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BABATHA'S FIRST MARRIAGE CONTRACT: HIDING IN PLAIN SIGHT

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Abstract

Babatha's archive of 35 richly informative legal documents from the period 94 – 132 CE only contains the contract for her second marriage, not her first. This omission invites investigation, in this article from a microhistorical perspective. Admittedly, Greek 'unwritten marriages' were known in Egypt during this period, and there is evidence for the influence of Greek practices in the Dead Sea region. Nevertheless, this article argues, firstly, that a written contract with the all-important dowry provisions (securing her position in the event of widowhood or divorce) accompanied her first marriage. Secondly, it is argued that Babatha retained this contract after her husband died. Thirdly, it is argued that her second marriage contract is a copy of the first contract and that, with all its provisions (*mutatis mutandis*) replicated in the second, she discarded it. This course of events illuminates significant aspects of the lives of Babatha and her family.

INTRODUCTION

The thirty-five legal documents (in Greek and Aramaic) of the Jewish woman Babatha, hidden by her in a leather satchel in a cave in Naḥal Ḥever in about 135 CE at the end of Bar Kokhba's revolt and rediscovered by archaeologists in 1961,[1] reveal that she married twice. Her first marriage, probably in about 117–118 CE,[2] was to a certain Jesus, son of Jesus, from her hometown of Maoza (on the south-eastern side of the Dead Sea). But in late 123 or early 124 CE, this husband died. Within three or four years she had married again, this time to Yehudah, son of Eleazar Khthousion, who had interests in both Maoza and En-Gedi. The contract for her second marriage, in Jewish Aramaic and drafted 'according to the law of Moses and the Judeans' (כדין מושה ויהודאי; P. Yadin II 10, line 5), forms part of her archive. So too does the marriage contract, in Greek, of her stepdaughter, Shelamzion (P. Yadin I 18). Yet no such contract for Babatha's first marriage was found among her documents.

This circumstance invites investigation. For Babatha was very scrupulous in retaining possession relevant to her own legal position and that of her relatives by

[1] For the discovery, see Y. Yadin, 'The Expedition to the Judean Desert, 1961: Expedition D — The Cave of the Letters', *Israel Exploration Journal* 12 (1962), pp. 227–257. The Greek documents were published first: N. Lewis (ed.), *The Documents from the Bar Kokhba Period in the Cave of Letters: Greek Papyri* (Judean Desert Studies; Jerusalem: Israel Exploration Society, Institute of Archaeology, Hebrew University and Shrine of the Book, Israel Museum, 1989). These are cited as P. Yadin I 5 etc, where 'I' indicates this first volume. The (Nabatean and Judean) Aramaic documents were published later: Y. Yadin, J. C. Greenfield, A. Yardeni and B. A Levine (eds), *The Documents from the Bar Kochba Period in the Cave of Letters: Hebrew, Aramaic and Nabatean-Aramaic Papyri* (Judean Desert Studies; Jerusalem: Israel Exploration Society, Institute of Archaeology, Hebrew University and Shrine of the Book, Israel Museum, 2002). These are cited as P. Yadin II 1 etc, where 'II' indicates this second volume.

[2] And almost certainly before mid 120 CE, the date of P. Yadin II 7, which appears to assume her marriage (lines 24–6, 65–9).

blood or marriage. In particular, the lack of a first marriage contract raises three questions: first, was there a contract when Babatha married her first husband; secondly, if so, did she retain possession of it after his death; and, thirdly, if these questions are answered affirmatively, what happened to it? Investigating these issues aids in understanding aspects of Babatha's life and carries us into the lives of other members of the Jewish community of Maoza at a very granular level. This is the unique benefit of a microhistorical examination of documents from a legal archive such as this.[3]

WAS THERE A CONTRACT FOR BABATHA'S FIRST MARRIAGE?

It is sometimes simply assumed that a written contract existed for Babatha's first marriage. Thus Hannah Cotton and Jonas Greenfield note, without comment, that 'Babatha's contract to her first husband' was not found in her archive.[4] But is this assumption valid? What if no such contract existed? What if Babatha and her first husband Jesus lived together as man and wife without such a document, for example, in what is called, an *agraphos gamos*, an 'unwritten marriage', examples of which survive from Egypt.[5] Since a written document did not constitute a marriage, an *agraphos gamos* was possible. Where a contract was then drawn up, the marriage then became an *engraphos gamos* ('a written marriage'). It is clear, moreover, that some Greek marriage practices found their way to Judea and Nabatea/Arabia. The marriage contract of Babatha's stepdaughter mentioned above contains what is generally agreed to reflect the *ekdosis* ('giving away') tradition known from Egypt, where the bride was entrusted to her husband: 'Judah, son of Eleazar, nicknamed Khthousion, gave over (*exedoto*) Shelamzion, his own daughter, to Judah nicknamed Kimber, so …' P. Yadin I 18, 3–5).[6]

An *agraphos gamos* is possibly revealed in Maoza during our period in the marriage contract of Salome Komaïse (P. XḤev/Se 65).[7] This document, while recording the payment of a dowry on the date it was executed, also contains the words that the bride and groom '[continue] life together … as also before this time' (lines 5–6). Ranon Katzoff and, following him, Naphtali Lewis considered that the situation in this document reflected a later rabbinic tradition where 'bride and the groom had been

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[3] On this research methodology, see S. G. Magnússon and I. M. Szijártó, *What is Microhistory? Theory and Practice* (London: Routledge, 2013). For the method in practice, see E. Le Roy Ladurie, *Montaillou: Cathars and Catholics in a French Village 1294–1324* (Harmondsworth: Penguin 1980) and (deployed within an 'archival ethnography' approach) P. F. Esler, *Babatha's Orchard*: *The Yadin Papyri and An Ancient Jewish Family Tale Retold* (Oxford: OUP, 2017).

