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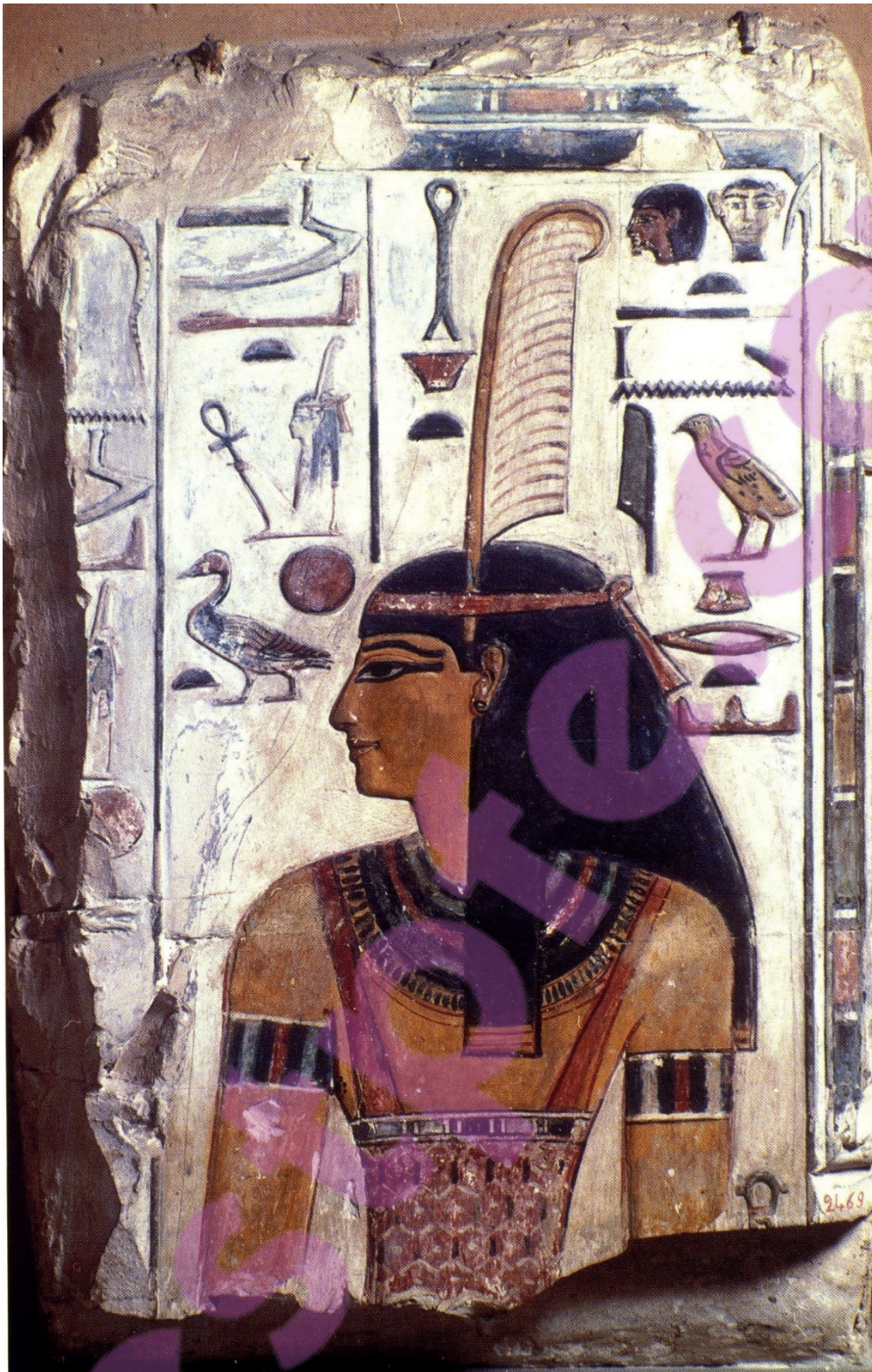


Figure 1.1. The goddess Maat with the ostrich feather, the ever-present symbol of the goddess

Source: From the tomb of Sety I, 19th Dynasty, ca. 1300 BCE; Egyptian Museum, Florence. Photo kindly provided by Dr MC Guidottii, Director of the Museum

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

‘A society cannot be properly understood without a coherent conception of its law. Of importance are the social, moral and cultural foundations of the law’ (Wacks 2006:xiv). In agreement with Wacks, I am of the opinion that the ancient Egyptians can be better understood if we understand their laws in general and in particular, the possible foundations of succession law against the backdrop of their world.

As Assmann (2002:13-14) argues, the most fundamental and all-encompassing construction of meaning is the cultural construction of time since this provides the framework for any account of history and for any understanding of the shape and course taken by history. Indeed, as Thomas Mann (quoted in Assmann (2002:27)) rightly observes, ‘[d]eep is the well of the past’. This is particularly true of ancient Egypt with its exceptionally long history.

I have a legal background and am an admitted attorney of the High Court of South Africa. I practised law before I extended my studies to Egyptology. The title of my Master’s dissertation was ‘The concept of law and justice in ancient Egypt: With specific reference to the Tale of the Eloquent Peasant’. In the present study I shall apply my knowledge of ancient Egypt and hieroglyphs, and use my legal background to look at succession law in ancient Egypt in order to demonstrate a possible link between this branch of law and the ancient Egyptians’ belief in the afterlife. Testamentary dispositions will be analysed to examine whether certain elements and concepts pertaining to succession law are present. The texts analysed for this study refer to the Old, Middle and New Kingdoms of ancient Egypt.

In this thesis the concept of succession law in ancient Egypt and its elements and principles will be identified, specifically relating to testamentary dispositions. In order to establish these elements and principles, we need to understand the Egyptian concept of law, and in particular succession law, and its practice in ancient Egypt. It is fundamentally important to take cognisance of the role of religion and the social context of the ancient Egyptians’ world, since law, and succession law in particular, appears to have been inextricably linked to religion and the belief in the afterlife. An attempt shall

be made to show the direct link between the emergence of succession law in ancient Egypt and the belief in the afterlife.

Succession law is concerned with the transfer of property vested in a person at his death to another person or persons. The definition of succession law will be further discussed in Chapter 2.

When a person dies, his or her assets pass by inheritance to a person or persons qualified to succeed the deceased. The rules of succession law determine who the qualified person(s) are and they establish the scope of the benefits (Schoeman & De Waal 2005:2). In essence, as Corbett, Hofmeyer and Kahn (2001:1) put it quite simply, '[t]he law of succession deals with the rules governing the devolution of the estate of a person upon death'.

The ancient Egyptian culture seems to have emerged, fully formed, towards the middle of the fourth millennium BCE and, after almost forty centuries, eventually disappeared at the end of the fourth century AD (Grimal 2000:17; see also Addendum A of this study for a timeline). Ancient Egypt had become consolidated by the early third millennium BCE with the pharaoh heading a centralised state with developed administration (Allam 2007:263). Menes, the first pharaoh, united Upper and Lower Egypt in around 3200 BCE and he was succeeded by thirty dynasties of kings who reigned until around 341 BCE (Ellickson & Thorland 1995:333).

Theodorides (1971:292) observes that if Egypt went through 'tribal' and 'gentilic' stages at all, it certainly had passed through them by the time of the historical era at the beginning of the third millennium BCE. A very strong civil organisation developed in ancient Egypt (Theodorides 1971:292) and this implies that the transfer of both personal and immovable property from one person to another was possible. According to Theodorides (1971:292) the social and administrative system found in ancient Egypt focused on the family. Baines (1991:134) affirms the importance of the family unit in ancient Egypt, indicating that family solidarity was essential, thus the family and the protection of family property were very important. As a unit, the family reaped the benefits of success, but had to care for children, the disabled and the elderly (Baines 1991:134). This means that the basic family unit was large, consisting of parents, children (including married ones with their children), unattached and widowed relatives, grandparents, and even servants or slaves (Baines 1991:134).

To understand law in ancient Egyptian society, it is important to remember that the ideology of ancient Egyptian society was a totality shaped and determined by religion. Religion was present in every aspect of the Egyptians' life; it was embedded in society, rather than being a separate category (Shaw & Nicholson 2008:273). Every aspect of the world was seen as being governed by a divine power which established and maintained order (Allam 2007:263). Their beliefs and practices assisted the ancient Egyptians to understand and respond to events in their lives (Gahlin 2007:339). It was religion, and the cult actions deriving from those beliefs, which held ancient Egyptian society together and allowed it to flourish for more than three thousand years (Teeter 2011:11).

Life was to be conducted in accordance with *maat* (Gahlin 2001:86). The concept of *maat* was associated with morality and ethics and the entire order of society, preventing chaos by balancing opposing forces (Allam 2007:263). The pharaoh had the task of defending *maat* and was therefore called upon to maintain and restore order, for which purpose he or she issued appropriate laws (Allam 2007:263). Law was therefore tied up with a religious world view and represented the rules regulating the behaviour of members of society (Allam 2007:264).

The concept of *maat* and the importance of living a just life was central to the beliefs about the judgement of the dead, where the deceased's heart (𓇢) was weighed in the balance scales against *maat*, symbolised by the feather (𓇣) of the goddess Maat (Oakes & Gahlin 2004:463). Figure 1.1 above shows the goddess Maat with the feather tied to her head and Figure 1.2 shows a depiction of the judgement of the dead. It is likely that the notion of the judgement of the dead became applicable around 1800 BCE and onwards; before then, the Coffin Texts were in use, with the old view of an afterlife without judgement of the dead (Quirke 1992:162). Before the Coffin Texts, the Pyramid Texts, which represent the earliest funerary texts, also ensured an afterlife without judgement (Shaw & Nicholson 2008:263).

Death was the most strongly ritualised of life's stages (Baines 1991:144). The ancient Egyptians were not interested in death itself, but rather in the afterlife, which was a fundamental aspect of ancient Egyptian religion (Taylor 2001:12). It would appear that, from the dawn of Egypt's history, as early as Predynastic times, the ancient Egyptians already cherished the hope of eternal life, an earth-like existence after death (Oakes & Gahlin 2004:21). This is clear from the preparations which accompanied their burials (Oakes & Gahlin 2004:390), for they stocked their burial chambers and tomb chapels

with the bounty of this world. Death was merely a doorway or passage to another existence (Quirk 1992:141; Oakes & Gahlin 2004:21).

For the ancient Egyptians the living and the dead were part of the same community, resulting in a moral relationship between the two (Baines 1991:147, 151). The deceased was dependent upon the actual delivery of food and drink by his or her family and those who survived the deceased (Allam 2007:265). Since it was practice in ancient Egypt for the next generation to take responsibility for the care of the deceased, it was very important to have children (Baines 1991:144) who would receive the deceased's property (Pestman 1969:59). This resulted in a strong sense of obligation by the surviving family members of the deceased (Allam 2007:265).

As indicated above, because they believed in life after death, the ancient Egyptians were obsessed with sustenance in the afterlife and resorted to magic and ritual in the hope of securing this sustenance (Allam 2007:265). The continued survival of the dead relied to a large extent on the maintenance of a mortuary cult which would ensure that the deceased was nourished in perpetuity by a supply of offerings (Taylor 2001:174). The deceased would be sustained not only by prayers and inscriptions on the tomb walls and on funerary papyri, but also by this cult (Ikram 2007:349). For the wealthy, the cult was performed by the surviving relatives of the deceased or by the priests; while the poor relied exclusively on family members for their offerings (Ikram 2007:349). It required some means of long-term support, which often took the form of an endowment (Taylor 2001:174).

Although there was a strong sense of obligation by the surviving family members to care for the deceased, this piety gradually diminished, which gave rise to doubts as to whether an individual would be properly provided for after death (Allam 2007:265). It therefore became common to make arrangements during one's own lifetime for the provision of sustenance after death, enlisting family members or even other persons for this task (Allam 2007:265). Thus, the opportunity arose for a person to bequeath to these people property, obliging them to present the required mortuary offerings and to celebrate the required services (Allam 2007:265).

In my opinion these arrangements, made prior to death, can be classified as 'testamentary dispositions'. From very early on in the Old Kingdom through to the New Kingdom there is evidence of such testamentary dispositions. In analysing and studying

them, it might be possible to identify certain elements and concepts of the law of succession.



Figure 1.2 Judgement of the dead, Hunefer, from Thebes, New Kingdom, 19th Dynasty
Source: Courtesy of the Trustees of the British Museum, *Papyrus of Hunefer*, British Museum EA 9901/3.

1.2 RESEARCH PROBLEM AND QUESTIONS

1.2.1 RESEARCH PROBLEM

The question arises whether elements and concepts of succession law can be identified from testamentary disposition texts from the Old, Middle and New Kingdoms, and whether there is a link with religion, specifically pertaining to the belief in the afterlife).

1.2.2 RESEARCH QUESTIONS

This study has as its objective to answer the following research questions:

1. What role did religion, and specifically *maat*, play in the world of the ancient Egyptians?
2. What role did the belief in the afterlife play in the ancient Egyptians' lives?
3. What was the relation between religion and the emergence of law in ancient Egypt?
4. What was the nature of the link between the belief in the afterlife and the emergence of succession law?
5. What did the ancient Egyptians understand under the notion of succession law and how did it effect their socio-economic lives?

