, it seems that what we have here is, in fact, *depositum irregulare,* and the money deposited was supposed to be used by Babatha's husband Juda. It is not written explicitly in P. Yadin 17. However, in the next papyrus, P. Yadin 18, Juda offers dowry for his daughter in the sum of 200 denarii. It seems that Juda was in need of money for his daughter from his first marriage, which Babatha offered him and secured the payment by the contract of deposit.[11] The debt arising from this deposit is then indirectly confirmed by P. Yadin

9 Y. Yadin, *Bar-Kokhba: The Rediscovery of the Legendary Hero of the Second Jewish Revolt against Rome*, New York 1971, pp. 245–246; U. Yiftach-Firanko, *Marriage and Marital Arrangements: A History of the Greek Marriage Document in Egypt. 4th century BCE – 4th century CE*, Munich 2003, p. 19.

10 R. Katzoff, *On Jews in the Roman World*, Tübingen 2019, p. 84.

11 See M.L. Satlow, *Jewish Marriage in Antiquity*, Princeton 2001, p. 98; M.L. Satlow, *Marriage*…, pp. 54–55.

21 and 22, where Babatha states that she holds certain orchards against the debt and the dowry (*ἀντὶ τῆς σῆς προικὸς καὶ ὀφειλῆς*). I would argue that perhaps what we have here is actually a bank deposit that was well known to Greeks and could be known to other cultures under the Hellenistic influence, which, however, found its way into the Roman legal system only marginally in the form of *depositum irregulare* and was often identified as a loan.[12]

A question arises here of why would Babatha marry a man who was not so well off, since she was obviously quite a wealthy woman as she could afford to employ scribes to write down any documents relating to her financial and other dealings, and could offer him money as well? We also find *actio tutelae* (P. Yadin 15) against her son's guardians where she accused them of mismanagement of his property and not paying enough for his upbringing that would match his previous life standard. Unfortunately, we will never know the answer.

A marriage and securing the future of the bride

P. Yadin 18 dated 5 April 128 CE, just a bit more than a month after the deposit in P. Yadin 17, includes a marriage contract between Juda's daughter Shelmazion and her future husband Juda Cimber. Just like in previous cases, it seems that all obligations were secured by the means of stipulation, as again, we can find a promise (*ὡμολόγησεν ὁ γήμας Ἰούδας Κίμβερ ἀπειληφέναι… ὡμολόγησεν δοῦναι αὐτῇ πρὸς τὰ τῆς προγεγραμμένης προσφορᾶς*) at the beginning, a stipulation clause at the end (*πίστει ἐπηρωτήθη καὶ ἀνθωμολογήθη ταῦτα οὕτως καλῶς γείνεσθαι*), and a mention of *λιβράριος*.

The contract itself resembles Greek *ekdosis*, since the father hands the bride over to the groom, and even the Greek formula characteristic of this marriage contract is used (*ἐξέδοτο Ἰούδας Ἐλεαζάρου τοῦ καὶ Χθουσίωνος Σελαμψιώνην τὴν ἰδίαν θυγατέρα αὐτοῦ παρθένον Ἰούδατι υἱῷ Ἀνανίου Σωμαλα καλουμένῳ Κίμβερι*). What is not characteristic of the *ekdosis* is the groom's contribution to the value of the dowry, which is 150% of the dowry offered by the father of the bride, 300 denarii. The total value of the dowry was 500 denarii, which is a Jewish custom. The character of the legal tradition behind the marriage contract is discussed at length by scholars especially concerning the mention of *ἑλληνικῷ νόμῳ*, right after the mention of dowry and marriage obligations of the husband, as well as *κατὰ τοὺς νόμους* later in the text, where it tends to be identified in the first case as a reference to a Greek custom and in the second case to Jewish law. What is the interest of this

12 D. 16.3.24 and more clearly Ulpianus in D. 12.1.9.9.

paper, however, is the financial motivation. In this case it is to facilitate marriage of the daughter of Babatha's second husband, for which purpose it seems she gave him money in deposit in P. Yadin 17. Perhaps, the fact that Babatha kept the marriage contract along with other documents, even though it did not concern her directly, could point to the cause behind the deposit in P. Yadin 17. The general idea is that she kept all documents relating to her family, but after her second husband died, there would be no need to keep anything for the sake of his daughter since her mother was still alive and actually entered into a legal dispute with Babatha after Juda's death. Babatha perhaps kept this marriage contract as further proof of the money deposited in the P. Yadin 17 to secure her later claim for it to be returned to her.