[3] H. M. Cotton and J. C. Greenfield, 'Babatha's Property and the Law of Succession in the Babatha Archive', *ZPE* 104 (1994), pp. 211–224, 218.

[4] H. M. Cotton and J. C. Greenfield, 'Babatha's Property and the Law of Succession in the Babatha Archive', *ZPE* 104 (1994), pp. 211–224, 218.

[5] For the position in Egypt, see H. J. Wolff, *Written and Unwritten Marriages in Hellenistic and Postclassical Roman Law* (Haverford, PA: American Philological Association, 1939) and U. Yiftach-Firanko, *Marriage and Marital Arrangements: A History of the Greek Marriage Document in Egypt. 4th Century BCE —4th Century CE* (Münchener Beiträge zur Papyrusforschung und Antiken Rechtsgeschichte, 92: Münich: Verlag C. H. Beck, 2003), pp. 81–104.

[6] For the text, see Lewis, *Documents*, p. 77. See the plausible discussion on this issue in P. Yadin I 18 by U. Yiftach-Firanko, 'Judaean Desert Marriage Documents and *EKDOSIS* in the Greek Law of the Roman Period', in R. Katzoff and D. Schaps (eds), *Law in the Documents of the Judaean Desert* (Supplements to the Journal for the Study of Judaism, Volume 96; Leiden: Brill, 2005), pp. 67–84, at pp. 78–80.

[7] See H. Cotton and A. Yardeni, *Aramaic, Hebrew and Greek Documentary Texts from Naḥal Ḥever and Other Sites: With an Appendix Containing Alleged Qumran Texts (The Seiyal Collection II)* (Discoveries in the Judean Desert, 27; Oxford: The Clarendon Press, 1997), pp. 228–229.

living together since the day of their betrothal, in keeping with the Jewish practice of the time when the bride was both an orphan and a minor.'[8] Tal Ilan and, following her, Hannah Cotton have rejected this view, insisting that this is a case of an unwritten marriage becoming a written one similar to what we find in Egypt.[9] There is neither space nor need to adjudicate on this debate here. Suffice it to say, that the signs of Egyptian influence on marriage in the Dead Sea region mean that an *agraphos gamos* was a real option.

Consideration of whether Babatha would have entered into a marriage with her first husband without a written contract, and whether her father Shim'on and mother Miriam would have consented to such a course, begins with the central role of the dowry in the marriage contracts that survive from the ancient Mediterranean world. Research by social scientists into modern instances of the dowry has well brought out its underlying social rationale. A dowry represents the resources of a family that pass from parents to daughters and is a form of inheritance that the bride receives on marriage.[10] Dowries are the product of a bargain where the bride's family aims to link themselves and her to a desirable son-in-law, and dowries increase with the wealth and social status of the two families.[11] The dowry is meant to be held by the husband in trust for the wife, on condition that it will be returned to her if he dies or divorces her. The presence of a dowry is of fundamental importance to a married woman since, in the event of either of these two contingencies, her economic survival might well depend on her former husband or his family returning the dowry to her. A dowry is particularly significant in patrilineal societies where sons, or, in their absence, paternal male kin typically inherit unalienated family property upon the death of the father. Dowries were regularly included in ancient Jewish marriage contracts in the Roman period.[12] Michael Satlow notes that 'Philo and Josephus seem to assume that a dowry was an essential component of a respectable Jewish marriage',[13] and they regularly appear in the marriage contracts from the Dead Sea. In the latter, repayment of the dowry is secured against the property of the husband. Patrilineal succession was present in Judea and in Nabatea (which became Roman Arabia in 106 CE),[14] although under Israelite law it was modified in favour of surviving daughters (Num. 27:8–9). A number of considerations weigh heavily against Babatha having entered into her first marriage without a written contract that made provision for her dowry.

Firstly, Babatha possessed, or had at her disposal, at least 700 denarii on her marriage to her second husband, Yehudah. Of that amount, 400 denarii constituted the dowry she, or her father if he was still alive, brought to her second marriage (P. Yadin II 10, line 6). There was a separate amount of 300 denarii Babatha lent to

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[8] Lewis, *Documents*, p.130. Katzoff notes of this approach 'it was I who suggested it to Lewis', in his essay 'On P.Yadin 37 = P.Hever 65', in Katzoff and Shaps, *Law*, p. 133-144, at p. 134.

[9] See T. Ilan, 'Premarital Cohabitation in Ancient Judea: The Evidence of the Babatha Archive and the Mishna (*Ketubbot* 1.4)', *Harvard Theological Review* 86 (1993), pp. 247–64, and Cotton and Yardeni, *Aramaic,* pp. 226-229.

[10] J. Goody, 'Bridewealth and Dowry in Africa and Eurasia', in J. Goody and S. J. Tambiah, *Bridewealth and Dowry* (Cambridge Studies in Social Anthropology; Cambridge: Cambridge University Press, 1973), pp. 1–58, at pp. 1 and 17.

[11] Ibid., p. 17.

[12] See the discussion of dowries by M. L. Satlow, *Jewish Marriage in Antiquity* (Princeton and Oxford: Princeton University Press, 2001), pp. 199-216.

[13] Ibid., p. 201.

[14] In P. Starcky (from Maoza in 58-68 CE), lines 21-22, a man states that he is the heir of his deceased father and his paternal uncle, the latter having died without issue; for the text, see A. Yardeni, 'The Decipherment and Restoration of Legal Texts from the Judaean Desert: A Reexamination of Papyrus Starcky (P. Yadin 36)', *Scripta Classica Israelica* 20 (2001), pp. 121-137). P. Yadin I 20, from 130 CE, concerns a claim two minor males have on their paternal uncle's estate.