6. What is understood under 'testamentary dispositions' and which concepts and elements of succession law can be identified from texts pertaining to the Old, Middle and New Kingdom?

1.3 SIGNIFICANCE OF THE STUDY

The significance of this study is that it indicates the important contribution of religion in the emergence of law in general, and more specifically the contribution of the belief in the afterlife in ancient Egypt to the emergence of succession law. Furthermore, elements and concepts pertaining to succession law from certain important testamentary disposition texts from the Old, Middle and New Kingdom have been identified and explored. Applying my personal legal background in studying these testamentary dispositions, the identification of concepts and elements of succession law in ancient Egyptian texts is my contribution to the study of Egyptology.

1.4 LIMITATIONS OF THE STUDY

This study does not imply or suggest that the ancient Egyptians had a concept of succession law and/or of other legal terminology as these are understood today or as they have been developed in Roman law and subsequently been incorporated into most modern legal systems.

This study is also not an attempt to provide examples of all testamentary dispositions in ancient Egypt since the time period of ancient Egypt's history is too long.

The study does not claim that succession law did indeed exist as a separate part of law or private law as is the case today in modern legal systems of the world.

Although important concepts and elements have been discussed, it is not the aim of this study to be a research work of a purely legal nature.

It is not possible to present definitions, descriptions or explanations of elements and concepts pertaining to ancient Egyptian succession law since these are modern concepts. The ancient Egyptians simply wanted to protect the family and maintain 'order' in their lives.

This study does not purport to offer final conclusions in the research on the subject, but attempts to engage discussion and further research in several different directions

pertaining to succession law in ancient Egypt. Some suggestions for further research and envisaged future studies are contained in the final chapter of this thesis.

1.5 DELIMITATION

This study is limited to indicate the role and importance of religion, and more specifically the concept of *maat* and the belief in the afterlife, in the emergence and development of succession law in ancient Egypt.

The focus of the study is on some valuable examples of testamentary disposition texts from the Old, Middle and New Kingdoms which are examined in order to indicate the concepts and elements¹ pertaining to succession law which were identified, as well as reaffirming the connection with its origin: the belief in the afterlife and sustenance of the deceased.

The English translations of the applicable texts will be mostly studied, but where necessary reference will be made to the original hieroglyphs and transliterations. The purpose is not on analysing the different texts as such, but rather to examine the contents in order to identify concepts and elements referring to succession law in general and to testamentary disposition in particular.² It is for this reason that I am working with the English translations.

1.6 AIMS AND OBJECTIVES

The main aim of this research is to ascertain whether there is a link between religion and succession law in ancient Egypt and to establish which succession law elements and concepts can be identified from testamentary dispositions texts from the Old, Middle and New Kingdoms.

The important role of religion will be demonstrated, for law, and particularly succession law, was interdependent on religion. The importance of religion in the development and even the origin of succession law will be discussed with specific reference to the ancient Egyptians' belief in the afterlife. It must be examined whether there are any elements of

¹ I intend to examine these texts (and some others) individually and in more detail in future studies in an attempt to broaden the study of ancient Egyptian succession law.

² In future studies when dealing with a particular text I intend also to include the study of the hieroglyph text. For the present study my focus is on the contents of the different texts in order to identify concepts and elements of succession law and in particular testamentary dispositions.

the matters mentioned and, more specifically, elements of testamentary dispositions in the texts of ancient Egypt.

It must also be investigated whether identifiable elements and concepts were commonly used in testamentary dispositions, indicating that they formed part of the ancient Egyptians' understanding and ideas of succession law, and were used throughout different examples of testamentary dispositions.

Elements and concepts of succession law that are examined will include *fideicommissum*, wills, codicils, right to inherit, disinheritance and the role of the eldest son. The focus of the study will specifically be on testamentary dispositions from the Old, Middle and New Kingdoms.

Elements and principles of succession law in ancient Egypt will be identified, specifically relating to testamentary dispositions. In order to demonstrate the existence of these elements and principles, an understanding of the Egyptian concept of law – in particular succession law – and its practice in ancient Egypt is necessary. It is fundamentally important to take cognisance of the role of religion and the social context of the ancient Egyptians' world. Law in general, and succession law in particular, appears to be inextricably linked to religion and the belief in the afterlife. An attempt shall be made to show the direct link between succession law in ancient Egypt and the belief in the afterlife. The ancient Egyptian concept of succession law and what it entails shall be considered with specific reference to testamentary dispositions.

I will attempt to identify and discuss succession law elements and concepts from certain testamentary disposition texts from the Old, Middle and New Kingdoms, and examine the possibility that these concepts and elements are evident in these different testamentary dispositions over time in ancient Egyptian history. In addition the study will investigate whether these early identifiable elements and concepts might be the source or inception point of most of our modern concepts pertaining to succession law.

In order to ascertain the above as well as the other research questions, texts from the Old, Middle and New Kingdoms pertaining to elements of testamentary dispositions will be analysed and discussed. The point of departure for this study is to analyse texts from ancient Egypt in order to see whether there are any elements, characteristics, etc. present which show similarity to present-day concepts of succession law.

1.7 HYPOTHESIS

An attempt will be made to indicate that the ancient Egyptians had laws and concepts similar to what we today call 'law of succession' and in particular referring to testamentary dispositions.

In this study a number of testamentary disposition texts from the Old, Middle and New Kingdoms will be analysed, which might illuminate elements and concepts of succession law in testamentary disposition texts and possibly indicate a link between succession law and religion.

This is a multidisciplinary study as aspects of law, Egyptology and socio-anthropology will be touched upon when studying the texts. It is anticipated that by applying my legal knowledge certain aspects pertaining to succession law will be identified from the ancient Egyptian texts

I will indicate the nexus between the belief in the afterlife and succession law reflecting on the ancient Egyptians' view and understanding of religion and how it led to the emergence of law, and more specifically how the belief in the afterlife led to the emergence of succession law. I will refer to some primary source examples to support my point in this regard.

1.8 SOURCES

1.8.1 INTRODUCTION

No law code of any nature has been found from the Old, Middle or New Kingdoms, although references are made to law collections (Jasnow 2003b:289). There are, however, a greater number of sources pertaining to law from the New Kingdom (Jasnow 2003b:293-294).

Records from ancient Egypt mostly consist of papyri, supplemented by inscriptions from tombs, monuments and temples. Due to preservation problems of papyri up to the Hellenistic period, their numbers are small.³ The various types of legal sources include decrees, instructions, trial records, letters, literature and transactional records (Westbrook 2003c:6). In my opinion, to enlarge the corpus of texts showing elements

³ Although we have an abundance of material from the rest of the ancient Near East, this does not mean that Egypt had a less developed law system in quantity or complexity. Unfortunately large parts of it are lost to us or are represented only by isolated pieces of evidence.

and concepts of law, one should also consider religious, mortuary and funerary texts, as well as inscriptions.

According to Westbrook (2003c:4) the term 'source' within the context of history of law has two meanings. In a historical sense it would refer to written records from which historians obtain evidence of legal rules and institutions. In a legal sense it refers to the norms, written or unwritten, from which the courts draw authority for their decisions. The latter, today, would include items such as statutes, precedents and treaties. The test for a source from a historical point of view is its credibility. The test from a jurisprudential point of view is its authority. One must therefore consider these viewpoints for each of the sources in turn, i.e. as historical records and as legal authority (Westbrook 2003c:4).

Two criteria may be used to assess the credibility of the historical records. The first criterion would be to assess whether they provide direct or indirect evidence of legal norms. The second criterion would be the self-consciousness or subjective perspective with which a source presents the law, for sources are not necessarily neutral in their presentation of legal norms. The most direct statement of a law may be a distortion due to ideology, self-interest or idealisation (Westbrook 2003c:6).

Sources for ancient Egyptian law in general are scarce. This is even more true of the Egyptian law of succession, and the sources consist *inter alia* of agreements, lawsuits, etc. (Pestman 1969:58). There exists, however, some information from Greek and Roman authors (Pestman 1969:58-59) with an adequate number of texts which allow us to form a more complete picture of ancient Egyptian law from around 700 BCE. Therefore, sources of ancient Egyptian law of succession often date from a later period of history, but fortunately succession law is typically not the most progressive part of a civilisation (Pestman 1969:59).

Despite the fact that most of the sources informing us on succession law are from a later period within the context of the ancient Egyptian civilisation, we are able to obtain quite a comprehensive representation of succession law in ancient Egypt, since succession law is usually slow to change, especially in ancient Egyptian society which by nature was conservative and static. The nature of the sources, being personal accounts and dispositions and not theoretical expositions, is an advantage (Pestman 1969:58) since it brings one in contact with the law as it affected daily life, i.e. the practical application of

law. This is important since it provides valuable information and insight into the social life of an ancient culture, and, as we shall see, accentuates the relevance of understanding the social context when studying Egyptian law of succession.

This study aims to indicate the relationship between the belief in the afterlife and succession law and in particular aspects of succession law relating to testamentary dispositions. It is therefore necessary to do a content analysis of preserved written texts.

The primary text sources will be studied as translated and in some cases, regarding certain elements, the original texts will be studied. Secondary sources – such as books and journal articles – will be consulted and studied in the introductory and core sections of this study in order to achieve the aims and objectives set out.

1.8.2 PRIMARY SOURCES

The textual approach will comprise the study and analysis of translations of applicable texts. In some cases, the original hieroglyph texts will also be consulted. The comparison and analysis of text contents will shed light on the research questions. Elements relating to succession law concepts will be identified and compared. My approach to studying the primary sources is not so much to analyse the original texts, but rather to use the best and most comprehensive translations of the texts to identify concepts and elements of succession law in general and more specifically testamentary dispositions.

For a study of succession law in ancient Egypt the following sources (among others) have been consulted as main background texts:

- *The Demotic legal code of Hermopolis West* (Mattha 1975)
- *A history of Ancient Near Eastern law* (Vol I & II) (Westbrook 2003a; 2003b)
- ‘The law of succession in ancient Egypt’ (Pestman 1969)

Regarding Old Kingdom texts, some of the most important texts include the text of Metjen, where Sethe’s (1903) work *Urkunden des Alten Reichs* as well as Breasted’s (2001) seminal work *Ancient records of Egypt: Historical documents from the earliest times to the Persian Conquest: The First to the Seventeenth Dynasties* (Volume I) will be discussed. Breasted (2001) will also be consulted on the texts of Nikaure as well as that of the Unknown Official. For the texts of Heti, *Papyrus Berlin* and Niankhka, the sources of Breasted (2001), Sethe (1903), Theodorides (1971) and Logan (2000) have been consulted.

Middle Kingdom texts are represented by the *Papyrus Kahun I I*, *Papyrus Kahun II I* and VII I, and the text of Djefa-Hapi, as translated by Parkinson (1991), Griffith (1898), Theodorides (1971) and Logan (2000). I also had the opportunity to study some of the original Kahun papyri at the Petrie Museum, University College London, in 2015.

New Kingdom texts include the Naunakht document I I, Naunakht I II, Naunakht II, Naunakht III, Naunakht IV I, Naunakht IV II, and the *Adoption Papyrus*. The translations used are those of Černý (1945), Eyre (1992), Janssen and Pestman (1968). I had the opportunity to study the original Naunakht documents and the *Adoption Papyrus* at the Ashmolean Museum, University of Oxford, in 2015.

1.8.3 SECONDARY SOURCES

The secondary sources will be used to elaborate on the analysis, explanation and discussion of succession law concepts and elements, and the connection between succession law and the afterlife. These sources include among others Allam (2007), Černý (1945), Corbett, Hofmeyer and Kahn (2013), De Waal & Schoeman-Malan (2005), Eyre (1992; 2007), Janssen & Pestman (1968), Jasnow (2003a; 2003b; 2003c; 2003d), Lippert (2013), Pestman (1969), Quirke (1992), Taylor (2001), Teeter (2011).

1.9 METHODOLOGY

The research reported on in this study is qualitative in nature since it attempts to provide an analytical and descriptive framework and does not make use of quantitative research tools.

My legal knowledge will enable me to study and interpret these sources in order to reflect and indicate the legal value and understanding of the ancient Egyptians. The legal approach, using a modern legal perspective, is necessary to identify certain elements relating to testamentary dispositions in order to obtain an understanding of the ancient Egyptians' world view. My approach is not so much to analyse the text as such, but to rather identify the concepts and elements of succession law in general, but more specifically testamentary dispositions. Combining my legal knowledge with a cultural or religious perspective on ancient Egypt will enable me to determine the possible connection between law (succession law in particular) and religion (seen from the principles of *maat* and the belief in the afterlife). In so doing one must be careful not to enforce modern law terms onto the ancient Egyptian world. As Seidl (1957:58) correctly

emphasises: 'Wenn man überhaupt den Ausdruck "Testament" verwenden will, um damit eine ägyptische Urkunde zu bezeichnen, so muß man sich wieder darüber klar sein, daß man damit Vorstellungen, die aus dem römischen Recht stammen, dem Leser suggeriert.' ['When one wants to use the term/word "Testament" at all to refer to an Egyptian document, one must realise once again that it suggests to the reader ideas derived from Roman law.']. This study, as indicated above under 1.4 above, does not enforce terminology developed by Roman law, but attempts to indicate that similar elements or concepts were present in ancient Egypt, which might have been the building blocks of these later concepts, elements and/or terminology. Götze (1948:119) confirms that law is only one aspect of society and as such, must always be understood and studied in the wider context of society, necessitating greater insights into social and ethnic structures.

