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## Women and Property

conference organized by and  
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### **Women's Property and the Law of Inheritance in the Neo-Babylonian Period**

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During the period of the Neo-Babylonian Empire and early Achaemenid rulers (6th and 5th centuries B.C.) women in Babylonia had in principle full legal capacity: they could acquire, manage, and dispose of property by will, manage businesses and enter into legal obligations. This is attested by a substantial number of documents from private archives: women appear as buyers and sellers of land and slaves; they act alone or together with their husbands as creditors or debtors in debt notes; they are landlords or tenants of houses; they give or take slaves in hire, they lease agricultural land; they give receipts for deliveries of produce or payments of silver. A woman may herself be the agent of a trading partnership (*h}arrānu*).<sup>1</sup>

In a few cases, the archival context provides information on these women's family status. From these, it appears that by no means only widows (i.e. women not subject to a *paterfamilias*) were involved; on the contrary, even married women could conduct business

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<sup>1</sup> Women appear frequently as owners of houses and fields, as such objects are typical dowry components. Purchase of such objects by women is less common (as it required them to have considerable means at their disposal). In a few cases they merely act as proxies for their husbands (as mentioned in Dar 379: 59f.) or the husband arranges the purchase on behalf of his wife and with her own funds (VAS 6 157). Leases for fields owned by women are usually arranged by the husband, as it is he who has the right to usufruct of the dowry, though the woman appears as the nominal beneficiary of the income. Occasionally a woman appears as lessor of her dowry field: BM 46713. In BM 42301 (Jursa 1999:131f.) a woman rents out a field on behalf of her son. In VAS 5 96 (year 25 Dar) a woman purchases a house, with her husband present as a witness. There is at least one example of a woman (most likely a widow) acting entirely on her own in buying a house (Wunsch 2003: no. 29, beginning of Darius's reign); the vendor, however, is a relative of her in-laws.

Women renting out houses: BM 31273 (rental contract, starting from 1/xi year 26 Dar, 35 shekels per year to be paid in two instalments in advance; the tenant has to keep the house in good repair) with Dar 554 as a corresponding receipt for full rental payment to the landlady until the end of the 10th month by the previous tenant. In VAS 5 134 and 145 women (presumably widows) rent out houses in return for daily deliveries of bread. Obviously, ownership of the houses guaranteed them maintenance. BM 33966 (year 36 Dar) is an example of a woman renting a house at 13 shekels of silver annually under the usual conditions. She does not seem to be related to the family of the landlord in any way. VAS 4 138 (year 13? Dar) represents a receipt for rental payments made by a woman.

Women as creditors are more often attested, to name a few examples: VAS 4 66. 150. 152 (with antichretic pledge of a house); women as debtors: VAS 4 132.

Women buying and selling slaves, e.g. VAS 5 73 (purchaser), VAS 5 35 (purchaser and vendor are women), VAS 5 126 (vendor), renting out slaves: VAS 5 16.

A woman with full affiliation appears as the agent of a *harrānu* business in Nbn 652 and the complementary texts BM 31451 and 31548.

without their husbands appearing as witnesses or having to give formal approval.<sup>2</sup>

Women who participated actively in commercial life, however, were the exception. A glance at the strictly patriarchal rules of inheritance shows that their chances of acquiring property at all or being able to dispose of it were very limited. Neither as daughters nor as wives did women have a right of inheritance. Only sons inherited, and in the absence of sons, the husband's male collaterals. Even if a woman received a dowry on marriage, as was the norm in middle and upper class urban families, the dowry was not managed by her, but was handed over to her husband or his father. An economically independent standing for the woman was neither anticipated nor desired by this arrangement; it was only conceded out of necessity to a widow with small children and on a temporary basis, until her sons were old enough to take over. Even in that case the alternative existed of placing control in male hands again through remarriage.