Yehudah in February 128 CE (P. Yadin I 17, line 26). At some stage she also lent Yehudah her dowry and he died still owing her both debt and dowry. This motivated her to seize date-orchards of his after his death so that their crop could repay both loans, which are specifically referred to in the matching contracts for the harvest and sale of the dates (P. Yadin I 21, lines 11–12 and I 22, line 10). Since she had been widowed for a few years, it is likely that before re-marrying she spent some of her available cash. Although, as of December 127 CE, she also owned four date-palm orchards,[15] from where did her cash originate? The likely source was the dowry her father, Shim‘on, provided for her first marriage, to Jesus, and which was repaid to her after his death. This dowry probably totalled 800 denarii. Mordechai Friedman has noted that consistently in the Mishnah, the Palestinian Talmud, in all Amoraic passages in the Babylonian Talmud and in most of the Palestinian Judean marriage contracts from the Cairo Geniza he has analysed the dowry for a bride who was a virgin was twice that for a widow.[16] Since two clauses in P. Yadin II 10 are later found (cited in Aramaic) among the Mishnaic requirements for a marriage contract (see below), it is not unreasonable to assume that a custom of a widow’s dowry being half that of a virgin’s was also present in the early second century CE. These factors suggest Babatha’s first dowry was 800 denarii.

Larger dowries than this are known from the Dead Sea region. The dowry in P. Mur 116, a Greek wedding contract, was the large sum of 2,000 denarii (line 12).[17] In 94 CE a Nabatean woman lent her husband a maximum of 300 *sela‘s* (equivalent to 1,200 denarii) from her dowry, which could well have been larger.[18] On other hand, several dowries were smaller, from 500 to 200, to 96 denarii.[19] Accordingly, Babatha’s likely dowry of 800 denarii falls at about mid-point in the range. This suggests that her father Shim‘on was a man of some means.

Babatha’s dowry was thus reasonably large, and her financial well-being might eventually have rested upon it. How likely is it that Babatha’s father handed such a sum to the groom other than in the context of a written document that both provided for its payment to Babatha if Jesus died or divorced her and secured that obligation against all his property? It is hard to imagine any responsible father in this setting not requiring such a document, but further considerations suggest that, as far as Shim‘on is concerned, the likelihood is close to zero. For this was a man who clearly loved his daughter and took considerable care for her welfare, as two areas of evidence reveal.

Firstly, in 127 CE Babatha registered in the Roman census four date-palm orchards she owned in Maoza.[20]Her father, Shim‘on, almost certainly gave her these properties on her first marriage.[21] This cannot have been later than 120 CE, since on 13th July of that year Shim‘on gave all the property he possessed in Maoza to his wife Miriam, on condition that full ownership be transferred to her on his death. So as well

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[15] They are described in P. Yadin I 16, her registration in the Roman census of that year.

[16] M. A. Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study. Volume 1. The Ketubba Traditions of Eretz Israel* (Tel-Aviv and New York: The Jewish Theological Seminary of America, 1980), pp. 251–53.

[17] For the text, see P. Benoit, O.P., J. T. Milik and R. de Vaux O.P., *Les Grottes de Murabba‘at* (Discoveries in the Judaean Desert, II; Oxford: The Clarendon Press, 1961), pp. 254–6.

[18] P. Yadin II 1.

[19] See P. Yadin I 18, the Greek marriage contract from 118 CE of Shelamzion, a virgin, and Babatha’s stepdaughter —500 denarii; P. Mur 20, in Aramaic probably from around 117 CE, the bride being a virgin—200 denarii; P. Mur 115, a contract of remarriage (so presumably equivalent to a widow’s dowry) in Greek from 124 CE —200 denarii; and P. XḤev/Se 65 from 131 CE this was the bride’s second marriage, so this is a widow’s amount)—96 denarii.

[20] The registration document is P. Yadin I 16.

[21] H. M. Cotton and J. C. Greenfield, ‘Babatha’s Property and the Law of Succession in the Babatha Archive’, *ZPE* 104 (1994), pp. 211–24.

as a dowry in the form of 800 denarii in cash, Shim‘on also gave Babatha valuable real estate. This was not a man so insouciant as to his daughter’s future well-being as to agree to her marrying someone without a written document protecting her dowry.

Secondly, there is a significant clause in Shim‘on’s deed of 120 CE (P. Yadin II 7) whereby he gifted all his property in Maoza to his wife Miriam:

> The sole (exception is that) it shall be the established right of Babatha, our daughter, that if she is widowed and will have no husband, that she may reside in the granary, which is a part of the sites of this gift, and may have (free) access and egress together with you (sc. Miriam) in that courtyard of the granary for as long as she is a widow without a husband; but she will not have the rightful authority to bring a husband into that house.[22]

Such a provision would have appealed to any father who was about to give real estate to his wife but who was also concerned for his daughter’s welfare if she was widowed. There was, however, a particular reason why it may have been important for Shim‘on to ensure that Babatha had somewhere to live in the event of her widowhood. It is reported in the Mishnah (*mKet* 4:12) that the people of Judea used to write into their wedding contracts that a widow could stay in her late husband’s house only until his heirs had paid her the dowry, whereas people in Galilee and Jerusalem stipulated for as long as she lived. While no claim is made there that such a clause had become normative at this date, it is noteworthy that the first type of clause is found in P. Yadin II 10 (lines 15–16; see below. The provision reflects the position in Judea (apart from Jerusalem). This may be explained by the proximity of Maoza to En-Gedi in Judea and the connections between persons in the two towns, perhaps because Judean date-farmers from En-Gedi moved to Maoza to grow dates there, given its abundant water supplies.[23] The second type of clause, more favourable to the widow, appears in the two (admittedly fragmentary) Aramaic marriage contracts from Murabba‘at, P. Mur 20 (lines 9–11), executed in Haradona (some 5 kms from Jerusalem),[24] and P. Mur 21 (lines 14–16), of unknown place of origin.[25] Shim‘on would no doubt have been aware of the Judean version of this provision and may well have wanted his daughter to avoid its strictures should she be subject to it in a marriage contract, as certainly in relation to P. Yadin II 10 she eventually was.