Different texts will be analysed to determine elements, characteristics and terminology similar to those of succession law and more specifically those relating to testamentary dispositions and their relevance in the social life of ancient Egypt. These texts, as indicated above, will include some of the most important texts of the Old, Middle and New Kingdoms.⁴ It is envisaged, and this is the rationale behind selecting certain texts, to focus on a few quality texts from each period in order to obtain maximum information from each in order to test the hypothesis and answer research questions. An attempt will be made to identify modern elements and concepts pertaining to succession law from these testamentary dispositions to demonstrate the similarities between ancient Egyptian and modern-day understanding of aspects of succession law. I shall thus attempt to identify contemporary counterparts to an understanding of ancient Egyptian succession law concepts with specific reference to testamentary disposition documents.

Furthermore this study follows a socio-anthropological approach. Anthropology entails the study of human societies and cultures and their development, but the socio-anthropological approach to ancient cultures focuses on the social organisation of a particular people and the elements that influence such organisation. The ancient Egyptians did not live in isolation and there was interaction between them and other civilisations in social, economic and religious matters. Social anthropology includes the

⁴ The study is limited in its choice of texts due to time and content constraints. A number of important texts were chosen for analysis and discussion; others like Wepemnofret, Kaemnofret etc. will be studied and discussed in future studies.

study of gender relations in terms of the social role fulfilled by women, which is also relevant to this study as pertaining to succession law.

This study will also touch on historical archeology since it is a study of a culture with some form of writing that focuses on the role of religion in the world of the ancient Egyptians, its influence on the socio-economic life of the people, and its influence on the emergence of law and specifically succession law. It focuses in particular on the Testamentary dispositions, concepts and elements identified during the Old, Middle and New Kingdom.

1.10 OUTLINE

A short description of the main content of every chapter is supplied:

Chapter 1 – Introduction

In this chapter the framework of the study is discussed and explained.

Chapter 2 – Religion: The basis of the Egyptian world

This chapter comprises a discussion of the ancient Egyptians' view and understanding of their world. Evidence of the important role of religion in their daily lives will be presented, and more specifically, that of *maat*, showing that religion formed the basis of their world view.

Chapter 3 – The belief in the afterlife

The importance of the belief in the afterlife is discussed. It is indicated that it was this belief which formed the basis of the ancient Egyptians' daily lives, and specifically their belief in *maat* which formed the golden thread through their culture.

Chapter 4 – The emergence of law

The emergence of law in ancient Egypt, as derived from religion and specifically from *maat*, is discussed. Evidence of the role that religion played in the ancient Egyptians' understanding and development of law and what they understood it to be, is presented. The key elements of ancient Egyptian jurisprudence are indicated and discussed, as well as the question of whether there was a link between the belief in the afterlife and law of succession.

Chapter 5 – The emergence of succession law

The emergence of succession law is discussed. It is shown that succession law developed from the belief in the afterlife since the sustenance of the deceased formed the basis for the law of succession in ancient Egypt. It is explained what is meant by the notion of 'succession law'. The socio-economic background of the Egyptians is discussed. In its social context, the importance of *inter alia* family structure, the protection of family assets, and the role of the eldest son are of major importance.

Chapter 6 – Ancient Egyptian succession law

The ancient Egyptians' understanding of and the working of customary intestate succession law is explained. Ways to alter the customary intestate succession process are discussed. Testamentary dispositions, as a way to alter customary intestate succession law, are discussed in general terms as being linked to the very belief in the afterlife, forming the very essence of succession law in ancient Egypt. This must be seen against the backdrop of the socio-economic world of the ancient Egyptians.

Chapter 7 – Testamentary texts from the Old Kingdom

Some important texts from the Old Kingdom pertaining to testamentary dispositions will be discussed and analysed. Examples of some of these texts include Metjen, Nikaure, Niankhka, etc. Certain concepts and elements pertaining to the law of succession, and more particularly testamentary dispositions, are identified.

Chapter 8 – Testamentary texts from the Middle Kingdom

This chapter comprises a discussion and analysis of some important texts from the Middle Kingdom pertaining to testamentary dispositions, like the important testamentary disposition documents from Kahun. Certain concepts and elements pertaining to the law of succession, and more particularly testamentary dispositions, are identified.

Chapter 9 – Testamentary texts from the New Kingdom

Important texts from the New Kingdom pertaining to testamentary dispositions will be discussed and analysed in this chapter. Texts examined include, among others, the will

of Naunakht and related documents. Certain concepts and elements pertaining to the law of succession, and more particularly testamentary dispositions, are identified.

Chapter 10 – Conclusion

This chapter will summarise the conclusions and indicate the link between religion and law in general, but more specifically between the belief in the afterlife and succession law. The 'birth process' of testamentary dispositions is summarised. Certain concepts, elements, themes and characteristics related to succession law as discussed and analysed in the thesis are summarised in this chapter.

CHAPTER 2

RELIGION: THE FOUNDATION OF THE EGYPTIAN WORLD

2.1 INTRODUCTION

In order to understand ancient Egyptian law, and in particular succession law, it is important to understand the role of religion as background to its development. This chapter indicates that religion played an important role in the ancient Egyptians' understanding of their world, specifically the belief in *maat*. This chapter describes the background for or foundation of the Egyptian world, with religion in a broader sense as starting point of the thesis, since this also forms the basis of law

2.2 ANCIENT EGYPT IN HISTORICAL CONTEXT

This discussion should be read together with the 'Timeline' appearing in Addendum Addendum A of this study.⁵

The natural landscape of ancient Egypt was one of extremes, with vast expanses of arid desert bordering a narrow ribbon of fertile land, with the Nile as Egypt's lifeblood⁶ (Oakes & Gahlin 2004:14). Egypt was occupied by Palaeolithic hunting, fishing and food-gathering communities which lived along the Nile valley for the first few hundred thousand years of human occupation (Oakes & Gahlin 2004:12). Then, from ca. 5500 BCE the earliest separate, self-governing agricultural communities developed, which can be traced by examining the so-called Predynastic burial sites throughout Egypt (Oakes & Gahlin 2004:12).

Assmann (2002:27) suggests the beginning of pharaonic culture and the Egyptian state must be sought within the Naqada culture. Naqada⁷ was one of the cultures found in the Nile valley in the fourth millennium BCE and this culture can be clearly distinguished from the other cultures of the Nile valley (Assmann 2002:27). In the course of centuries it either ousted, engulfed or incorporated the surrounding cultures (Assmann 2002:27).

⁵ It is necessary to give a brief history of Egypt in order to provide the context and perspective of the different periods. This is relevant to the thesis as texts from different periods are discussed.

⁶ The silt deposits of the Nile are thick and black, inspiring the ancient Egyptians' name for their country, *kmt* ('Black Land'), and the arid desert they called *Deshret* ('Red Land') because of the pink glow of the barren desert cliffs at dawn (Oakes & Gahlin 2004:14).

⁷ There is no denying that Naqada had its own prehistory (Assmann 2002:29).

This process of cultural encroachment led to political unification and statehood (Assmann 2002:27). According to Assmann (2002:32) this early period is fascinating as we can legitimately speak of a historical awakening. There was a growing desire to keep a lasting record of historical events and this culminated in the form of pictorial annals (Assmann 2002:32).

From ca. 3100 BCE Egypt emerged as a centralised state with a highly efficient political system encompassing an administrative bureaucracy and elaborate kingship rites relating to a single ruler (Oakes & Gahlin 2004:12). The beginning of the Egyptian civilisation ca. 3100 BCE is encapsulated in the Narmer Palette, found at Hierakonpolis (now in the Cairo Museum), on which king Narmer is depicted wearing the crown of Upper Egypt and Lower Egypt (Oakes & Gahlin 2004:10).

The long history of ancient Egypt is divided into periods and dynasties. The term 'dynasty' refers to a group of kings related by family, geographic origin, or some other feature (Allen 2004:9). The Dynastic era of Egypt starts with the unification (ca. 3100 BCE) of Upper and Lower Egypt, while the era before that is known as the Predynastic Period. It is assumed that the first king of Dynasty One was either Aha or his predecessor, Narmer (Allen 2004:9). Egypt was divided into a number of provinces or nomes,⁸ that were most probably created in the Early Dynastic period, perhaps to facilitate the administration of tax revenues (Leprohon 2000:279).

The Archaic Period (ca. 3100-2650 BCE) includes Dynasties One and Two. The development of most traditional aspects of Egyptian civilisation such as religion, art, government and writing, can be traced back to this period (Allen 2004:10).

The Old Kingdom⁹ (ca. 2686-2181 BCE) has become famous for its monumental architecture, of which the most well-known are the pyramids of Giza¹⁰ (Oakes & Gahlin

⁸ Wilkinson (2005:173) explains that a 'nome' was an administrative province of Egypt and that the Greek term was introduced in the Ptolemaic Period. It corresponded to the ancient Egyptian *sepat*, which originally referred to an area of irrigated land (Wilkinson 2005:173). Nomes were first attested to in the early Dynastic Period, with the nome capitals moving over time according to central government policy (Wilkinson 2005:173). Interestingly, in royal mortuary temples of especially the Old Kingdom, nomes personified as women were often portrayed, bringing offerings for the royal cult symbolising the involvement of the entire country (Wilkinson 2005:173).

⁹ It is important to keep in mind that nineteenth-century historians imposed the term 'Old Kingdom' on Egyptian chronology (Malek 2000:89). Today, we have serious reservations about this early approach to the periodicity of history (Malek 2000:89). Malek (2000:89) observes that the ancient Egyptians themselves never used this 'periodicity of history'. The ancient Egyptians would actually have found the distinction between the Early Dynastic Period (3000-2686 BCE) and the Old Kingdom (2686-2160 BCE) difficult to grasp (Malek 2000:89).

2004:10). This period represented the first bloom of Egyptian culture and covers Dynasties Three to Six (Allen 2004:10). In continuation of the Early Dynastic Period, ancient Egypt experienced a long and uninterrupted period of economic prosperity and political stability during the Old Kingdom (Malek 2000:90). Ancient Egypt grew into a centrally organised state ruled by a king, believed to have qualified supernatural powers, and administered by a literate elite (Malek 2000:90). No external rivals threatened ancient Egypt's dominance and ancient Egypt enjoyed almost complete self-sufficiency and safety within its natural borders (Malek 2000:90). Religious ideas were reflected in breath-taking achievements in arts and architecture (Malek 2000:90).

Pyramid building¹¹ dramatically changed agricultural production because of the need to support those who had been removed from food production¹² (Malek 2000:102). The state's obligation and contribution was organisational (Malek 2000:102). Together with this arose the need for a better administrative organisation of the country and a more efficient way of collecting taxes, with the existing major centres of population, which were often royal estates, now becoming capitals of administrative districts (nomes) (Malek 2000:102).

Titles assigned to various officials are a major source of information on Egyptian administration, for example that of the early Fourth Dynasty official Metjen (Malek 2000:104). The bureaucratic officials were remunerated for their services in several different ways, but most significantly with an *ex officio* lease of state (royal) land, usually estates settled with their cultivators (Malek 2000:104-105). This land reverted, at least in theory according to Malek (2000:105), to the king after the official's term of office expired. After the Fourth Dynasty the royal monuments returned to a more modest scale (Wilkinson 2007a:42). There was an increased awareness of local identity and an

¹⁰ The place of the royal residence did not change, but remained at White Wall (Ineb-hedj), on the west bank of the Nile south of modern Cairo (Malek 2000:89). It would appear that the last king of the Early Dynastic Period and the first two rulers of the Old Kingdom were related to Queen Nimaathap, who was described as mother of the king's children under Khasekhemwy and as 'mother of the king of Upper and Lower Egypt' under Djoser (2667-2648 BCE) (Malek 2000:89).

¹¹ The huge volume of construction work carried out during the Third and Fourth Dynasties had a profound effect on ancient Egypt's economy and society (Malek 2000:101). The number of people involved in these construction projects must have been very large indeed (Malek 2000:101-102).

¹² Diverting the labour force from agricultural tasks to assist with pyramid building must have exerted considerable pressure on existing resources (Malek 2000:102). This provided powerful stimuli for efforts to increase agricultural production, to improve the administration of the country, to develop an efficient way of collecting taxes, and to look for additional sources of revenue and manpower abroad during the Old Kingdom period (Malek 2000:102).

upsurge in provincial autonomy in the Sixth Dynasty as the central government began to devolve more power to the regions (Wilkinson 2007a:43).

Reasons for the fall of the Old Kingdom might have been changing weather conditions (e.g. lower annual rainfall and/or inundation), increased power of provincial rulers or decline in size and quality of the royal funerary monuments due to possible decline in royal authority and wealth (Shaw & Nicholson 2008:234). It would appear that towards the end of the Old Kingdom, which had lasted for five centuries, the system faltered, and there ensued a century and a half of provincial assertion and civil war, known as the First Intermediate Period (Kemp 2001:71).

The Old Kingdom was followed by a time of insecurity when Egypt's rule was divided during the First Intermediate Period (ca. 2181-2055 BCE) (Oakes & Gahlin 2004:10), which comprises Dynasties Eight to Eleven (Oakes & Gahlin 2004:16).