Nonetheless, the documents preserved in Neo-Babylonian family archives reveal that by no means infrequently ways were sought to avoid the strictly patrilineal rules of inheritance, in order to ensure for female members of the family a certain degree of economic independence or to "divert" property into other branches of the family. The legal instruments for this purpose were – in contrast to other societies – already an integral part of the system: gift, donation *mortis causa*, and supplements to the dowry.

These provisions required documentation, but were then – as far as can be judged from records of litigation – unassailable, unless some legal defect had already existed beforehand. Women (and slaves as well) could claim their rights themselves, by turning to the local courts or the royal judges. A major part of the record consists of disputes over dowry items.

There were various reasons for transferring rights of ownership or usufruct to a woman. If there were no male issue, the testator could thereby prevent his brothers or more distant relatives from acquiring his estate and pass it instead to his wife, sisters, daughters, or grandchildren. If there were sons, it was on them that the duty lay to provide appropriate maintenance for the widow. Depending on the family situation, this meant that the widow would be dependent on the good will of her sons or step-sons, or in the worst case, at their mercy. In order to reduce the possibility of conflict, the testator could assign assets to her and guarantee her a right to remain in the matrimonial home and an income in kind, with or without nominating subsequent heirs. Provisions could be made in favor of daughters or sisters with an eye to the economic advantages arising from the connection with their husbands.

We will investigate below the ways in which property passed into female hands. First, however, it is necessary to summarize briefly the law of inheritance.

## **The Normal Rules**

### **1. Inheritance from the father**

As mentioned above, wives and daughters had no right of inheritance. The sons divided the estate among themselves, with the eldest son taking a double portion as his preferential share.<sup>3</sup> Numerous documents attest to the fact that this rule was maintained in

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<sup>2</sup> For example, Ina-Esagil-ramat, wife of Iddin-Marduk, appears in a series of documents drafted during her husband's lifetime. She is not identified as his wife except on the rare occasions when she acts on her husband's behalf. Cf. Wunsch 1993: vol. 1, 68.

<sup>3</sup> This is at least the rule if there are two or three sons. In the case of four sons the eldest is allocated a half

practice. If the testator had adopted sons without allowing them a right of inheritance, they were not included in the division.<sup>4</sup> They could, however, be the beneficiaries of gifts at the testator's discretion, either in his lifetime or post mortem. If there were sons from more than one marriage, the issue of the first marriage received two thirds, that of the second, one third (Neo-Babylonian Laws §15).

If the testator had no sons and had made no bequest in favor of other family members (wife, daughter, adoptive son, grandson or sisters), his brothers or his father's brothers were the next in line.<sup>5</sup> If any such bequests were made and were credibly attested by documents or witnesses, the brothers had practically no chance of claiming the inheritance in court.<sup>6</sup>

The testator could give his eldest or other sons an inheritance share in advance or at least determine its size in advance.<sup>7</sup> If this allotment had been part of the dowry negotiations, i.e. had been contractually guaranteed to the bride's family, it could not be subsequently reduced in size, even when the testator's property had substantially diminished and the other sons would be disadvantaged thereby (NBL §8). The testator could designate contingent heirs, should one of his sons die without issue. Normally, the deceased's brother would be entitled to his share, but in such a case daughters could also be considered.<sup>8</sup>

## 2. The Dowry

As far as family circumstances permitted, daughters were provided with a dowry (*nudunnû*), which was transferred "with her" to the family of the groom. In the Neo-Babylonian period – in contrast to earlier periods – there is no payment by the groom and his family to the bride's father.

The size of the dowry was at the discretion of the father or head of household, and bore no relation to the sons' anticipated inheritance shares. As daughters normally married far before the sons inherited, relations established through the marriage could have considerable influence on the subsequent prosperity of the family (and thereby on the sons' inheritance shares).

The size of the dowry naturally had something to do with the social status of the family. Within the Babylonian middle class, however, there were considerable

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share, while the younger brothers receive one sixth each (Wunsch 2003: no. 38 and 42). This seems to indicate that half of the estate was to remain in the hands of a single owner, no matter how many heirs had to be considered. So far, examples for more than four brothers are not extant.