While Shim‘on was thus very concerned for his daughter’s welfare if she was widowed, it is unclear why he did not also provide for Babatha to live in the granary if she was divorced. Perhaps the Judean practice just mentioned was weighing on his mind. Perhaps since this was a document making provision for Miriam’s becoming a widow, Shim‘on and his scribe were focused on the subject of widowhood and simply omitted it.[26] Perhaps, although becoming a widow or being divorced were both

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[22] P. Yadin II 7, lines 24-26 (Trans. by the editors, slightly modified).

[23] The earliest Jew we know to have reached Maoza was Nabima, mentioned in P. Starcky, lines 9, 20 (for the text, see Yardeni, ‘Decipherment’), who must have arrived before 35 CE. He was probably a direct ancestor of Babatha’s second husband Yehudah (see P. F. Esler, ‘Babatha’s Final Days: New Light from Papyrus Starcky’, *Journal of Biblical Literature* [2022] 141: 491-512).

[24] See Benoit *et al*., *Murabba‘at*, p. 111. The editors provide the texts of, and discuss, P. Mur 20 on pp. 109–14 and P. Mur 21 on pp. 114–17.

[25] Z. Safrai, ‘Halakhic Observance in the Judaean Desert Documents’, in Katzoff and Schaps, *Law*, pp. 205–236, p. 218, notes that P. Mur 21 followed the Jerusalem approach, but fails to mention P. Mur 20 does as well.

[26] This suggestion was made to the author by Michael Satlow (personal communication).

common experiences for Judean women,[27] the former occurred more frequently and constituted the greater risk.[28] Maybe knowing her husband, Jesus, Shim'on considered the prospect of his divorcing Babatha remote.

Whatever the explanation in relation to the possibility of divorce, here we see a man of considerable means paying particular attention to the welfare of his daughter in the event she was widowed, given the exigencies of life in a social setting where life expectancy was low. In that circumstance, Babatha would at least have a roof over her head. A man so concerned for his daughter if her marriage ended unhappily is hardly likely to have displayed less care in relation to ensuring the married with a contract protecting her dowry.

Thirdly, we note that her marriage contract with Yehudah (P. Yadin II 10), which precedes Yehudah taking Babatha into his house (line 5), makes ample provision for the return of her dowry (lines 6, 16) and appears to contain (line 17)[29] a provision securing repayment of the dowry against the groom's property. If Shim'on were still alive when Babatha remarried, these provisions in this document would indicate the care he then took for her welfare. Why would he have taken any less care some years earlier when she married her first husband?

Additionally, from what we know of Babatha, it is difficult to assume that she would have had a view on this matter any different from her father. In later years we find her a doughty defender of the interests of her infant son and herself. She commenced litigation against his guardians for providing insufficient maintenance (P. Yadin I 13 and 14) and against her late second husband's other wife to answer why she had seized everything in his house (P. Yadin I 23). After his death she took possession of date-palm orchards he owned (P. Yadin I 21 and 22). She does not appear to be a woman who would imperil her future by entering into marriage without a contract protecting her dowry if her husband died or divorced her. Since as we will see below, her second marriage contract (P. Yadin II 10) amply protected her economic interests, she is hardly likely to have been any less careful when she had first married some years earlier.

The evidence, therefore, leads to the conclusion that there was a written document contemporaneous with Babatha's marriage to her first husband Jesus that contained a stipulation requiring repayment of her dowry of (probably) 800 denarii, with that obligation secured against all of Jesus' property. But can we say anything more about that document. Was it in Aramaic and following Jewish law? Or did it follow Greek law or custom? And what other clauses might it have contained? Analysis will reveal that the answers to these questions are likely to be found in Babatha's marriage contract with her second husband, on the basis, advanced below, that it is a copy of her first marriage contract, with the date, name of the groom and amount of the dowry changed, and with some copying errors.

DID BABATHA RETAIN HER FIRST MARRIAGE CONTRACT?

This hypothesis assumes that Babatha, with her husband dead and her dowry returned to her, retained her first marriage contract up to the time of her second marriage, so that it could provide the precedent for the second contract, which is P. Yadin II 10 (as

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[27] Michael L. Satlow, *Jewish Marriage in Antiquity* (Princeton and Oxford: Princeton University Press, 2001), pp. 182-183.

[28] The nature of the available data probably prevents reaching any view on whether widowhood or divorce was a more common experience for women.

[29] This is very securely suggested by the editors on the basis of comparison with P. Mur 20, line12 (in Aramaic) and P. Mur 115, line 17 (in Greek); see Yadin *et al*., *Documents*, p. 140.

argued below). This assumption, however, faces a significant hurdle. This is the suggestion that on repayment of her dowry by her ex-husband or his family if he had died, a woman handed over her marriage contract to be retained by him or them, and that it was then scored through with chiastic lines to signal its cancellation.[30] Indeed, a marriage contract in Greek so cancelled is extant from the same cave in which Babatha's archive was found.[31] Yet, while there is a *prima facie* plausibility to the device of exchanging dowry for marriage contract, certain factors weigh so heavily against its legal usefulness, especially where the husband had died but also where he was divorcing his wife, as to cast doubt on its employment. These factors, general issues of legal prudence, will now be explored, followed by the citation of relevant ancient evidence suggesting a different course was followed.

In regard to the wife, a potential problem was that the family of a deceased husband, or the divorcing husband himself, might only be able to repay part of the woman's dowry at the time it was requested, yet demand delivery of the marriage contract therewith, thus depriving her of its value in the event no further payment was forthcoming.

In regard to the husband's family or husband, an unscrupulous ex-wife, who had received her dowry, might falsely claim that her ex-husband's family, or he himself, had only made part-payment after she had given them or him the marriage contract. Even worse, she might claim her husband (before he died or divorced her) had wrongly taken or kept possession of her marriage contract and had never paid her anything. These risks suggests that a simple exchange of dowry for marriage contract was too risky an instrument to be relied upon.