The monumental achievements of the Old Kingdom gave way to a 'dark age' of uncertain length (Parkinson 1991:8). The lack of variety and poor quality of artefacts and records testify to the breakdown of central authority (Parkinson 1991:8). According to Muhs (2016:54) the Middle Kingdom was established when the kings of the later Eleventh Dynasty reunited Egypt under their rule. It would be Nebhepetre Mentuhotep's victory which would mark the beginning of the second period of unified rule in Egypt, which is called the Middle Kingdom (Murnane 2000:698).

It was during this period that the first great works of Egyptian literature were written, in the phase of the language known as Middle Egyptian (Allen 2004:10). The Middle Kingdom reached its cultural peak under Amenemhat III (the only known son of Senusret III) (Callender 2000:167). It was, however, also under his rule that large numbers of Asians were allowed to settle in ancient Egypt in order to assist with building works, which would encourage the Hyksos to settle in the Delta (Callender 2000:169). The kings of the Middle Kingdom continued to be buried at Memphis, but ruled from Herakleopolis (Parkinson 1991:8). Lines of local rulers flourished in the provincial capitals, and at Thebes, in the south, one of these rulers founded a dynasty of kings named Intef (the Eleventh Dynasty) (Parkinson 1991:8). There were battles between provinces, but by the time of the reign of Wahankh Intef II, the Theban house could claim the land from Abydos to Elephantine (Parkinson 1991:8).

According to Theodorides (1971:306) the kings of the Twelfth Dynasty reconstituted the administrative system, with its unifying force. The Twelfth Dynasty was founded by Amenemhat I and was the dawn of a new era (Parkinson 1991:10). The capital was moved to a new site near Memphis and administrative reforms and fortification works bore witness to a strong affirmation of the state's unity (Parkinson 1991:10).

The Second Intermediate Period (ca. 1650-1550 BCE) followed, which again was a time of divided rule (Oakes & Gahlin 2004:11), covering Dynasties Thirteen to Seventeen which included the period of the 'foreign rulers', namely the Hyksos (Allen 2004:10). The Second Intermediate period began when the Twelfth Dynasty and the Middle Kingdom came to an end (Muhs 2016:54). Muhs (2016:54) suggests the Hyksos invaded northern Egypt from the Levant, ending the Fourteenth Dynasty and establishing the Fifteenth Dynasty. The Kushites also invaded southern Egypt from Nubia (Muhs 2016:54). The invasion of the Hyksos afforded the great lords of Upper Egypt a new lease of independence (Theodorides 1971:306). The discovery of the Khayan sealings at Edfu is important in this regard, as it makes an important contribution to the history of the Second Intermediate Period, including a review of the chronological issues relating to the order of the Hyksos rulers (Moeller, Marouard & Ayers 2011:87). The end of the Second Intermediate Period was marked by the unification of Egypt and the beginning of the New Kingdom (Muhs 2016:55).

At the beginning of the New Kingdom (at the dawn of the Eighteenth Dynasty), the north of Egypt was ruled by the Hyksos and in the south; Egypt has lost lower Nubia to the kingdom of Kush (McDowell 1999:1). For Kamose, the last pharaoh of the Seventeenth Dynasty, this situation was intolerable and he led the Egyptians in an uprising against the kingdoms to either side (McDowell 1999:1). It would however be his son Ahmose who achieved the ultimate victory by driving out the Hyksos (McDowell 1999:1).

The New Kingdom (ca. 1650-1550 BCE) saw the building of the temples at Luxor and Karnak, the mortuary temples on the west bank of the Nile and the royal tombs in the Valley of the Kings, all bearing witness to the power and the prosperity of Egypt at this time (Oakes & Gahlin 2004:11). Egyptian culture flourished during this period under the rule of Dynasties Eighteen to Twenty (Allen 2004:10).

It was not only enough to free the Egyptians, but Egypt's neighbours had to be subjected to provide a buffer zone against future enemies (McDowell 1999:1). In this process,

Egypt acquired an empire, for the first time enjoying extensive and prolonged contact with other great civilisations of the Ancient Near East (McDowell 1999:1). For the first time Egypt controlled extensive foreign land, and political-commercial contacts were developed with a number of other states and groups (O'Connor 2001:203). This meant, *inter alia*, an increase in revenue for Egypt, but also the forcible uprooting of foreign populations engulfed by the expanding borders and their resettlement in Egypt (Redford 2013:9).

Most of these foreigners were assigned to the temple communities as workers, producers or professionals (Redford 2013:9). This had a powerful impact on Egyptian society as new artistic and religious ideas, new terminology and new technology streamed into Egypt (McDowell 1999:1).

The demands of this large empire and the threat of attack, especially from the Mitanni and the so-called Sea People, led to the establishment of Egypt's first standing army (McDowell 1999:1). It were these new foreign contacts, new opportunities and growing urbanisation which led to a breakdown of the rigid rules of conduct which had governed the Egyptian culture of the Old and Middle Kingdoms, and led to greater individuality and variety of expression in the New Kingdom (McDowell 1999:2). There was a stronger economy as in the earlier time periods, which was supplemented by the resources of the empire in Nubia and western Asia (Shaw & Nicholson 2008:225).

The new empire was influenced by exotic new ideas, which led among others to the radical religious changes instituted by Akhenaten (Shaw & Nicholson 2008:225); although, as Redford (2013:26) indicates, we have no justification for speaking of Akhenaten's 'religion'. The Eighteenth Dynasty royal court probably alternated between Thebes in Upper Egypt and Memphis in Lower Egypt, except during the reign of Akhenaten, when a new royal city and necropolis were established – and again abandoned – at El-Amarna in Middle Egypt (Muhs 2016:92).

The royal titulary of eleven rulers in the Nineteenth and Twentieth Dynasties used the 'birth name' Rameses, which is the reason why this phase of the New Kingdom is often described as the 'Ramesside' period (Shaw & Nicholson 2008:269). The 'birth name' or *nomen* was but one of an Egyptian king's names.

The Nineteenth Dynasty established a new city called Pi-Ramesses on the site of the Hyksos capital Avaris (north-eastern Egypt) (Muhs 2016:92). However, the royal court

probably also met at Thebes and Memphis, with the royal tombs located at Thebes throughout the New Kingdom, except during the Amarna Period (Muhs 2016:92).

Regarding the burial practices, it is interesting to note that towards the end of the New Kingdom there was a change in the way burials took place in Egypt (Cooney 2011:4). An elite Egyptian of the Twentieth Dynasty would not be as ostentatious in his funerary equipment and architecture as was done before, because of *inter alia* the economic, political and social instability (Cooney 2011:4). From the end of the Twentieth Dynasty Egypt entered a period of comparative weakness, when the kings ruled the north and high priests of Amun at Karnak ruled the south (Oakes & Gahlin 2004:11). This period covers Dynasties Twenty-one to Twenty-four (Oakes & Gahlin 2004:16).

From the end of the Twentieth Dynasty Egypt entered another period of comparative weakness when the kings ruled the north and the high priests of Amun at Karnak ruled the south (Oakes & Gahlin 2004:11). This period, known as the Third Intermediate Period (ca. 1069-747 BCE), covers Dynasties Twenty-one to Twenty-four (Oakes & Gahlin 2004:16).

The Late Period (ca. 747-332 BCE) comprises Dynasties Twenty-five to Thirty (Oakes & Gahlin 2004:16). The Kushite kings invaded Egypt in the mid-eighth century BCE and would later be acknowledged as the Twenty-fifth Dynasty (Oakes & Gahlin 2004:11). In 701 BCE Egypt became part of the Assyrian Empire for a time; the governors of the Delta city of Sais initially ruled with Assyrian backing but were later to reign as the independent kings of the Twenty-sixth Dynasty. This 'Saite Period' (ca. 664-525 BCE) is regarded as a renaissance era, with a great deal of interest in the art and architecture of the past together with a new realism in both sculpture and literature (Oakes & Gahlin 2004:11).

Thereafter, Egypt was conquered first by the Persians (ca. 525 BCE), then by Alexander the Great (Ptolemaic Period, ca. 332-30 BCE) and finally by the Romans (ca. 30 BCE) (Oakes & Gahlin 2004:11, 16), when Egypt became a province of the Roman Empire and ultimately would lose its old identity to Christianity (Allen 2004:11).

The Roman conquest of ancient Egypt in 30 BCE is generally considered as the end of ancient Egyptian civilisation (Allen 2004:11).

2.3 THE ROLE OF RELIGION

In order to understand ancient Egyptian law, it must be kept in mind that the ideology of the time, which was a religiously determined totality in society, was shaped by religion. Every aspect of the world was seen as being governed by a Divine Power which established and maintained order (Allam 2007:263). Religion permeated every aspect of Egyptian life; it was embedded in society rather than being a separate category (Shaw & Nicholson 2008:273). Religion and cult actions derived from these beliefs, which held ancient Egyptian society together and allowed it to flourish for more than 3 000 years (Teeter 2011:11). This would influence every aspect of their lives. Bleeker (1967:1) correctly observes that one must learn to think like an Egyptian in order to penetrate the religion of ancient Egypt.

The very function of religion is a means of binding together a community in the same way that a language establishes a common core of communication between individual human beings (Quirke 1992:7). The distinctive characteristic of religion as a binding force is that it concerns creation and most often also a creator or creators (Quirke 1992:7-8). This is especially true in the case of ancient Egypt. The essence of Egyptian religion was the 'power in heaven', the sun-god (Quirke 1992:21), although in Egypt's formative phase the word 'sun' does not refer to a god (Quirke 1992:22). The ancient Egyptians had an overriding appreciation for daylight and found it in the soaring falcon, the metaphor for majesty, Horus¹³ (Quirke 1992:21). The word *ra* moves from the meaning of 'sun' to Ra, the sun-god somewhat later, during the period between Saqqara and the smooth-sloping sides of the pyramid under Sneferu, inaugurating a system of relating man to Creation¹⁴ (Quirke 1992:22).

In the Egyptians' mind there were three kinds of inhabitants of the universe: the gods, the living and the dead (Taylor 2001:15). Although the origins of the principal gods are explained, there is no coherent account of the creation of humanity, but it was recognised that humans were complex beings who could experience immortality in various forms (Taylor 2001:15).

¹³ The correct name is Heru, 'the distant one', but the Greeks gave the name Horus and it is important to note that the first kings took the falcon as the royal supreme title (Quirke 1992:21).

¹⁴ In this religion, the sun would hold a central position in Egyptian history for three thousand years until the late Roman period (Quirke 1992:22).

The Egyptians' beliefs and practices assisted them in understanding and responding to events in their lives (Gahlin 2007:339). It was a way to make sense of the world around them. The king fulfilled an important role on earth under the protective wings of Horus, the falcon in heaven (Quirke 1992:21-22). For the ancient Egyptians the king was the representative of the sun-god on earth (Quirke 1992:36).

The foundations of Egyptian society were established during the Archaic Period, but it was only during the Old Kingdom that ancient Egypt developed into a highly organised and centralised theocratic society (David 2002:77). One could argue that there was no 'secular' realm because all aspects of society and culture were intertwined with religion (Teeter 2011:4). This is an important observation to keep in mind when studying ancient Egypt. Temples dominated the landscape, with tomb chapels on the outskirts of towns a reminder of religion, for religion and religious institutions underpinned Egyptian society (Teeter 2011:4). Religion and life were so interwoven in ancient Egypt that it would have been impossible to be agnostic (Brewer & Teeter 1999:84). Religion therefore formed the very foundation of their daily lives and determined their outlook on life.

Even though Egyptian society flourished and developed over a period of 3 000 years, bringing with it new explanations for physical phenomena, this did not displace old ones (Teeter 2011:4). A variety of explanations for a single phenomenon could simultaneously hold true for the ancient Egyptians, for they had a layered understanding for the different parts, which was to them a series of complementary explanations (Teeter 2011:4). Just like us today, the ancient Egyptians could not live in a world that they could not understand and thus they were driven to establish meaning (Shafer 1991:4). They would find meaning and understanding in symbols and objects from their world.

Writing was in itself a consequence of religion (Teeter 2001:4). The ancient Egyptian language and its hieroglyphic script were referred to as *medjet netcher*, 'words of the god', for it was believed that writing was given to mankind by the god Thoth (Teeter 2001:4). For the ancient Egyptians writing had a religious potency, and to write was to call that thing or person into existence; for instance a prayer written on a tomb wall, asking that the deceased be provided¹⁵ with food and drink, actually made the foodstuffs

¹⁵ The making of such provisions would form the basis of succession law, as will be explained in Chapter 3.

eternally available (Teeter 2011:4-5). The very first function of writing was for religious purposes and it would initially appear on the monumental buildings of the Old Kingdom.

Although the ancient Egyptians functioned in a non-secular world, it is astonishing to see how similar their basic moral principles and the patterns of their lives are to those of our current, more secular time (Teeter 2011:7-8). Despite the above-mentioned similarities, the ancient Egyptians had an approach to understanding the world around them that was fundamentally different from ours as their world view was based on concrete principles which they could see around them, characterising them as the most rational of people, because their response to their world was based on their observed reality (Teeter 2011:9). For us today reality is formed and informed by a variety of scientific ideas, while the Egyptians explained all natural phenomena in concrete terms and in this process they avoided speculative thought (Teeter 2011:9).