In the context of Babatha's family's money, we would like to treat P. Yadin 19 (16 April 128 CE – 11 days after the marriage contract) and 20 (concession of rights) together, since they refer to the same object. We have already encountered certain types of contracts that could be used to achieve different goals than originally intended, that is the deposits in P. Yadin 5 and 17. Here we have another case of a legal act, a contract, that seems to serve as a tool for dealing with succession strategies that were not favorable towards daughters. The dowry in marriage agreements as such was nothing compared to gifts that would be bestowed by parents on the bride after the marriage. The purpose, of course, was to help the young couple, but especially to secure the daughter's well-being, since the husband could dispose of the dowry, but had no rights over these gifts.[13] Jewish law knew dispositions like this, where the gift would be made from that moment and after death, meaning that the transfer of ownership was instant, but the donor would have the usufruct until his death. The words "from today and after death" made the gift irrevocable.[14] In this case, however, the donor did not live on the property and the gift is defined a bit differently. Half of the courtyard in Ein-Gedi is to be transferred immediately, and the other half after his death (*διέθετο Ἰούδας Ἐλαζάρου Χθουσίωνος Ἐνγαδηνὸς οἰκῶν ἐν Μαωζᾳ Σελαμψιοῦς θυγατρὶ πάντα τὰ ὑπάρχοντα αὐτῷ ἐν Ἐνγαδοῖς ἥμισυ... καὶ τὸ ἄλλο ἥμισυ τῆς αὐλῆς καὶ οἰκημάτων διέθετο [.] Ἰούδας τῇ αὐτῇ Σελαμψιοῦς μετὰ τὸ αὐτὸν τελευτῆσαι*), except a small courtyard that was excluded from the gift. Katzoff warns that this could have something to do the with the question of the irrevocability of the gift, since in rabbinic law a gift in the event of death was only valid if done by a healthy person, and since Juda dies within the next two years, he wanted to make sure that it would not be invalid, which would be secured by keeping at least a small portion of the property

13 H.M. Cotton, *The Law of Succession in the Documents from the Judaean Desert Again*, in: H.M. Cotton, *Roman Rule and Jewish Life*, Berlin–Boston 2022, p. 444; M.L. Satlow, *Marriage*…, pp. 62–64.

14 Y. Rivlin, *Gifts and Inheritance Law in the Judean Dessert*, in: R. Katzoff, D. Schaps (eds.), *Law in the Documents of the Judean Dessert*, Leiden 2005, pp. 167, 173–177, 179.

given (the small old courtyard – *χωρὶς αὐλῆς μικκῆς παλαιᾶς*).[15] It seems that indeed the father wanted to secure his daughter in the future, although he did not follow the standard procedure for these gifts, since he gifted her half of the property immediately (along with the usufruct) and the other half was to be hers after his death. It is possible that he did have some health issues already and to make sure that the deed of gift would not be contested by his heirs, he excluded the small courtyard. The reason for thinking that he left the usufruct as well is that at that time he lived in Maoza with Babatha, so he had no need for property in Ein-Gedi. Maybe that is the reason why he chose this way of gifting the property to Shelmazion.

What is quite interesting here is the missing stipulation in the document, since we find no mention of promise and no stipulation clause, which are present in all other contractual documents from year 128 onwards. My argument would be that since it was a gift, where the father was giving property to his daughter, the close (blood) relation between the two did not necessitate such a strong need for securing the obligations, as none of the parties would contest the contents of the contract. The contract, however, could be contested by other parties, heirs, which as we can see is what happened from P. Yadin 20.