The only protection against such risks—for both the widow or ex-wife and for a deceased husband's family or the man himself in the case of divorce—was for the wife to provide a dated and duly witnessed receipt signed by her or her legal guardian referring to the amount of the dowry in the marriage contract and specifying her receipt of some or all of the dowry. In either situation it would have been appropriate to draw lines upon the marriage contract to demonstrate its cancellation.

Consideration of which party retained possession of the cancelled marriage contract (and the discovery of such a document in the cave in Naḥal Ḥever, *supra*, suggested someone did, rather than its simply being destroyed) requires differentiating between widowhood or divorce. If the husband had died, his family, who had repaid the dowry and received a receipt from his widow, had no conceivable use for the marriage contract. For a widow, however, the marriage contract was her evidence of the terms on which she was previously married, including as to the amount of her dowry, which she could produce in marital discussions with any future husband, and its usefulness would have persisted until she married again. It was undoubtedly in her interest to retain the document until then. The case of divorce was somewhat different. Here the ex-wife had just the same reason to keep the marriage contract. Her ex-husband, on the other hand, even though he would hold her signed

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[30] See B. Porten, *Archives from Elephantine: The Life of an Ancient Jewish Military Colony* (Berkeley and Los Angeles: University of California Press, 1968), p. 247, where he suggests that Mibtahiah may have had to surrender her marriage contract to her husband, who was divorcing her, in return for her dowry. Tal Ilan develops this view in 'Women's Archives in the Judaean Desert', in L. H. Schiffman, E. Tov and J. VanderKam (eds), *The Dead Sea Scrolls: Fifty Years after their Discovery* (Jerusalem: Israel Exploration Society, 2000), pp.755–60, at p. 758, and in 'Women's Archives from Elephantine and the Judean Desert: Law Codes and Archaeological Finds,' in I. Peled (ed.), *Structures of Power: Law and Gender Across the Ancient Near East and Beyond* (The Oriental Institute of Chicago Seminars 12; Chicago: The Oriental Institute of the University of Chicago, 2018), pp. 171-9, at pp. 174-175.

[31] See H. Cotton, 'A Cancelled Marriage Contract from the Judaean Desert [*XHev/Se Gr. 2*)]', *JRS* 84 [1994] 64-86.

receipt for the dowry repayment, might also have wanted to keep the contract to prove the terms upon which he was previously married and, perhaps, to supply additionaly proof to any potential wife of his divorce. Which of the ex-spouses ended up in possession of the contract would have been a matter for negotiation between them.

This approach to the question of how dowries were repaid finds support in the ancient evidence:

(a) A close comparator is P. Coll. Youtie I. 67 from 260/1 CE.[32] This was a marriage (pursuant to a marriage contract: τῇ τοῦ γάμου αὐτῶν συνγραφῇ; lines 15-16) among members of the wealthiest stratum of society where the young widow's dowry was paid back to her parents by the guardian of the child of the marriage, who had succeeded to his father's estate. The document is essentially a receipt for the repayment of the dowry, issued by the mother of the wife on behalf of herself and her absent husband. Yet there is no reference to the marriage contract being returned.

(b) P. Tebt. II.460, from around 139 CE, is a deed in which a young woman whose husband has died (but who has remarried) waives the right to the dowry owed her by her late husband's family in return for a sum of money and the resolution of an issue concerning some real estate. The woman had previously registered a deed of waiver (συνγραφὴ ἐκστάσεως) with the local authorities in Tebtynis and, as well as providing this deed (P. Tebt. II.460) by way of receipt and settlement of any claims, handed over that deed to her late husband's family. The document also refers, however, to 'the dowry (τὴν φερνὴ]ν) that they owe me according to a contract' (ἣν ὀ[φίλουσί] μοι κατὰ συν[γ]ρα[φὴν]; lines 24-25), which must be a reference to a written marriage contract, one that preceded and provided the foundation for the first deed of waiver mentioned earlier. Yet there is no statement that this marriage contract was handed over.

(c) As for divorce, on the other hand, P. Oxy II.266 is a dowry receipt[33] from 96 CE in which a divorced woman also stipulates that she has returned to her ex-husband the marriage contract 'crossed out with respect to (its) cancellation, since the dissolution of the marriage has occurred' ([κεχιασμένην ε]ἰς ἀκύρωσιν ἕνεκα τοῦ [ἀν]αζυγὴν τοῦ γάμου γενέσθαι). The dissolution of the contract and the cancellation of the deed that recorded it are separate acts, with the first preceding the second.[34] This document shows the interest of ex-husband in having both the receipt for the dowry and the cancelled marriage contract, probably for the reasons postulated above.

This discussion of a widow's situation makes it likely that Babatha provided a receipt to her first husband's family in return for the repayment of her dowry, in the order of 800 denarii. We know that the practice of providing dated and signed receipts in return for monetary payments was established in Maoza, since P. Yadin I 27 is Babatha's receipt of 19th August 132 CE for payment of six denarii from his legal guardians, constituting three months' maintenance due to her son. More importantly, it is also likely that Babatha retained her first marriage contract, at least

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[32] For a translation of this document, see J. Rowlandson (ed.), *Women & Society in Greek and Roman Egypt: A Sourcebook* (Cambridge: CUP: 1998), pp. 191-193.

[33] Bernard Grenfell and Arthur Hunt label it a 'Deed of Divorce' (P. Oxy II. P. 238), but the divorce had occurred previously, since document is addressed to the man who was once her husband (τῷ γενομένῳ αὐτῆς ἀνδρί; line 5).