The ancient Egyptians' reliance on observable and familiar patterns of daily life to explain the unknown comforted them, for everything was related to recognisable experiences of life (Teeter 2011:9). This reliance on physical explanations for natural processes was a fundamental and persistent feature of ancient Egyptian culture, a rational response to the intellectual and social context of their time (Teeter 2011:9-10).

Egyptian religion consisted of a wide range of beliefs and practices, and they lived with and participated in this diversity. There was no single term for 'religion' whilst 'religious' beliefs were essential and unquestioned presuppositions underlying the concept of life (Baines 1991:123). Myths¹⁶ played an important role in ancient Egypt. As Gahlin (2007:296) asserts, myths were constructed with the purpose of providing explanations for the fundamentals of human existence. According to Pinch (2004:13) myths were the products of ancient Egypt's most original minds and its deepest thinkers. These ancient Egyptian myths articulate the core values of one of the oldest and longest lasting civilisations (Pinch 2004:13). Myths help people to explore their mental world, to resolve crises and to endure the contradictions of life (Pinch 2004:13). Myth is also a most valuable source of information, for example, some stories relate how deities have to argue their case before a divine tribunal, indicating the importance of the concept of justice for the ancient Egyptians (Pinch 2004:13).

¹⁶ Religion is used here as the broader term and mythology as one component of religion.

The Egyptians had a variety of myths incorporating diverse creation myths as an explanation for the origin of the gods, which then created humankind (Teeter 2011:12). Apart from myths, religion includes aspects of rituals, theology and morality. It is important to remember that the diverse explanations for almost every natural event were understood to be equally valid and could be simultaneously true (Teeter 2011:12). The Egyptians' holistic view led to the treatment of prayer, magic and science, for instance, as realistic and comparable alternatives (Shaw & Nicholson 2008:273). Each component had the same aim: to suppress evil and maintain the harmony of the universe (Shaw & Nicholson 2008:273).

This uncomplicated level of knowledge and understanding, as limited as it was, appears to have been adequate to satisfy the ancient Egyptians' intellectual curiosity (Teeter 2011:12). The ease with which they could explain the concrete world around them might explain why they did not develop a tradition of more analytical thinking, a fact that hampered their scientific progress (Teeter 2011:12). It would be the Greeks, who had a different world outlook, who would begin questioning the world in theoretical terms (Teeter 2011:12). The Egyptians favoured allegorical rather than empirical thought, while the Greeks would debate one theory against another to reach a new, single synthesis, which was a process completely alien to the Egyptians (Teeter 2011:12-13).

The longevity of Egyptian culture is amazing. Despite their lack of enquiry about the world around them they held the same world view for approximately 3 000 years, a fact which made their society one of the most conservative and unchanging in the history of mankind (Teeter 2011:13). Teeter (2011:13) makes the important point that a major feature of the Egyptian mind was their reverence for the past, which had an enormous impact on their culture and thus on religion, for the modification or discarding of early forms was not seen as progress but rather as corruption of a state of perfection. To recall their past through physical imitations of its patterns was believed to have been an important element in preserving continuity and therefore the preservation of an orderly society. The aim in emulating the past was to create a safe and comforting environment since new situations and objects were potentially threatening (Teeter 2011:13). This would explain the remarkable faithful retention of the earliest manifestations of their culture, like the king's crowns and dress as well as architecture and art styles (Teeter 2011:13). All of these features emerged during the Old Kingdom and this would

continue to provide the framework for Egyptian culture for 3 000 years (Teeter 2011:13). This understanding of ancient Egyptian civilisation as being conservative and reluctant to change is important, as it would assist us to form an understanding of their law and their law of succession as will be indicated in Chapters 4 and 5.

Today we approach natural phenomena with an acceptance of abstractions which we cannot observe, like molecules or atomic particles, but the ancient Egyptians explained their world in concrete terms which were rooted in the observations of the world around them (Teeter 2011:13). They created for themselves a comfortable environment by limiting enquiry to the obvious and predictable, and avoiding potentially frightening and culturally unsettling metaphysical debate (Teeter 2011:13).¹⁷

According to Teeter (2011:14) the ancient Egyptians' world view should not be regarded as flawed or short-sighted, for their civilisation lasted for thousands of years. The vast number of statues, temples and wall paintings produced by the ancient Egyptians are among the most recognisable and admired products of the world's present-day or past cultures (Teeter 2011:14).

The temple and priesthood ensured that the universe remained stable (Shaw & Nicholson 2008:273). Daily offerings to the gods kept forces of chaos at bay and neglect of the gods or blasphemy against them led to punishment (Shaw & Nicholson 2008:273). From Deir el-Medina for example, many *stelae* describe how offences against the cobra-goddess, Meret-seger, led to blindness and how, after penitence, the god cured the wrongdoer (Shaw & Nicholson 2008:274). In ancient Egypt the gods required food, drink, clothing and rituals to sustain them as the protectors of mankind against the forces of chaos (Brewer & Teeter 1999:85).

According to Brewer and Teeter (1999:93), the formative principles behind Egyptian religion, cosmology and gods were not logical, but symbolic. Brewer and Teeter (1999:93) observe that the metaphors employed to explain the universe and the gods attempted to reduce cosmic (the unknowable) phenomena to an earthly scale. One of the most important principles of ancient Egyptian theology was *maat*, the personification of universal order and truth (Brewer & Teeter 1999:93). The goddess Maat was presented

¹⁷ This approach may be responsible for the development of symbolic art as the ancient Egyptians tried to decode and make sense of the world around them and to explain the unexplainable in concrete terms (Teeter 2011:13).

as a woman wearing an ostrich feather (representing truth) on her head (Gahlin 2001:86; see also Figure 1.1). In mythology she was the daughter of Ra, the sun god, and the personification of physical and moral laws, order and truth (Van Blerk 2006:5). The feather became an ideogram for Maat (Van Blerk 2006:5). According to Goebis (2007:276) the concept of *maat* is attested as early as the mid- Second Dynasty.

2.4 THE CONCEPT OF MAAT: THE BASIS FOR LAW

From ancient Egyptian religion, a concept arose which was central to the understanding and appreciation of the social order with its inherent rules: this foundational concept was called *maat*,¹⁸ which referred to morality and ethics, and the entire order of society was bound up with this doctrine (Allam 2007:263). As Bleeker (1967:6-7) correctly observes one can, without hesitation, accept that *maat* constituted the fundamental idea of ancient Egyptian religion. The concept of *maat* embraced what we would call justice, although it had a broader meaning, signifying the divine order of the cosmos as established at creation (Ockinga 2007:252). Assmann (1990:17) is of the view that the concept of *maat* links human action and the cosmic order. It is difficult if not impossible to give a proper translation of this concept as it stands and falls with the ancient Egyptians' worldview. The concept of *maat* was central to Egyptian thought (Assman 1990:17).

Parkinson (1991:31) is of the opinion that the Egyptians perceived the universe in terms of a dualism between order (*maat*) and disorder. A balanced universe (*maat*) was established by the creator god as part of the world's 'natural order', and imbalance in the world came not through the existence of some evil force, but from human behaviour. The opposite of *maat* was *izft*, which meant wrongdoing, injustice, disorder, falsehood and antisocial behaviour (Allen 2004:116). *Maat* was created and placed in the cosmos to bring order (Assmann 1989:62).

Maat was mythologically personified and anthropomorphically represented as the goddess of order, truth, harmony and justice who embraced the cosmic order and life on earth. (See Figure 1.1 for a depiction of the goddess Maat.) Maat therefore became the divinity to whom everyone was answerable for his or her actions (Allam 2007:263).

¹⁸ The concept of *maat* is briefly discussed here as basis for law in general. It will be discussed in chapter 3 in more detail in the context of its relevance to the belief in the afterlife which forms the foundation for a branch of law, namely succession law.

It is clear that as early as the Pyramid Age we are witnessing the earliest examples of higher aspects of an evolutionary process, the emergence of a sense of moral responsibility as it was assuming an increasing mandatory power over human conduct (Breasted 1934:123). This development was moving towards the assertion of the notion of conscience as an influential social force (Breasted 1934:123).

Breasted (1934:116-7) suggests that the family was the primary influence in the rise and development of moral ideas. As early as the Pyramid Age, it was recognised that the individual's claim to worthy character might be based on his spirit and his conduct in his relations with his parents and siblings (Breasted 1934:117). Thus moral impulses have grown from the influences that operated in family relationships (Breasted 1934:121). Although the range of good conduct may at first have been confined to the family, in the Pyramid Age it had already started to expand to become a wider community matter (Breasted 1934:123). Man would be judged for his wrongs and injustices on earth at death by a judgement before the supreme judge in a court of justice (Breasted 1934:125). According to Breasted (1934:130) there is much emphasis on common sense and the use of the mind, which is usually called the 'heart'. People behaved according to norms accepted by society, enshrined in the concept of *maat* (Ockinga 2007:255).

It was the king's task to defend *maat*, thereby maintaining and restoring order (Allam 2007:263). As a result of this, the king had to issue appropriate laws (Allam 2007:263). Fundamentally, the reason for the emergence of law was to ensure that *maat* was established. *Maat* was thus the direct link between law and religion in ancient Egypt. Therefore official legislation was comprised of laws, which the king issued as needed, and not of divinely revealed statutes as in Judaism or Islam (Allam 2007:263).

Not only the king but all instruments of the state – the judiciary and bureaucracy – took the notion of *maat* as their ruling principle, it being the goal and duty of their activities. *Maat* therefore embodied just administration and in the process maintained order (Allam 2007:263). Law was therefore tied up with a religious world view which represents the rules regulating the behaviour of members of society (Allam 2007:264). Because *maat* governed all human activity and established an ethical framework for every deed, it symbolised an ideal order towards which each person had to strive (Allam 2007:264).

The ancient Egyptians believed that the existence of *maat* would ensure the continued existence of the world as it had done since the beginning of time (Allen 2004:115) and they lived in the unshakeable faith that *maat* was, despite periods of chaos, injustice and immorality, absolute and eternal in nature (Bleeker 1967:8).

It was by living according to the principles of *maat* that the ancient Egyptians confirmed that they understood the principles and values of *maat* (Helck & Otto 1980:1112-1113), which had religious, ethical and moral connotations and became the focal point of the ancient Egyptian legal system (Bedell 1985:12).

According to Assmann (2002:132) justice is what holds the world together, and it does so by connecting consequences to deeds. According to Assmann (2002:132), this is the essence of what makes it 'connective'. Justice links human action to human destiny (Assmann 2002:132). Connective justice does however not only link consequences to deeds but also the individual to people around him (Assmann 2002:133). The Egyptians had a specific view of connective justice dependent on *maat*, which will be briefly set out here as explained by Assmann (2002:133-135).

Justice is achieved by systematic maintenance. Justice refers to a life in harmony with the connective structures that make community with fellows and gods possible. The idea of connective justice that binds individuals into a community and their actions into the meaningful ensemble of history is central to Egyptian civilisation throughout its entire span (Assmann 2002:135). This understanding of the ancient Egyptians' view that human action and human destiny are linked, is an indication of the fundamental and important role that religion played in the ancient Egyptians' very existence. This fundamental link between human action and human destiny would form the basis of everything, including their general law and law of succession.

2.5 CONCLUSION

It is clear that the ancient Egyptian world was dominated by religion and that they made sense of the world around them by viewing everything through the eyes of their religious beliefs. Religion was the way in which they could make sense of things around them. The beliefs and rituals accompanying religion brought security, stability and continuity.

Of particular importance was the ancient Egyptians' belief in *maat*, the bigger order of things. This belief in *maat* represented order, balance, justice and truth. This dominated every aspect of their daily lives; everything they did was to be in accordance to *maat*. This was necessary in order to keep the balance of order, truth and justice in the cosmos and on earth. For them human action and human destiny were inextricably linked.

This belief in *maat* influenced and structured their idea of law. It is through *maat* that the religious origin of ancient Egyptian law is perceived. The belief in this bigger order of things on earth was a way of life which influenced every aspect of their lives, including the law. The belief and rituals accompanying religion brought security, stability and continuity, and formed the basis for the development of ancient Egyptian law.

CHAPTER 3

THE BELIEF IN THE AFTERLIFE

3.1 INTRODUCTION

In this chapter a closer view is presented of this world of religion, looking more specifically into the belief in the afterlife as this is indeed the foundation of a branch of law, namely succession law. It will be illustrated which role *maat* and the concept of 'judgement of the dead' played in the belief in the afterlife. It will therefore be necessary to discuss and explain the notion of 'judgement of the dead' and the belief in the afterlife. It is important to discuss and determine the role played by the belief in the afterlife in the ancient Egyptians' lives and if and how the belief in the afterlife shaped their daily lives.

This chapter will also determine what role this belief in the afterlife played in the care for the deceased in respect of the burial as well as sustenance after death.

This belief in the afterlife would therefore require caring for the deceased in providing sustenance.

It is important to keep in mind the ancient Egyptians' world view and specifically their belief in this afterlife as well as the social circumstances of the time when studying documents relating to ancient Egyptian succession law. Of these, the notion of *maat* was a central tenet. *Maat* dominated every aspect of their daily lives. All actions had to be in accordance with *maat* in order to keep the balance of order, truth and justice in the cosmos and on earth. This belief was extremely important since one would be judged on keeping this balance at death.