The P. Yadin 20 is then a concession of rights, where Juda's heirs cede any right to the property gifted in P. Yadin 19 to his daughter Shelmazion. It seems that the courtyard became an object of legal dispute since it is possible that the inheritance was not yet divided after the death of Eleazar, Juda's father and there were more children with a claim. Although the courtyard mentioned in P. Yadin 19 is the same as that we find in P. Yadin 11, where it is clear that Juda has possession of it and can dispose of it. It seems that P. Yadin 20 is the result of a settlement where the heirs act following the will of her father and cede the property to her.[16] Interestingly, here we find a stipulation again, and in both, a promise at the beginning (*ὁμολογοῦμεν συνκεχωρηκέναι σοι ἐξ ὑπαρχόντων Ἐλεαζάρου τοῦ καὶ Χθουσίωνος τοῦ Ἰούδου πάππου σου αὐλὴν σὺν παντὶ δικαίῳ αὐτῆς εἴ τι ἐν Ἐνγαδοῖς καὶ πᾶσιν ἐν αὐτῇ οἴκοις καὶ τὰ ἠνοιγμένα σὺν αὐτῇ*), and a stipulation clause at the end (*πίστεως ἐπηρωτημένης καὶ ἀνθωμολογημένης*), which was probably to secure the obligation to cede the property.

The quest for a widow's financial stability

The last contract we want to introduce is the contract of sale and purchase in P. Yadin 21 and 22 dated 11[t] September 130 CE. First of all, it is important to note, that this

15 R. Katzoff, *On Jews*…, pp. 43–44.

16 See H.M. Cotton, *The Law of Succession*..., p. 446–450; N. Lewis (ed.), *The Documents*…, p. 89.

contract has been discussed at length already since elements of the contract cannot be subsumed under a sale-purchase contract without any doubts. The biggest problem is the price paid for the goods. What is being sold are fruits of date palms from three orchards while they are still attached to the trees, before being picked. The price for the fruits is the problem since it is the portion of the produce picked from the trees in the orchards. That is why some scholars suggest that it could be perhaps a *locatio conductio rei* contract concerning the orchards,[17] however, these were drawn for the whole vegetation cycle, and not just before the harvest. Others suggest *locatio conductio operarum*,[18] but the trouble is that there is no interest in the work of the purchaser mentioned and the parties specifically talk about selling (*ὁμολογῶ πεπρακέναι*) and buying (*ὁμολογῶ ἠγορακέναι*). The only hint could be the provision where Simon (the buyer) can keep the rest of the produce against his labour and expenses (*λήψομαι εἰς ἐμαυτὸν ἀντὶ τῶν ἐμῶν κόπων καὶ ἀναλωμάτων*). The solution seems to be the Egyptian *καρπωνεία* as a deed of sale of crops before their harvest. Under *ius civile*, what we could consider this to be the *emptio rei sperate* or *futurae*, since this was a means to dispose of harvest while reducing risks of the owner concerned with the actual harvest, as well as changing prices in the market, as the letter of Pliny the Younger shows (8.2). However, the price was still paid in money,[19] which is not the case in P. Yadin 21 a 22 since the payment is done in a portion of the harvest here. Another feature of Roman *emptio-venditio* present in the contract (in P. Yadin 22) is the surety against eviction from property (*ἐμοῦ καθαροποιούσης σοι τοὺς προγεγραμμένους κήπους ἀπὸ παντὸς ἀντιποιουμένου*). Here I would like to draw readers' attention to other elements of the papyri, which is that each of the documents only includes obligations of one of the parties. P. Yadin 21 accommodates the obligations of Simon to buy the dates and deliver the agreed amount, keeping the rest as a payment and promising to pay a fine should he fail to uphold his part of the agreement. In P. Yadin 22, we find obligations of Babatha to sell the dates to Simon for which she will receive the agreed amount of produce, as well

17 See A. Radzyner, *P. Yadin 21-22: Sale or Lease?*, in: R. Katzoff, D. Schaps (eds.), *Law in the Documents of the Judean Dessert*, Leiden 2005, pp. 145–163; B. Isaac, *The Babatha Archive. A Review Article*, "Israel Exploration Journal" 1992, Vol. 42, No. 1–2, pp. 62–75.