[34] 'With respect to' translates the Greek εἰς used here in its relational sense. The aorist γενέσθαι indicates the marriage has already been dissolved.

until the time when she married Yehudah, son of Eleazar Khthousion. For her it served the useful purpose of setting out the terms under which she had previously agreed to marry, including the amount of her dowry. For her deceased first husband's family, however, having obtained her receipt for their dowry repayment, it would have served no purpose at all.

WHAT HAPPENED TO BABATHA'S FIRST MARRIAGE CONTRACT?

P. Yadin II 10 as a copy of another marriage contract

Our argument now requires a consideration of Babatha's marriage agreement with her second husband, Yehudah, written in Jewish Aramaic (P. Yadin II 10).

Here is the text:[35]

Recto

1. [On the th]ird of Adar, in the consulate of [……]
2. ……
3. [……..] you [……..]
4. [……from E]n-Ged[i …….. that you will be to me]
5. as a wife [according to the la]w of Moses and the J[u]deans. And I will [feed] you and [clothe] you.[36] And in accordance with your dowry,[37] I will bring you (into my house),
6. and you have a binding claim upon me (in the sum of) four hundred *zūzīn* (denarii), which are (equivalent to) one hundred T[y]rian (tetradrachms), whatever
7. she (*sic*) will wish to take and to …. from the ….[38], together with the lawful allocation of your food, your clothing and your bed,
8. the provision for a married woman. Or, which (is) the value (in) silver (of) four hundred *zūzīn* which are (equivalent to) sela's (tetradrachms) (in number)
9. one hundred. Whatever you wish to take and to [….. from the dow]ry, together with the lawful allocation of your food, and your bed
10. and your clothing as (is appropriate for) a married woman. And, if you are taken captive, I shall redeem you from my estate (and) from my assets,
11. [and I shall take] you back as my wife, [and] your dowry will be an obligation upon me just as [……..].
12.-13. [*And if you shall go to your eternal home before me, your sons from me will inherit the silver of your dowry, in addition to what would otherwise be theirs.*][39]

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[35] Translation by the author.

[36] The text translated 'feed' and 'clothe' is uncertain, but these requirements feature in other Judean marriage contracts (e. g. P. Mur 20, lines 9–11).

[37] The Aramaic word is *ketubba* (כתבה), a standard word in later Jewish tradition for a woman's marriage contract, the meaning the editors assume here by leaving the word untranslated. But it is problematic to infer this meaning here when the whole document is a marriage contract and the word clearly means 'marriage-money', that is 'dowry', in line 11. This is an early instance of a meaning that also appears in Jewish Palestinian Aramaic from the third century CE to the Arab conquest; see M. Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period*, 272. Indeed, Friedman, *Jewish Marriage in Palestine*, p. 77, notes that in 'Palestinian rabbinic sources the word (sc. φερνή) is used exactly like the word *ketubba* … for either the dowry, …, or the marriage contract.'

[38] The editors (*Documents*, p. 129) gently postulate פרנה ('dowry'), adopted from the Greek *phernē* (and used in this sense by Yehudah Cimber in his Aramaic subscription to his marriage contract with Shelamzion [P. Yadin 18:71]), but the word for dowry in this document is *ketubba* (as in lines 5 and 11).

[Childr]en (who are)
14. fe[m]ale will reside and be provided for from my house and from [my assets until] the time that they are [marr]ied to husbands. And if
15. And if (sic) I shall go to my eternal h[ome] before you, you shall reside and be provided for from my house (and) from my assets
16. [until the t]ime that my [heir]s shall wish to give you the silver of your dowry. And at whatever time that you tell me,
17. [I will exchange] for [*you this document, as is fitting. And all the ass]ets [that I possess and that I will acquire are guaranteed and pledged*]
18. [*for your dowry. And I, Yehudah, son of Eleazar, (declare) there is bind*]ing on me, me myself, everthing that is] written [above].

Verso
19. […] for Babatha daughter of Shim‘on, obligatory upon Yehudah, son of Eleazar.

Signatures
20. [Yehudah, son of Eleazar; on] on his [own account] he wrote it.
21. [….]
22. [Baba]tha, [daughter] of Shim[‘on]; on her account.
23. [……] by [her] verbal order.
24. Toma, son of Shim‘on; witness.
25. [….., *son of Yeho*]*ḥanan*;[40] wit[ness].
26. […] … […]

This is a sophisticated legal document. Its author was very familiar with the evolving approach to the Judean Aramaic marriage contract (later called a *ketubba*). ‘By the late second Temple period and the early second century, its formula (sic) had begun to crystalize.’[41] This process is reflected in two such contracts that were found in the caves of Murabba‘at, P. Mur 20 and 21.[42] Some of the clauses present in these contracts were later noted as necessary in marriage contracts in the Mishnah.[43] Two are even stated in Aramaic, thus indicating the conservative nature of the tradition. Thus *mKet* 4:7 mentions the requirement that a wife’s dowry is secured against her husband’s property, while *mKet* 4:8 requires the provision that if a wife is captured her husband will redeem her and take her back as his wife.[44] The former provision is persuasively postulated for the lacunate verses 17–18 of P. Yadin I 10,[45] while the latter appears in lines 10–11 thereof. The husband’s promise to secure his wife’s dowry against his present and future acquired assets was the fundamental safeguard

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[39] Although lines 12-13 have not survived, barring a few letters, some provisions such as those postulated and italicised here must have stood here, since this is the first part of a standard clause covering the situation of children of the marriage in the event of the wife predeceasing the husband (first the sons and then the daughters), which became formalised later, as seen in *mKet* 4:10, but fragments of which survive in P. Mur 20, lines 6 and 21, 13 from this earlier period. The daughters’ position (line 14 in P. Yadin II 10) is prescribed in *mKet* 4:11.

[40] The reading and hence the suggested name (by the editors, Yadin *et al*., *Documents*, p. 127) are extremely uncertain.

[41] Friedman, *Jewish Marriage in Palestine*, p. 2.

[42] Benoit, *et al*., *Murabba‘at*, pp. 109–117.