The ancient Egyptians were not obsessed with death, but with the afterlife. The afterlife was the ultimate goal of living a life in accordance with *maat*. Living according to *maat* was a way of life, a much more complete understanding or insight into life, order and balance than what modern people understand it to be, who tend to live life in 'compartments' by 'boxing' things or their way of life into religion or non-religion, among others.

3.2 *MAAT*, JUDGEMENT AND THE AFTERLIFE

It was important for the ancient Egyptians to do everything in life according to *maat*,¹⁹ and to keep in mind the eventual judgement at death since that would determine whether they would go to the afterlife. Ultimately, it is this belief in the afterlife that determined every aspect of the ancient Egyptians' daily life, including law and specifically succession law. The notion of *maat* would represent the continuity and transformation of the person to the afterlife, effectively also representing immortality (Assman 1990:122).

The notion of *maat* was the principle that held ancient Egyptian society together, the ideal way of life being to lead a life in accordance with *maat*, which would correspond to socially acceptable or ethical norms of behaviour (Oakes & Gahlin 2004:462; Allam 2007:263-264). *Maat* could not be changed or interfered with (Assman 1989:75-76). The continued existence of the world and people depended largely on fulfilment of natural cycles,²⁰ with the ideal order of familiar things continuing forever (Taylor 2001:12). Human life was also seen as part of this greater scheme of creation and regarded also as cyclical (Taylor 2001:12). Emphasis was on how people should listen to as opposed to being deaf to *maat* and on the idea that greed destroys social relations (Oakes & Gahlin 2004:463). The ancient Egyptians could attain the afterlife by leading a good life on earth (Baines 1991:151), so it was eventually the task of every Egyptian to live in accordance with *maat* (Allam 2007: 263-264). The very first signs of a belief in the survival of death date from the beginning of the fourth millennium BCE, since ca. 4400-3200 BCE the corpse was usually laid in an individual pit-grave covered by a low mound of earth to serve as protection and as a marker (Taylor 2001:13). Objects essential for life, such as stone or ceramic jars with food and drink, tools, weapons, jewellery etc. was placed with the body, indicating that at this stage the afterlife was seen as an extension of earthly existence (Taylor 2001:13). The earliest written records regarding the afterlife are contained in the Pyramid Texts²¹ of the late Old Kingdom

¹⁹ Humankind today certainly does not live their daily lives with the same sense of insight as the ancient Egyptians, geared towards the afterlife, did. Often modern people live for the present and the now, only taking into account their immediate self-centred needs.

²⁰ These cycles would be things like the rising and setting of the sun, motions of the stars, rising and setting of the moon, annual inundation of the Nile, growth and death of plants (Taylor 2001:12)

²¹ The Pyramid Texts are a collection of spells drawing on different traditions and contain several different views regarding the afterlife, with one of the earliest being that the king would ascend to the sky to achieve eternal life (Taylor 2001:25).

(Taylor 2001:25). The ancient Egyptians' idea of the afterlife obviously evolved throughout their long history (Ikram 2007:340).²²

In order to understand the concept of *maat*, we need to look at the Egyptian world with a neutral mind and not impose our modern ideas of ethics and reasoning on it (Mancini 2004:8).

For the ancient Egyptians connective justice meant that it transcended death and promised immortality (Assmann 2002:133). At death, a person would be judged for his or her wrongs and injustices on earth at the judgement before the supreme judge in a court of justice (Breasted 1934:125). People consequently behaved according to the norm accepted by society, enshrined in the concept of *maat* (Ockinga 2007:255). This concept, and the importance of living a just life, was central to the beliefs about judgement after death, where the deceased's heart (𓇢) was weighed in the balance scales against *maat*, symbolised by the feather (𓇣) of the goddess Maat (Oakes & Gahlin 2004:463). The heart was important as it was regarded as the centre of the individual where intellect, memory and the moral aspect of an individual resided (Taylor 2001:17). The hieroglyph for *maat* means, among other things, 'proper behaviour' (Allen 2004:95).

At judgement, the deceased had to declare his or her spiritual baggage in a list of denials, the so-called 'negative confessions'. If one was found to have spoken these words truthfully, the scale would balance, showing that the deceased had lived a just and proper life (Allen 2004:95), and the deceased was declared *mAa Hr w*, meaning literally 'true of voice' or 'justified' (Quirke 1992:163), and was allowed to join the society of the dead (Allen 2004:95). In contrast, the hearts of the wicked were tossed to Amemet, the 'swallower'. The ancient Egyptians realised, intellectually, even though they still feared death, that death was inevitable and that they could only attain the afterlife by passing through death (Taylor 2001:12).

As many as 42 deities heard the deceased protest innocence of crimes against the divine and social order (Quirke 1992:162). This was an ethical judgement after death (Baines 1991:151), when each Egyptian was held accountable and could only go to the afterlife if he or she passed the final judgement (Allam 2007:263-264), which was a moral force to the ancient Egyptians and affected the individual in this life and in the transition to the

²² Already in these formative years it is possible to recognise the fundamental aspects which would characterise Egyptian funerary practices and which would remain in place for the next four millennia (Taylor 2001:13-15).

next life (Baines 1991:151). Regardless of social stratification, if an individual had lived according to *maat* (and the correct prayers had been recited and correct rituals executed), afterlife was available to all Egyptians (Ikram 2007:340).

The belief in this judgement might have been integral to religion in ancient Egypt in all the different periods (Baines 1991:151).²³ Quirke (1992:162) is of the opinion, with which I concur, that the concept of judgement of the dead might have been formulated earlier, but it is unlikely that it existed ca. 1800 BCE when the Coffin Texts were in use, which contained the old view of an afterlife without judgement of the dead. In the Coffin Texts the tribunal was a standard court where the divine authorities could hear cases of complaints, but in the new tradition, the judgement of the dead was not a trial of one incident only, but an assessment of the entire being, the entire earthly life of a person (Quirke 1992:162).

The Coffin Texts, so called since they were mainly written on early Middle Kingdom coffins in cursive hieroglyphs (Parkinson 1991:32), were a collection of spells which would ensure survival of the deceased in the afterlife (Parkinson 1991:32). They date from the end of the Old Kingdom, but are characteristic of Middle Kingdom burials (Parkinson 1991:32). Before the Coffin Texts, these spells were written on the tomb walls, the so-called Pyramid Texts (Shaw & Nicholson 2008:263). In these spells the deceased would be addressed as Osiris. The spells would deal with offerings and resurrection and would be inscribed in the burial chamber itself, the most sacred part of the pyramid (Shaw & Nicholson 2008:263).

In the Old Kingdom the king was thinking and planning for all, but in the Middle Kingdom the idea of the 'heart-guided' individual becomes important (Assmann 2002:135). In the Middle Kingdom the heart plays a central role in inscriptions and literary texts (Assmann 2002:135).

The idea of the judgement of the dead builds upon this concept of individual merit (Assmann 2002:136). In other words, the Middle Kingdom sought to secure the network of connective justice by lodging it within the individual (Assmann 2002:137).

²³ The texts enacting the deceased's successful passage to the afterlife, Chapter 125 of the *Book of the Dead*, is however not attested before the Eighteenth Dynasty. There is, however, evidence that some of its underlying ideas may be much older (Baines 1991:151).

It would be the spread of the Religion of Osiris²⁴ – and inextricably linked to it the emergence of universal acceptance of the judgement of the dead during the Middle Kingdom – that would constitute the most significant new paradigm in ancient Egyptian history of meaning (Assmann 2002:157).

The cult of Osiris represented an important development in the Middle Kingdom; this god had become the Great God of all necropolises (Callender 2000:179). A reason for this was the patronage lavished on it by the rulers of the Middle Kingdom which would reach its zenith during Senusret III's reign (Callender 2000:179). The growth of the cult of Osiris was accompanied by the 'democratisation of the afterlife', which represented the extension of once royal funerary privileges to everyone (Callender 2000:180). The funerary rites and beliefs of the population changed, for instance the decoration of non-royal coffins with the Coffin Texts, which represented a combination of the royal Pyramid Texts and new funerary compositions²⁵ (Callender 2000:180).

In Assmann's (2002:157) view the notion of life after death in the Old Kingdom centred on eternal continuation in the tomb. The dead, except for the king, did not ascend to heaven, nor to the underworld) (Assmann 2002:157). Instead, they crossed to the 'beautiful west',²⁶ the city of the dead (Assmann 2002:157). It was only the king who ascended to heaven (Assmann 2002:157). In ancient Egyptian mythology Osiris was the first mummy and the first to be resurrected and his face was depicted as being black or blue²⁷ which was the symbol of resurrection (Ikram 2007:341).

In contrast to the Old Kingdom, the tomb in the Middle Kingdom became a point of potential access for symbolic contact between this world and the hereafter (Assmann 2002:158). The deceased no longer lived in the tomb (Assman 2002:158).

²⁴ Osiris appears in the records from the funerary texts for king Unas and is recorded for the first time on the inner chamber of his pyramid ca. 2400 BCE, but would from that point onwards take a leading role in Egyptian religious texts and images (Quirke 1992:52). This same period (the Pyramid Age) saw the development of mummification and Osiris was depicted as a mummiform man with ostrich feathers on either side of his White Crown. He was strictly speaking not the king of the dead, but rather of the blessed dead (Quirke 1992:52).

²⁵ These would however come to an end primarily as a result of among others the introduction of the mummiform coffin which was not suited for long texts because of its shape (Callender 2000:180).

²⁶ The west was where the sun set and was regarded as the entrance to the region of the dead, also referred to as 'the land that loves silence' (Taylor 2001:13). This would explain why cemeteries were located on the west side of the Nile (Taylor 2001:13).

²⁷ The black or blue face was associated with the fertile silt of the Nile and green growth of plants (Ikram 2007:341).

The world beyond the 'beautiful West' in the Old Kingdom was a continuation of this world (Assmann 2002:158). The tomb in the Old Kingdom was effectively a place of symbolic perpetuation of the human sphere, which would ensure permanence beyond death (Assmann 2002:158). The deceased took the world of the living into the next life, by means of grave goods and mural images (Assmann 2002:158).

However, towards the end of the Old Kingdom, the imaginary geography of the underworld began to develop, namely the kingdom of Osiris (Assmann 2002:158-159). It is at that time, according to Assmann (2002:159), that the hereafter began to develop 'a life of its own' and the emphasis switched from perpetuation to transition.

In the early stages of its evolution during the Middle Kingdom, the judgement of the dead was modelled on the mythical trial in which Osiris 'urged' his claims successfully against Seth, his murderer, and thus overcame death (Assmann 2002:159).

From then onwards, every dead person hoped to find the same vindication after death to follow Osiris into the realm of immortality (Assmann 2002:159). It would be Osiris who would be the crucial indicator of the judgemental significance of death in the history of ancient Egyptian systems of meaning (Assmann 2002:159). Regarding the cultural meaning of death, the Old Kingdom had not yet anything to do with Osiris religion (Assmann 2002:159). The belief in judgement was integral to religion in ancient Egypt, it being a moral force which affected the individual in this life and in the transition to the next life (Baines 1991:151).

Although the ancient Egyptians were concerned with maintaining *maat*, Egyptian religion was not overtly directed towards personal morality implicit in upholding *maat* (Shaw & Nicholson 2008:274). However, the wisdom literature provides some insight into the ancient Egyptians' view on morality, while some of the same concepts are present in the funerary texts of the New Kingdom (Shaw & Nicholson 2008:274). Funerary papyri like the *Book of the Dead* show the deceased's transition in a scene where Horus, king of the living, formally presents the deceased to Osiris, king of the dead (Allen 2004:95). The new corpus appears on coffins around 1600 BCE and texts are also written on the shrouds for Thebans. The same texts could also appear on tomb chapel and burial chamber walls (Quirke 1992:163). However, from the reign of Hatshepsut onwards, more use was made of papyrus, the traditional manuscript material.

The *Book of the Dead*, referred to above, is the name given to papyri sheets covered with magical texts and accompanying illustrations (called *vignettes*) which the ancient Egyptians placed with the deceased in order to assist them pass through the dangers of the underworld and attain an afterlife, the Egyptian concept of heaven (Faulkner 2012:11).

Wealthy ancient Egyptians spent much of their lives preparing an appropriate burial place (Oakes & Gahlin 2004:21). The New Kingdom administrators made ready rock-cut tombs on the west bank of the Nile, not far from the royal tombs in the Valley of the Kings (Oakes & Gahlin 2004:21).

3.3 HOPE OF ETERNAL LIFE

It is important to understand the ancient Egyptians' belief in an afterlife as it formed the basis of their daily lives, and it was their belief in *maat* which would form the golden thread throughout their culture. It would be *maat* and the judgement of the dead which would determine whether one would have access to the afterlife, and it was this hope of eternal life which would shape their daily lives.