18 See A. Radzyner, *P. Yadin 21-22: Sale or Lease?…*, pp. 145–163; R. Katzoff, *"P. Yadin 21" and Rabbinic Law on Widow's Rights*, in: R. Katzoff, *On Jews in the Roman World*, Tübingen 2019; M. Broshi, *Agriculture and Economy in Roman Palestine: Seven Notes on the Babatha Archive*, "Israel Exploration Journal" 1992, Vol. 42, No. 3–4, pp. 230–240; J.G. Oudshoorn, *The Relationship*…, p. 5; B. Isaac, *The Babatha*…, pp. 62–75.

19 P.J. du Plessis, *The Law of the Harvest*, in: L. Gagliardi (ed.), *Antologia giuridica romanistica et antiquaria*, Milano 2018, pp. 153–157.

as to clear it of any counterclaims and should she fail, to pay a fine. Along with the fact that both papyri start with *ὁμολογῶ* and end with a stipulation clause (*πίστεως ἐπηρωτημένης καὶ ἀνθωμολογημένης*), what we have here is a specific kind of contract that was in fact put into a stipulation to uphold the obligations of the parties.

What is more interesting is the situation that probably drew Babatha to creating such a contract, which was precisely the result of the death of her husband and her claims to payment of dowry and his heirs' debt. According to tannaitic literature, Babatha could hold and dispose of immovables but had no right over movables,[20] in this case, the fruits from the palms. Considering all the documents, Babatha seems to be quite a capable businesswoman and she assessed that she could only sell the orchards once, but she could have regular income from the fruits, which, however, she could not pick and sell. If she seized the movables, she would have to return them, according to R. Akiva.[21]

The case would be very likely considered in front of Roman judicial authorities since all procedural documents present in the Archive are addressed to or issued by the Roman administration in Arabia. If we consider the ruler of acquiring ownership, we can see the benefit of this agreement. Babatha sells the fruits while they are still attached to the trees. Simon picks the fruits, thus acquiring ownership, and then hands the portion of the produce over to Babatha for her use. Strictly speaking, Babatha did not possess the dates as movables to dispose of them so she did not break the rule. Besides, Jewish law did not apply the *fraus legis facta* concept,[22] so she would be safe, should it be considered under Jewish law. When it comes to the possible judiciary jurisdiction in Roman courts, she cleverly uses Roman *stipulatio*, perhaps for two reasons. First, the provisions cannot be subsumed under any *ius civile* contractual type and *stipulatio* would be easy to identify by the Roman authorities. Second, *stipulatio* is a contract *stricti iuris*, thus the good faith of the parties would not be taken into account; thus again, the contract stands. Either way, Babtha gets what she wants and needs. The very next document P. Yadin 23, is a summons addressed to Babatha concerning a dispute over the said orchards, which the heirs claim she holds by force.

20 R. Katzoff, *"P. Yadin 21"*…, pp. 64 ff.

21 B. Cohen, *Jewish and Roman Law: A Comparative Study*, vol. II, New York 1966 (reprint 2018), pp. 672–673.

22 See: R. Katzoff, *"P. Yadin 21"*…, p. 558.

Conclusion

An important element in the documents discussed is the contractual freedom that seemed to govern the world of ancient Rome. Here we want to point to the argument offered by Alonso that the personality principle of the *ius civile* strictly adhered rather to the family affairs, the question of status or inheritance, while the private law sphere of contracts was governed much more freely and rather by local tradition, meaning that even Romans living in the provinces would use contractual forms that were traditionally used in the area and corresponded with the local legal tradition.[23]

The real issue then emerges when we consider the legal procedure for these cases and we have several solutions available. The first is to use local courts. However, if a Roman citizen were to be involved, a problem could arise. The second would be to use procedures made available by the Roman administration in the province, pursuant to which judgement may be made in accordance with local law or *ius gentium* (whatever that actually was) or perhaps even *ius civile* or *ius honorarium* in the cases where contracts and the legal protection became available for foreigners as well as Roman citizens. Even if we worked with the theory that local law should be applied, we would need to assume the willingness of the Roman judiciary official to learn such law, which we seriously doubt was the case. The question then arises: what would be the easier way to deal with this legal syncretism? *Stipulatio*.