[43] These are the so-called ‘court stipulations’ (תנאי בית דין) of *mKet* 4:7–12; See Friedman, *Jewish Marriage in Palestine*, p. 15.

[44] This provision was unique to Judean marriage contracts from Judea. See: Friedman, *Jewish Marriage*, 347 and Safrai, *Halakhic Observance*, p. 217.

[45] See Yadin *et al*., *Documents*, 140.

of her financial security.

A notable feature of this document is that the groom, Yehudah wrote it himself. We know this because we have specimens of his handwriting in the Aramaic subscriptions he provided to certain Greek documents in the archive (P. Yadin I 15, 17 and 18). His subscription in P. Yadin I 17 extends over three lines (41–43).

Yet it is likely that Yehudah was not a scribe, whom we would expect to have the ability—from drafting other contracts of this kind—to be able (like any experienced lawyer) to do so from memory. The first area evidence for him not being a scribe is the existence of a document, quite simple in its terms, to which he was a party (as lessor) and was in a position to draft but did not: P. Yadin II 6 (a lease). This document was written by Yoḥana, son of ʻAbdʻobdat Makutha, who was also responsible for P. Yadin II 8 and 9. Yehudah, however, was only responsible for one document, P. Yadin II 10. He did not even write his own daughter's marriage contract (P. Yadin I 18, although that was in Greek and some of its provisions were specified to be in accordance with Greek custom).

Secondly, Michael Wise has cogently argued for Yehudah's not being a scribe from his analysis of writing styles in the Dead Sea legal papyri.[46]

The third area of evidence for Yehudah's not being a scribe lies in the numerous errors apparent in the document.[47] Their number is quite unusual among the papyri of Babatha's archive. The more prominent inaccuracies are worth listing:

1. In line 7 we find 'she will wish' (תצבא) when 'you (feminine) will wish' (תצבין) is required.

2. In line 14 there is the singular feminine third person for the imperfect of the verb to be (הוא[ת]) with (female) children (נקבן), instead of the required plural (יהוין).

3. Immediately after this error in line 14, we have another feminine singular for 'living' (יתבא) when the feminine plural (יתבן) is needed.

4. Also in line 14, after his 'living' (יתבא) we expect 'in my house and be provided for from my assets' (בביתי ומתזנן מן נכסי), but we have instead 'from my house and from my assets' ([נכסי] מן ביתי ומן). The latter phrase replicates one in line 10, where it is used (appropriately) in relation to Yehudah's promise to redeem Babatha with this own resources if she is captured.[48]

5. The words 'and if' (ואם) at the end of line 14 are repeated at the start of line 15, an example of dittography.

6. In line 15 he uses the plural for 'being provided' (מתזנן) when the singular is needed, as he is now talking of Babatha not a plurality of (female) children.

7. In line 15 he repeats the mistake of having 'from my house and from my assets' (מן ביתי ומן נכסי) when he needs '(will live) 'in my house and be provided for from my assets' (בביתי ומתזנן מן נכסי).

8. In line 17, his having the exchange clause before the pledging clause is legally

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[46] Wise, *Documents*, p. 60.

[47] See Yadin *et al*., *Documents*, pp. 130-141, and Michael Owen Wise, *Language and Literacy in Roman Judaea* (New Haven and London: Yale University Press, 2015), pp. 321-323.

[48] See Yadin *et al*., *Documents*, p. 138.

> unnatural (since we expect a procedural clause, like the exchange clause, to come after the all-important pledging clause) and reverses the order in other marriage contracts (such as P. Mur 20 and 21).[49]

How are these errors to be explained? The editors of P. Yadin II 10 deduce from them that Yehudah 'was not a professional scribe.'[50] But this implies that he may been a part-time or amateur one, when the fact he failed to draft P. Yadin II 6 and his handwriting style suggest he was no sort of scribe at all.

Michael Wise has explained the errors on the basis that Yehudah was copying another document. Unlike a scribe writing from memory, he suggests, 'the pattern of errors in the document proves instead that he followed an exemplar as best he could.'[51] As one example, Wise plausibly attributes the first error noted above to the phenomenon of the 'nasalization of final open syllables' produced by Yehudah's 'vocalizing audibly as he wrote.'[52] While one might challenge the idea that Yehudah introduced errors by hypothesising he was copying a document that already contained them, his role would still be that of a copyist. Moreover, even if there had been errors in his exemplar, the dittography at the end of line 14 and start of line 15 rather suggests a fresh error by Yehudah in the process of producing this document. More fundamentally, if there were errors in the document Yehudah had before him, why did he not just correct them? Any competent Judean scribe would have had the requisite knowledge and his professional pride would surely have propelled him to do so. But someone who is not a scribe might easily overlook existing errors and even add new ones. Thus, we conclude, in agreement with Wise's proposal, that Yehudah was coping an exemplar (in the form of an existing marriage contract) and making mistakes as he did so, although qualified to the extent that it is possible there were already some errors in the document he copied.

For someone who was literate but not in the business of drafting legal documents, this constituted a much simpler task than devising a contract *de novo* from memory or by cherry picking clauses from a number of written precedents. A similar suggestion was made by Kimberley Czajkowski in the course of discussing how P. Yadin II 10 was drawn up. In an offhand but astute remark, she has observed that Yehudah 'may simply have copied a previous marriage document in order to save money.'[53] Supporting this idea is the factor that for someone like Yehudah, who was often in debt, employing his literacy to eliminate a scribe's fee for his marriage contract with Babatha may well have been appealing. More recently Czajkowski has floated a different proposal, that although he was 'not skilled to the level of a professional scribe, it is possible that Judah had the relevant literacy skills and legal knowledge to draw up such a contract and did so.'[54] This is much less plausible; someone who could not draft a basic agricultural lease (P. Yadin II 6) was unlikely to have had the ability to draft a marriage contract with its rather more complex provisions. Wise has suggested Yehudah could have taken a precedent from one of the handbooks of notarial practice (which apparently existed at the time) or 'simply copied another