For us today, reality is formed and informed by a variety of scientific ideas, while the ancient Egyptians explained all natural phenomena in concrete terms and in this process they avoided speculative thought (Teeter 2011:9). The ancient Egyptians did not see death as the end but as a further change leading to another type of existence (Taylor 2001:12).²⁸ Because they could not make sense of death,²⁹ they articulated a vision of the afterlife which was modelled entirely on their daily lives in the Nile Valley and which thus included minute details like food, household effects, entertainment and activities in abundance, the afterlife being a perfect reflection of daily life due to its avoidance of the unknown (Teeter 2011:9; Oakes & Gahlin 2004:391). The living and dead were part of the same community, and the dead could intervene among the living (Baines 1991:147). They believed that death would lead them to a desired state in the afterlife, for death did not necessarily end their role in this life. This is a difficult concept in a modern society to understand, since for modern communities society only consists of the living. For the ancient Egyptians death was seen as the arrival of a boat at its harbour, the end of one journey, but also as the start of another journey (Taylor 2001:13).

²⁸ Death was seen as a transitional state leading to the afterlife (Taylor 2001:12).

²⁹ It was from their love for life that the ancient Egyptians derived their firm belief in the afterlife (Taylor 2001:10-12).

In ancient Egypt, death was the most strongly ritualised of life's stages (Baines 1991:144). From the dawn of ancient Egypt's history, as early as Predynastic times when the Pharaohs' ancestors settled in the Nile valley (ca. 4000 BCE) (Quirke 1992:141), well before Pharaonic Egypt's unification and up to the Roman Period, belief in the afterlife was a fundamental aspect of ancient Egyptian religion, a basic component of religion (Ikram 2007:340; Oakes & Gahlin 2004:21, 390). The ancient Egyptians were not interested in death itself, which was viewed mainly as a doorway or passage to another existence (Oakes & Gahlin 2004:21; Quirke 1992:141), but rather in the afterlife, a fundamental aspect of ancient Egyptian religion. It is obvious from the preparations which accompanied their burials that they believed in the existence of an afterlife (Allam 2007:265; Oakes & Gahlin 2004:390) for they stocked their burial chambers and tomb chapels with the bounty of this world and also resorted to magic and rituals in the hope of securing sustenance in the afterlife (Allam 2007:265). A continued use of human faculties after death is implied with the presence of food offerings in particular. The deceased could eat and drink after death to absorb energy, as in life. For the ancient Egyptians the two forms of surviving death, the spirit of sustenance and the spirit of mobility, shared the task of perpetuating existence for a person (Quirke 1992:143).

The greatest possible significance to the afterlife is attached to the 'desert of eternity' (Assmann 2002:67). Time spent on earth is only 'a trifle' in comparison to the 'eternity' spent in the 'realm of the dead' (Assmann 2002:67).

Grave goods to provide for the needs of the deceased in the afterlife were found in the simplest graves, dating from Predynastic Egypt to the graves at the end of the Pharaonic era (Oakes & Gahlin 2004:21). Tombs from the Old Kingdom, called the *pr ȝt* (𓂏𓂗), 'house of eternity', resembled a house, even with bedrooms and in some cases bathrooms. On the tomb walls were painted scenes of daily life and of the natural world.

Funerary texts buried with the dead state that the dead ascended to the afterlife and that this was located in the heavens, the realm of the sun (Oakes & Gahlin 2004:391). Central to Egyptian funerary beliefs was the myth of Osiris, god of the dead and ruler of the afterlife, who judged the dead to decide whether they have lived a 'justified' life (Ikram 2007:341). The myth of Osiris was associated with creation, the cycles of life and the perception to have overcome death (Taylor 2001:25). These mythologies would provide explanations for man's resurrection as well as describing the world where the dead lived






(Taylor 2001:25). The afterlife, ancient Egyptian paradise, was called the field of *hṯp* ('satisfaction' or 'offerings'), the land of Osiris (Oakes & Gahlin 2004:391).

Afterlife or paradise was associated with the western horizon (the place of the setting sun) and was imagined to be a luscious place with fields irrigated by channels full of water, crops of emmer, wheat, barley and flax, the fruit trees heavy with loads of ripe dates and figs (Oakes & Gahlin 2004:391).

Assmann (2002:67) is of the view that the overwhelming presence of the concept of eternity in the form of monuments and inscriptions meant that life on earth appeared to be almost something like a dream rather than reality. The notion of eternal life evolved throughout many centuries and 'the nature of the afterlife came to be formulated within a framework of religious doctrines, texts and practices' (Taylor 2001:15). The system of belief changed over time, applying not any longer only to the king, but to all the people, giving everyone the equal opportunity to reach the afterlife (Taylor 2001:25).

3.4 BURIAL, THE TOMB AND SUSTENANCE OF THE DECEASED

Burial (*qrst*) was an important ceremony in ancient Egypt. The establishment of a unified state, with centralised government and literate bureaucracy ca. 3100 BCE also coincided with an acceleration in the development of burial practices (Taylor 2001:15).

The Egyptians believed (from early in the Old Kingdom) that the human body consisted of many facets, in life a complete entity, but displaying a multiplicity of forms that could be used in the next world (David 2002:116). The Egyptians did not have a simple dualistic division of body and soul, but perceived man as a composite of physical and non-physical elements (Taylor 2001:16). The ancient Egyptians believed every person consisted of a physical body with different components, and together these represented the entire individual (Ikram 2007:342). These parts were the name (*rn* ); the shadow (*Swt* ); the double or life force (*ka* );³⁰ the personality or soul (*ba* ); and the spirit (*akh* ) (Ikram 2007:342). Their funerary religion was devoted to ensuring the survival of all these components and not only of the body (Ikram 2007:342). It would be

³⁰ The *ka* was the most important of a human being's non-physical aspects and the relationship between the *ka* and the individual was almost like that of twins (Taylor 2001:18-19). The *ka* came into being when an individual was born and had no concrete form, but was given substance by representing it in the form of a statue which served as a dwelling (Taylor 2001:19). The hieroglyph sign of two upraised arms might perhaps represent the symbolic embrace contact between one generation and the next (Taylor 2001:19).

the deceased's body³¹ which would be the link between the deceased and his or her former earthly existence, since the deceased were able to receive the food and drink necessary to sustain their spirit (David 2002:116-117). It was for this reason that mummification took place from as early as the Naqada II Period until the Christian era in order to preserve the earthly body for the use of the *ka* and the *ba* (Ikram 2007:343). The spirit (*ka*) was the most important element and was essentially the vital force enabling a person to continue to receive sustenance in the afterlife (David 2002:117).

It was believed that death occurred when the *ka* left the body, after which the body was mummified,³² a process which took 70 days (Allen 2004:94). The bodies of the poor who could not afford mummification were wrapped in a reed mat and buried in a grave dug in the sand (Allen 2004:94). The deceased were escorted to their tomb in the necropolis, normally situated in the desert cliffs west of the Nile (Allen 2004:94), where ceremonies were held by the priests known as the 'Mouth-Opening Ritual', intended to return to the deceased the use of his or her mouth and the other senses of the body (Allen 2004:94). This ritual was important for resurrection (Ikram 2007:345). Offerings of food and drink were presented, a bull slaughtered, after which the body and its accompanying grave goods were finally buried (Allen 2004:94).

Tombs became complex architectural structures and a proper burial would involve a number of rituals and provision of magical texts (Taylor 2001:15). Obviously the poor could not afford the same tombs as the elite, but their concept of eternity did not differ and they attempted to achieve the best afterlife they could afford (Ikram 2007:349).

The ancient Egyptian tomb had two parts, the burial chamber and the chapel or temple (Allen 2004:94-95). The burial chamber was below the ground, where the deceased was interred together with the grave goods, and was sealed after the funeral (Allen 2004:94). The substructure where the deceased was buried was sealed (Ikram 2007:345). Above the ground was a chapel (or temple in the case of royal tombs) where offerings could be

³¹ The physical body was important for the continued existence and it was for this reason that the need for mummification developed, the idea being not only to preserve the body, but also to transform the corpse into a new eternal body (Taylor 2001:16). The function of the body was not to rise up and be physically active in the afterlife, but to house the *ka* and the *ba* (Taylor 2001:16).

³² During mummification the body was packed with natron to remove moisture. The major internal organs were removed, leaving only the heart in place. The brain, extracted through the nose, was discarded. The liver, lungs, stomach and intestines were separately mummified and placed in four canopic jars, each with a lid representing one of the four gods known as 'the sons of Horus', i.e. Imseti (𓆎𓅓𓏏𓏂 *imstj*, human head) for the liver, Hapi (𓆎𓅓𓏏𓏂 *Hpy*, baboon head) for the lungs, Dua-mutef (𓆎𓅓𓏏𓏂 *dwA-mjw.t*, jackal head) for the stomach, and Qebehsenuef (𓆎𓅓𓏏𓏂 *qbH-snw*, falcon head) for the intestines (Allen 2004:94).

made and prayers said for the deceased (Allen 2004:95). The superstructure (chapel/temple) was accessible to priests and visitors and served as main cult place (Ikram 2007:345). Inside the chapel there were usually depictions of the deceased and scenes of offerings (Allen 2004:95). The focal point of the chapel or temple would be a niche in the western wall, known as a 'false door' with an offering slab in front of it (Allen 2004:95). The false door was one of the most important parts of the tomb and was inscribed with an offering formula³³ or list as well as names and titles of the deceased (Ikram 2007:349). The spirit of the deceased could then, through the false door, emerge to partake of the nourishment (*ka* 𓆎) or the offerings (Allen 2004:95). In front of the false door was the offering table, normally directly above the burial chamber, and it was here that the spirit could hear prayers and receive offerings (Ikram 2007:349). The word for 'sustenance' or 'offering' is given as *ḥw* (𓆎) (Gardiner 2005:580), while food-offerings are indicated by *snw* (𓆎 or 𓆎) (Gardiner 2005:590). It was possible that the food offerings could be given by saying prayers that referred to provisions, the so-called 'voice-offerings' (Teeter 2011:131). The *ka* and *ba* could access the chapel or temple in order to access offerings³⁴ and to transit between this world and the afterlife (Ikram 2007:345).

For the ancient Egyptians the king's role, as the guarantor of continued order, did not end with his death (Malek 2000:101). For the king's contemporaries who were buried in the vicinity of his pyramid and for those involved in his funerary cult, the relationship with the king continued forever (Malek 2000:101). The firm belief in eternal afterlife was the motivation for building the pyramids and the funerary monuments (Taylor 2001:12). It was important to safeguard the king's position and status after his death as much as in his lifetime (Malek 2000:101). The building of monumental structures was an important way of expressing such a concept in the Old Kingdom (Malek 2000:101).

In the Third Dynasty, the tombs of the members of the royal family, priests and officials were separated from the exclusive areas of the royal pyramids and continued to be built around them, mostly in mud brick (Malek 2000:101). During the Fourth Dynasty,

³³ Apart from the food offerings, the written word, the 'offering formula' was very important (Taylor 2001:95). The written word represent magical power of word and image, which was expressed in a standard form of written words (Taylor 2001:96)

³⁴ The tomb was supplied on a daily basis by the mortuary cult and could be endowed with land by the deceased during his or her lifetime (Ikram 2007:349). In practice the offerings would be left for the deceased and later taken away by the priests as payment (Ikram 2007:349). This was obviously not limited to the priests, but also to those who had performed the rituals (Taylor 2001:95). In practice it meant the priests and relatives could eat the offerings.

however, these tombs were now built of stone and surrounded the pyramids as if the tombs themselves were part of the complexes (Malek 2000:101). Unique to the Fourth Dynasty are the extensive fields of *mastaba* tombs built according to an overall plan, separated by streets intersecting at right angles (Malek 2000:101).

Every pyramid complex served as a focal point for the cult of a deceased king which was meant to continue forever and to provide for the king's needs in the afterlife (Malek 2000:105). The king was the primary beneficiary and could, in his lifetime, endow his pyramid establishment with land or make arrangements for contributions from the state treasury (Malek 2000:105). The cult arrangements involved presentations of offerings, most of which were used to support priests and officials involved in the funerary cult (Malek 2000:105). The offerings could however also have been used to support craftsmen living in the pyramid town, or else they were redirected to support funerary cults in non-royal tombs (Malek 2000:105). Land donations made to pyramid establishments were protected by royal decrees that made them permanent and inalienable (Malek 2000:105).

As David (2002:113-114) correctly observes, the tomb was regarded as a 'house' and therefore a continuation of life after death. The ancient Egyptians saw earthly life as a transitory phase requiring only a temporarily dwelling, but the afterlife (as presented by the tomb) required permanence and was often referred to as 'the house of eternity' (Taylor 2001:12).³⁵ The tomb served to convey the deceased to the afterlife (Ikram 2007:345). Assmann (2002:48) observes that there is no other funerary tradition in the world comparable to the Egyptian tomb in its representation of the entire culture. It includes the here-and-now and the beyond, professional life and mortuary cult, individual and social existence (Assmann 2002:66).

The funeral ceremonies, however, served not only to restore the deceased's physical abilities, but more importantly, to release the *ba* from its attachment to the body in order for it to come and go at will (Allen 2004:95), i.e. for the continuance of the established order. The *ba*³⁶ was supposed to find the body and re-join the *ka* (life-force) in order to receive nourishment for the deceased to continue living (Allen 2004:95). The

³⁵ While houses of the living (including the king) were mainly built with perishable materials, the tombs for the largest part were built of stone (Taylor 2001:12).