The documents of the Babatha Archive show how a certain population living perhaps in a higher stratum of society adapted to the changed situation after the annexation of the Nabatean Kingdom as the province of Arabia in 106 CE and it has everything to do with finances. We want to take care of our families, maintain our status, and perhaps even increase financial stability to secure the future of our family. It is only natural that residents of the province would try to find a way that would secure enforceability of their legal dealings in the reformed circumstances. As we have already stated earlier, the Roman judicial authority was perhaps the only one available for Babatha. In the papyri starting with P. Yadin 17, we can see the stipulation clauses and we can see that the dealings they cover are not clear-cut forms of Roman contracts, but we often encounter local tradition. It would be understandable that Babatha would first employ professional help, an advisor in the form of libraries, to help her draw the documents and use a form that would be easily enforceable in front of Roman judges should the need arise. And the easiest way was to use the *stipulatio* as the most universal contract, made also available to the peregrines by that time. As a result, we argue that *stipulatio* is a feature of

23 J.L. Alonso, *The Constitution Antoniana and Private Legal Practice in the Eastern Empire*, in: K. Czajkowski, B. Eckhardt, M. Strothmann (eds.), *Law in the Roman Provinces*, Oxford 2020, pp. 56 ff.

Roman *ius gentium*. Here again, we want to draw attention to Alonso stating that before the *Constitutio Antoniana* the stipulation clause was not commonly used and only became an integral part of basically all documents after 220 CE, perhaps out of fear that the peregrine law would no longer apply. Still, it was not an unknown practice to secure deeds with the stipulatory clause, even among Romans, as Alonso names six cases from Egypt before the CA.[24]

When it comes needing to secure contracts, we also want to highlight the use of a tutor or a legal representative for Babatha in those legal acts where she was a party (for example P. Yadin 17, 21 and 22), which was not needed under the Jewish law, but was necessary under the Roman law, as women did not have full legal capacity.

As it seems, the population of the province were made perfectly capable of finding their way around the complicated reality of the legal syncretism that became the reality in the Roman Empire and this was also made available by the interaction with Roman administration, which worked through its magistrates with their judiciary competences to accommodate the peregrines within the complex legal structure of the realm ever since the Punic wars and the introduction of *praetor peregrinus*.

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Pieniądz rządzi wszystkim – motywy finansowe w archiwum Babathy

Streszczenie

Archiwum Babathy to zbiór tekstów prawnych, proceduralnych lub osobistych, z których większość została napisana w języku greckim i stanowi przegląd codziennego życia mieszkańców pochodzenia żydowskiego żyjących na początku II wieku n.e. w prowincji Arabia. Studiowanie archiwum jest nie tylko cenne dla historii prawa, lecz także rzuca światło na relacje między ludnością żydowską epoki a administracją rzymską, co jest również ważne dla badania historii judaizmu w okresie Drugiej Świątyni. W artykule przedstawiono te papirusy archiwum, w których znalazły się oświadczenia woli zaangażowanych stron, czy to w umowie, czy w innym akcie prawnym. Z tych powodów poddano analizie papirusy P. Yadin 5 (*depositum*), 11 (*mutuum*), 17 (*depositum*), 18 (kontrakt małżeński), 19 (*donatio*), 20 (koncesja praw), 21 i 22 (*emptio-venditio*), a także inne papirusy, które dotyczą podobnych

sytuacji. Zwrócono uwagę na finansową motywację sporządzania tych dokumentów, a wraz z nią na potrzebę zabezpieczenia ważności i wykonalności zobowiązań zawartych w wybranych dokumentach.

Słowa kluczowe: archiwum Babathy, *ius civile*, *stipulatio*, Arabia, rzymska administracja

CYTOWANIE

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