<sup>4</sup> Adoption (*ana mārūti leqû* "to take as a son") does not automatically entail a right of inheritance, as can be seen from the case of Kalbaya who had been adopted at an early age by his maternal uncle into the Egibi family (Spar and von Dassow 2000: no 53). Although in records he always uses the affiliation from his adoptive father, he was not to share in the latter's estate (as becomes clear from Wunsch 2000: no. 10, see Wunsch 2000: vol. A, 16f.)

<sup>5</sup> E.g. BM 42299 (Jursa 1999:129f):23f.: *isqu šuāti ša PN mār ah}ija ša PN2 abū<a> arkassu ilqû šina* "this aforementioned prebend belonged to PN, the son of my brother, whose estate <my> father has taken (as inheritance)".

<sup>6</sup> In Nbn 356 (Wunsch 1993: no. 167 with previous literature) the brother of the deceased tries in vain to claim such an inheritance.

<sup>7</sup> E.g. Wunsch 2003: no. 34, 36.

<sup>8</sup> In BM 33092 (Roth 1989-90: no. 2), a property transfer from husband to wife, two sons are named as subsequent heirs. The daughter is designated as contingent heir in case one of her brothers dies.

differences. For example, an influential family with good connections managed to acquire for itself wealthy daughters-in-law, but gave its own daughters relatively poor dowries.<sup>9</sup> Quite clearly, marriage in certain circles was a financial strategy, in which daughters were mere ornamentation.

The documents give no indication that families went into debt to provide dowries for their daughters. There are debt notes for sums in silver from dowries, but these are not third party claims; rather, they are claims by a daughter and son-in-law against the father or his heirs.<sup>10</sup> In other words, they concern delayed payment of the dowry.

In practice, a good deal of time could pass between arrangement of the marriage, with a binding dowry promise, and actual delivery. Occasionally, young children were betrothed, in order to seal the business relations of the respective fathers.<sup>11</sup> It could also happen that large sums of silver were immediately transferred, in consideration of mutual transactions. Often, however, the parties would deliberately take their time about paying. The reason was, *inter alia*, that the husband and his family only had a usufruct in the dowry; ultimately, it belonged to future children of the marriage, and was to be returned to the wife's family if she died childless.<sup>12</sup> Perinatal and infant mortality were serious risks; it was better therefore to wait until a child was born before handing over sums that the other family would invest in their own business and which would be difficult to recover should the wife die.

As previously emphasized, the wife had neither disposition of nor usufruct in the dowry, but only acquired a usufruct as a widow. Disputes between the heirs of the husband and of his father-in-law were often inevitable where the dowry had been absorbed into the family property and its component items were no longer identifiable. We are well informed of such disputes, especially from records of litigation.<sup>13</sup> Documents also record that widows ceded their usufruct in land or other dowry items to adult sons in return for a contractually guaranteed pension.

All in all, the necessary conclusion is that the wife's dowry could not serve as a basis for her own business and certainly could not guarantee her economic independence during her husband's lifetime.

### 3. The Wife's "Cash-box" (*quppu*)

Certain parts of the dowry could be assigned by the bride's father to the bride for her personal use. Apart from jewelry, this could be sums of silver, which were designated as being *ina quppi* "in the cash-box." It is true that the amounts were modest in relation to the overall dowry, but if the dowry were large enough, it could amount to a substantial sum. They show that wealthy fathers were concerned to give their daughters a certain amount of financial independence.

### 4. Inheritance from the mother

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<sup>9</sup> Roth 1991, esp. p. 34f.

<sup>10</sup> E.g. Wunsch 1993: no. 137.