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[49] Also see Yadin, *Documents*, 139.
[50] Yadin *et al*., *Documents*, p. 118.
[51] Wise, *Language*, p. 321.
[52] Wise, *Language*, p. 322.
[53] K. Czajkowski, *Localized Law: The Babatha and Salome Komaise Archives* (Oxford: OUP, 2017), p. 112.
[54] K. Czajkowski, 'Legal Knowledge and its Transmission in Three Marriage Contracts from the Judaean Desert,' in: K. Berthelot, N. B. Dohrmann and C. Nemo-Pekelman (eds.) *Legal Engagement: The Reception of Roman Law and Tribunals by Jews and Other Inhabitants of the Empire* (Rome: École française de Rome, 2021), pp. 251-269 at p. 258.

ketubbah from the family archives, making such changes as necessary.'[55]

P. Yadin II 10 as a copy of Babatha's missing first marriage contract

Leaving aside the possible use of a notarial handbook for the moment, from whom might Yehudah have obtained a marriage contract to copy, which would mean he needed to alter only the date, the names and the amount of the dowry? One can imagine various possibilities. Perhaps he had a copy of the marriage contract with his first wife (Miriam, presumably Shelamzion's mother), as postulated recently by Czajkowski.[56] But she lived in En-Gedi and might have been unwilling to let so precious a document out of her possession to aid her husband in marrying another wife. She may also have had a frosty relationship with Babatha not uncommon between co-wives.[57] This is suggested by her commencing legal proceedings against Babatha after Yehudah's death.[58] Alternatively, perhaps he could have asked another relative or a friend—someone willing to let such a valuable document out of their possession. This suggestion, however, presents complications, both in securing possession and in obtaining Babatha's consent to any document that differed from her first marriage contract, the terms of which she probably agreed to at the time. This factor also weighs against the use of a model taken from a precedent book.

The simplest solution of all was to use another readily available exemplar—in the form of the contract from her first marriage, to Jesus. As argued above, Babatha, as a widow, probably retained this contract, at least until her remarriage, especially because it evidenced the amount of first dowry when she married her first husband. Three considerations support this proposal.

First, this document was physically proximate. Presumably Babatha had it with her in the house in Maoza in which she states she was living in her registration in the Roman census from early December 127 CE, while Yehudah resided in his own house in the town (P. Yadin I 16, lines 14 and 16–17).[59]

Secondly, Babatha would be unlikely to have any objection to Yehudah using it for this purpose. Either because it had been drafted by a professional scribe, paid by her father, or because it was a copy of such an earlier document, Babatha would have had the comfort of knowing that it was of at least reasonably good quality in legal terms. Presumably, her father, her mother and herself had been satisfied with its terms. By having that first *ketubba* replicated, *mutatis mutandis*, for her second marriage she would have been reassured that these legal protections persisted for her benefit. A precedent drawn a notarial handbook would not have offered this comfort, and the thought that Babatha had recourse to one, in spite of the fact she had the contract from her first marriage readily at hand, makes little sense.

Thirdly, and most importantly, this scenario explains the conundrum with which this article began, namely, the circumstance that Babatha did not retain her first marriage contract. The other documents in her archive suggest that she kept documents of continuing legal significance to herself or to her relatives by blood or

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[55] Wise, *Language*, p.

[56] Czajkowski, 'Legal Knowledge', p. 259.

[57] Compare the often-difficult relations between co-wives among Palestinian Arabs in the 1920s described by Hilma Granqvist in *Marriage Conditions in a Palestinian Village* (Helsinki: Akademische Buchhandlung, 1935), pp. 174-217, while Hannah and Penninah present a similar picture in 1 Samuel 1-2.

[58] See P. Yadin I 6, a summons issued by Babatha against Miriam on 9 July 131 CE, containing a reply by Miriam mentioning her earlier summons against Bathatha (Lewis, *Documents*, 113-115).

[59] These living arrangements suggesting they were probably not yet married at this time.

marriage. For the reasons set out above, the main purpose of a marriage contract, to ensure that a widowed or divorced wife was paid her dowry, had been fulfilled in Babatha's case by her obtaining her dowry of 800 denarii after her first husband's death. So, to that extent, the document had fulfilled its primary purpose. Yet before a widow or divorced woman remarried, the marriage contract also served another purpose, by providing proof of the amount of her dowry. Although her second (or subsequent) marriage probably attracted half the dowry of her first, as argued above, her first marriage contract served to confirm the amount.

Once a widow like Babatha remarried, however, it is difficult to see any legal purpose in holding onto the first marriage contract. In a situation where the first contract was capably drafted in terms of the protections it offered the wife (as it is suggested above Babatha's was) and where the new husband was, like Yehudah, literate enough to execute a reasonable copy, having him copy the document fully secured the wife's interests and saved the money otherwise payable to a professional scribe. There was then no need for her to retain the first contract. The counter suggestion to this, that Babatha may have had some sentimental attachment to her first marriage contract, is met by the lack of any language in P. Yadin II 10 and other Dead Sea examples of such language. They are concerned with legal protection.

Accordingly, we conclude that, by changing the date, the name of the groom and the amount of the dowry in P. Yadin II 10, and by rectifying the errors listed above, we have the text of Babatha's first marriage contract. Since the momentous discovery by Yigael Yadin's team of Babatha's archive on 15 March 1961, it has been hiding in plain sight.

Moreover, the reasoning that has led to this conclusion opens the curtains on many significant features of the lives of a community of Jews living by the Dead Sea in the first quarter of the second century CE. Dominant themes arising from this examination of P. Yadin II 10 and other documents in the Babatha archive include a Jewish father's love for his daughter and the notable agency she demonstrates in the defence of her interests. The narrative that emerges is an inspiring one.