<sup>11</sup> In marriage or dowry contracts the age of the bride or groom is not given, and only prosopographical evidence can help. In the case of Nanaja-ḫīrat from the Egibi family it is clear that she was nine years at most when her dowry contract was drafted (Wunsch 1995-95:42<sup>+66</sup>).

<sup>12</sup> NBL 10. See esp. Roth 1989: no. 10.

<sup>13</sup> E.g. Ries 1984; Roth 2000; Wunsch 1999-2000.

As regards the wife's dowry, the husband did have a usufruct, but no right of inheritance. It was for the children of the marriage, daughters and sons alike. If a widow remarried, she could take her dowry into the new marriage; the second husband would then have the usufruct in it.<sup>14</sup> The capital, however, had to remain intact, since the children of the first marriage were heirs in equal shares with the children of the second marriage. Presumably for this reason investigation and approval by the court was deemed advisable or was prescribed.

No clear principles for division of the dowry among the children of one marriage can be deduced from either the laws or the documents of practice. It would appear that there was a certain flexibility: on the one hand sons divide a mother's estate; on the other, mothers provide their daughters with generous portions even though there are male heirs. It could also happen that a mother changed her mind and withdrew a portion that she had previously allocated. The preferential treatment of a particular child was legitimate, if that child had alone fulfilled the duty of maintenance. The dowry could not, however, be assigned to an outsider as long as the children were alive.

By gifts of the mother in favor of her daughter, the latter could come into possession of property over which she could dispose independently of her husband.

### **Standard Special Provisions**

#### 1. Dispositions of property in favor of the wife *kūm nudunnē*

Transfer of property followed the pattern *pān X šudgulu* "to transfer to someone (as property)." Frequently the donor retains the usufruct for life.

A distinction must be made between transfers *kūm nudunnē* "(as equivalent) for the dowry" and transfers *elat nudunnē* "apart from the dowry" or *adi nudunnē* "in addition to the dowry" or without any appropriate qualification.

The first case (*kūm nudunnē*) concerns compensation to the wife for dowry goods that the husband or his father have subsumed into the family property and invested, so that it is no longer separately identifiable.<sup>15</sup> Dowry compensation often occurred at the insistence of the wife or her family with the aim of putting property equivalent in value to the dowry beyond the reach of the husband's creditors. Even where it looks as if the husband is making his wife a gift, it is not the husband's property that is involved but assets deriving from the wife's family, which at no point actually belonged to the husband. Usually the husband retains a usufruct for life and names the children as heirs.

This arrangement did not improve the wife's economic situation, but without such a transfer in written form she might find herself in an incomparably worse situation.

#### 2. True gifts to the wife *inter vivos* and *mortis causa*

Such gifts are quite frequently documented.<sup>16</sup> This special provision in any case needed to be in writing, as it ran counter to the claims of the legitimate heirs. Often the property in contention was land, houses, or slaves. The wife had unrestricted access to income from lease and hire of property, either immediately or after the death of the

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<sup>14</sup> NBL §13. Cyr 168 concerns a division of dowry property by two sons from different marriages of the mother. Collation of the text has revealed that their shares are equal, as would be expected.

<sup>15</sup> Roth 1989-90: 3-6.

<sup>16</sup> E.g. BM 33092 (Roth 1989-90: no. 2) which concerns a field and a house, 14 slaves and debt notes worth  $8\frac{5}{6}$  minas of silver, i.e. a substantial gift, explicitly labeled *elat nudunnē*.

donor. In this way, such gifts furnished an important basis for the wife's independent business activity.

A clause whereby the wife "may give to whomever she wishes" a particular item occasionally guarantees her free right of disposition in addition to usufruct.<sup>17</sup> Otherwise, the unstated assumption must be that her children will inherit.

### 3. Supplementary Dowries

Occasionally women were given an extra dowry by their relatives (mother, grandmother, brother).<sup>18</sup> As far as usufruct is concerned, the rules of dowry apply in principle, and the husband is explicitly mentioned as co-beneficiary. In relation to the "normal" dowry, this extra gift represents only a quantitative improvement.

### 4. Adoption of a son-in-law

If there were no male heirs, a son might be adopted and married to the adopter's daughter.<sup>19</sup> This arrangement, however, made no substantial change to latter's economic position.

## **Special Provisions that run counter to the rules**

### 1. An inheritance share for the daughter alongside the son

To date a single example is attested where a father assigns his daughter an inheritance share of one third, and expressly in addition to the dowry.<sup>20</sup> The background can be reconstructed from the archival context.

The father, a successful businessman, had one son and one daughter. He married his daughter to the eldest son of an influential businessman and royal judge with excellent connections to the ruling circles. A substantial sum of dowry silver was given to the father-in-law shortly after the betrothal, while several years were left to pass until the household items were handed over. This haste in paying the money was in contrast with customary practice. The economic aspect was therefore decisive in facilitating the marriage, and the investment must have been justified for the father in the profit that he anticipated from it – which would also redound to the benefit of his son. With the one third inheritance share, the daughter in some respect got the portion that would have gone to a second son, while the only son received the preferential share of a first-born. This unusual arrangement does not appear to have remained unchallenged, since later documents attest to its modification.

A large part of the daughter's inheritance share (far exceeding the value of the dowry) was transferred to her husband's family in advance, during her father's lifetime, albeit dressed up as an interest-free loan. Her father accordingly transferred business capital from his estate to his son-in-law, but formally remained the latter's creditor. When

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<sup>17</sup> VAS 5 129 (= NRV 17):27 *ašar tarâm* [anamdin]; AfO 42/43, 48-53, no. 2:10, 36 *ašar pān* [šu mah] *ra tanamdin*.

<sup>18</sup> For additional dowries to the women of the Egibi family (granted by their maternal grandparents) see Wunsch 1995-96, esp. 41f.

<sup>19</sup> E.g. Nbn 356 (see n. 6).

<sup>20</sup> Wunsch 1993: nos. 137, 209, discussed in vol. 1, 78-82.

the daughter died, he made her children heirs to his claim on the debt: thus they inherited property of their maternal grandfather at the expense of their father.

## 2. Assignment of the whole estate to the wife notwithstanding the existence of male heirs

Before going on a long journey, the businessman Itti-Marduk-balā'u from the Egibi family bequeathed the whole of his property to his wife, but retained for himself the usufruct for life, and by implication also the right to dispose of it. The will also provides dowries for the daughters and names a future son-in-law. Wife, son, and daughters are to take joint possession of the estate.<sup>21</sup>

This unusual document is the only case known to me in which the whole estate was bequeathed to the wife, although a male heir – if still a small child – existed. Once again, the special circumstances are to be reconstructed from the archival context. Some five years before the drafting of the document, the husband had inherited the estate of his father as eldest son and taken over the running of the family business. He was still an undivided heir together with his brothers. At the same time, he and his father had been close business associates of his father-in-law, and substantial sums had been transferred by way of dowry. In the event of Itti-Marduk-balā'u's death, his brothers could have insisted on taking over the business, as his son was not yet old enough. That was exactly what he sought to avoid: by making his wife the heiress, he gave her father a chance to intervene on her behalf (and on behalf of her children), to pave the way for division of the inheritance with the brothers, and to run the business until the grandchild was old enough. Without this provision, the wife and daughters in these circumstances would only have had a claim to payment of their dowries.

The provisions of the will were never realized, because Itti-Marduk-balā'u outlived his wife. Whether the brothers could have challenged the will remains an open question.

## Summary

In the Neo-Babylonian/early Achaemenid period women had the capacity to engage in commerce, but the patrilineal law of inheritance foresaw no automatic way for them to gain possession of assets. There were, however, legal institutions available, in the form of gifts and testamentary dispositions, that could if needed be used for this purpose.

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<sup>21</sup> Wunsch 1993: no. 260, discussed in Wunsch 1995-96.

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