³⁶ An important religious development during the Middle Kingdom was the belief that everyone, not only the king, had a *ba* (spirit force) (Callender 2000:180). In this regard one of the world's oldest debates on the issue of suicide is the *Dialogue between a man, tired of life, and his 'Ba'* (Callender 2000:181).

deceased would thus avoid the perils of the underworld to travel safely in Ra's bark (Shaw & Nicholson 2008:274). This is also why the deceased is often referred to as 'those who have gone to their *kaw*' (Allen 2004:95). After this reunion took place, the deceased became an *akh* (𐀝), literally, an 'affective one', who was able to live on in a new, non-physical form. This took place once the deceased had passed the judgement (Allen 2004:95).

Every component of the Egyptians' elaborate funerary preparations was devoted to preserve all these elements throughout eternity (Taylor 2001:16). Muhs (2016:44) observes that from the beginning of Egyptian history the Egyptian funerary practices included both the deposition of funerary offerings at the time of burial in the tomb together with the deceased and subsequently regular funerary offerings to the deceased or in front of a tomb chapel attached to the tomb. Already in the course of the Old Kingdom royal and private funerary practices both placed increasing emphasis on expanding and perpetuating the post burial regular funerary offerings (Muhs 2016:44). The notion of nourishment that the deceased required was among the most important funerary practices (Taylor 2001:15). After death the deceased was sustained by an active mortuary cult (Ikram 2007:349). The *ka* needed feeding and was dependent for this on the living (Taylor 2001:95).

The first texts and images produced to secure a good life after death were set into the chapels above the tombs. The texts include a listing of material goods to be supplied to the tomb in perpetuity. As from the third millennium BCE the tomb owner provided his career and his titles in these texts; after ca. 2600 BCE, the interior wall of a tomb chapel would be covered with an elaborate account of the provisioning for an estate. The persistence of chapel building well into the Ptolemaic Period shows the strength of this social belief in the sustenance of the spirit and their aspirations for everlasting life (Quirke 1992:152).

Importantly, Assmann (2002:67) observes that we can only understand the Egyptian tomb if we look beyond the architectural, iconographic and epigraphic elements and inquire into the underlying value systems, the cultural construction of time and eternity, of memory and immortality, of social 'virtue' and biographic significance.

After death the deceased was sustained not only by prayers and inscriptions on the tomb walls and on funerary papyri, but also by an active mortuary cult. This

responsibility lay with the priests and family for the wealthy; and for the poor mainly with family members, although priests could be shared, to take offerings to the deceased (Ikram 2007:349). Sustenance was essential to life and the *ka* was intimately connected with sustenance as the individual could not feed him- or herself anymore, but by feeding the *ka* the individual was kept alive (Taylor 2001:19). Fulfilling this crucial need was the most important purpose of the *ka* in the afterlife as this would be the main way of existence through the means of the deceased receiving sustenance (Taylor 2001:19). It was possible for the *ka* to leave the body and burial chamber into the chapel or temple where offerings were presented and it was here that a statue³⁷ was provided in which the *ka* resided during the important sustenance process during which the *ka* absorbed the life-giving power of the food (Taylor 2001:19). In order to address the need of sustaining the *ka* a mortuary cult was established and was served by relatives of the deceased or priests who had the duty to present offerings in the context of a ritual³⁸ (Taylor 2001:95). The deceased dependent on the mortuary cult which would ensure the deceased was nourished by the supply of offerings in perpetuity by the relatives or priests (Taylor 2001:174).

It is possible that there existed a moral relationship between the dead and the living to provide this sustenance (Baines 1991:151). It is likely that the funerary endowment would eventually vanish through diversion to the benefit of either their deceased descendants or of others (Ikram 2007:350). However, some New Kingdom texts began to doubt the value of provision for the next life, implying that nobody has come back from there (Baines 1991:148).

The sustenance and renewal of time through rituals complements the construction of sacred permanence (Assmann 2002:73). The mortuary cult was established to ensure funerary rituals would continue to be performed from one generation to the following (Taylor 2001:95).

3.5 CONCLUSION

The belief in eternal life or the afterlife is part of *maat*: harmony, order and justice, illustrating the thread running through Egyptian life. The ancient Egyptians believed in

³⁷ Like the divinity, the *ka* of the deceased embodied within the cult statue in the chapel or temple consumed only the essence of the offerings placed of the offering table (Taylor 2001:95).

³⁸ The offering ritual was closely related to daily magical purification and provisioning of the images of the gods and took place in the cult temples (Taylor 2001:95).

the afterlife and cherished the hope of eternal life, therefore it was necessary for the deceased to be sustained after death. The belief in eternal life and the sustenance of the deceased would form the foundation for the law of succession in ancient Egypt. The judgement of the dead played a critically important role for the ancient Egyptians. It was only if the deceased made it through the judgement that the afterlife was attained.

The ancient Egyptians' whole life was focused on this afterlife and the hope of eternal life in the sense that everything was part of the bigger order (*maat*), for life did not end with death. Their belief in *maat* shaped their daily lives, forming a golden thread throughout their culture; *maat* and the judgement of the dead would determine whether one would have an afterlife.

This belief in the afterlife resulted in the paramount importance they subscribed to the provision of sustenance for the deceased by way of offerings and rituals. It was part of life; the belief in the continuation of life after death was evident from the Old, Middle and New Kingdoms. In my view it is from this virtual 'obsession' with the afterlife that we begin to see the very first signs of the emergence of succession law, making provision for the situation after death, in other words, the belief in the afterlife would be the reason for the emergence of law in general, but more specifically succession law. The funerary endowment would eventually vanish through diversion to the benefit of either the deceased's descendants or of others.

CHAPTER 4

THE EMERGENCE OF LAW

4.1 INTRODUCTION

In this chapter the emergence of ancient Egyptian law out of religion and specifically arising from the concept of *maat* will be discussed.³⁹ Furthermore, the important role played by religion, and specifically *maat*, in the ancient Egyptians' understanding and development of law will receive attention. An attempt shall be made to indicate that the ancient Egyptians had law and to explain what the ancient Egyptians understood by law, followed by a discussion of the development of ancient Egyptian law and key jurisprudence elements of ancient Egyptian law.

Law has existed as long as organised human society, but its origins are lost in the mists of prehistory (Westbrook 2003c:1). The advent of writing left a record from which the living institutions of the past can be reconstructed (Westbrook 2003c:1). In many instances the emergence of truly legal concepts was derived from religion, although over time law emerged separately from religion (Allam 2007:265). The ancient Egyptians' belief in the concept of *maat* led to the development of law in ancient Egypt. Law developed out of religion, and specifically out of the notion of *maat*. In order to achieve *maat*, it was necessary to have mechanisms in place and this is where law was established: it developed out of religion. A study of ancient Egyptian law should therefore always allow for the close relationship between law and religion in ancient Egypt. It was the purpose of law to achieve order, balance, truth, and justice (*maat*).

Law asserted its autonomy as early as the age of the pyramids, whereafter the part of religion in legal matters began to diminish (Allam 2007:266). Religion now no longer determined the legal standing of a matter, but it was rather the juridical mechanism which became authoritative, even in the religious sphere (Allam 2007:266). A well-known example of this is one of the central myths in ancient Egypt, 'The Contendings of Horus and Seth', known from *Papyrus Beatty* dated to the mid-twelfth century BCE (see

³⁹ Although Chapters 4, 5 and 6 all touch on aspects of law, their focus in each case is different and this calls for separation in different chapters. Each chapter has its own focus but continues the flow of the previous chapter, in the process maintaining the line of argument in the thesis. Law is discussed in this chapter in its broader sense as it developed out of religion, in essence following on the discussion in Chapter 2.

Sweeney 2002:143). It is a satirical account of the lawsuit between the god Horus, the rightful heir to the crown of Egypt, and his uncle, the god Seth, who usurped the crown by murdering Horus' father Osiris (Sweeney 2002:143). Even the gods themselves had to appear before a court in order to resolve their dispute (Allam 2007:266). This myth is an expression of important Egyptian values such as justice and family solidarity (Sweeney 2002:143).

Relevant in the context of this thesis is the ritual of the judgement of the dead, which took place before a special court. The judgement of the dead occupied a very prominent place in Egyptian belief (Allam 2007:266), as has already been discussed in Chapter 3 of this study. The judgement of the dead is an important example of the intimate relationship and interaction between law and religion in ancient Egypt.

Certain fundamental elements of ancient Egyptian law appear to be, among others, the great importance of justice as well as the value that was attached to tradition – both important to maintain the bigger order of things. Egyptian law was essentially based on the concept of *maat*, which was about morality, ethics and the entire order of society (Allam 2007:263; Shaw & Nicholson 2008:178). Life was to be conducted in accordance with *maat* to avert chaos (Allam 2007:263). The pharaoh's duty was to defend *maat* in order to maintain and restore order, which he did by issuing appropriate laws (Allam 2007:263). Law was therefore tied up with a religious world view and represented the rules regulating the behaviour of members of society (Allam 2007:264).

The ancient Egyptians thus lived in accordance with *maat*, their lives geared towards the afterlife, which was the ultimate goal. Furthermore, against this backdrop law emerged as a mechanism to maintain *maat* on earth, with the king playing an important part by 'making' law, ensuring that *maat* was maintained on earth. The king was in a position to transform the vertical belief in *maat* (between man and the gods) to horizontal reality (*maat* between people on earth).

4.2 THE EMERGENCE OF LAW IN ANCIENT EGYPT

The organisation of the legal system in ancient Egypt was governed by religious principles (David 2002:288). It was believed that law have been handed down from the gods to mankind at the time of creation and the gods were responsible for maintaining the concept of law (David 2002:288). The law stood above all humans and was personified by the goddess Maat, with the concept of *maat* representing truth, justice,

righteousness, the correct order and balance of the universe (David 2002:288). Egyptian law was based on a common-sense view of right and wrong, following the concept of *maat* (Van Blerk 2006:26).

Explicit sources of law from the Old Kingdom are rare, although there is considerable indirect evidence in the form of titles and references to legal institutions or situations (Jasnow 2003c:93). There must have existed an abundance of archival documents from the Old Kingdom as people, animals, crop yields all had to be counted, and we see, from scenes in the Old Kingdom tombs, scribes carefully recording the quantities (Lorton 2000:345). According to Muhs (2016:22) the Old Kingdom saw diversification of uses of writing compared to the preceding Early Dynastic Period. The first narratives appear from this period in the form of religious texts inscribed in royal tombs (so-called Pyramid Texts), biographies inscribed in the tombs, letters (both royal and private), agreements and court proceedings (Muhs 2002:22-23).

The first discovered legal code dates from the late period (747-332 BCE)⁴⁰ (Shaw & Nicholson 2008:178). According to Teeter (2011:4) there were only a few codified laws because the king was the highest judge from whom ancient Egypt and all laws emanated.

Egyptian law was essentially based on the concept of *maat* (Helck & Otto 1980:1110). The king, as a king god, was the supreme judge and law giver (Helck & Otto 1980:1110). The goal of *maat* was to keep the chaotic forces at bay, with the idea of order as the *Grundlage* of the world, upon which the legal system was based in turn (Helck & Otto 1980:1110-1111).

The king's primary duty was to uphold the order of creation which had been established on the primeval mound at the time of creation (Tobin 1987:115). Kingship in Egypt represented the effective power of *maat* (Tobin 1987:115). The king, as son of the Sun-god, was entrusted with the task of upholding *maat* (Bleeker 1967:7). He upheld the law and was theoretically the sole legislator, but he was also subject to the law (David 2002:288). The king had to live his life according to the principles of *maat* and he had to maintain *maat* in society (Van Blerk 2006:18). The king had thus to 'rule by *maat*' (Goebs 2007:276). The king's duty was to make sure that *maat* was attained on earth and in order to do so the king had to make law. The word for law was *hp* (and the plural

⁴⁰ A Greek writer mentions that there was a Pharaonic legal code set out in eight books (Shaw & Nicholson 2008:178).

hpw) (Kruchten 2001:277). The word *hp* is also later translated to include 'regulations' and 'statutes' (Lesko 1984:82). It was essentially *maat* that necessitated the need for law. The king was the link between law and *maat* (religion).

It would appear that the king, the vizier and the great courts located at Memphis had jurisdiction over crimes against the state (Muhs 2016:24). The king was the head of the judicial administration (Muhs 2016:25). According to Muhs (2016:25), no evidence survives from the Old Kingdom to suggest that the king could hear and decide cases himself. The purpose of law in ancient Egypt was to realise *maat* on earth and the king was the link between law and *maat* (Van Blerk 2006:17). Kingship in ancient Egypt effectively represented the effective power of the order of *maat* (Van Blerk 2006:18).

The king represented a source of law, since the ancient Egyptians regarded the king as a god and so his word had the force of law (Versteeg 2002:5) and he was the primary source of law (Westbrook 2003c:26). The king's duty to make laws is summarised in texts by the phrase 'putting *maat* in place of injustice' and, on temple walls, by images of the king presenting the symbol of *maat* to the gods (Allen 2004:117). This scene of the presentation of *maat* first appears as an iconographic device in the time of Thutmose III, where her effigy was presented to the gods by the king as sustenance (Teeter 1997:83).

The ancient Egyptians believed only the king knew the requirements of the *maat* principle and that his laws were identical to the will of the creator god, which was why the king could maintain law and order and these laws and ruling of the king reflected the world in harmony (Helck & Otto 1980:1115). The king had the duty towards the gods and the people to maintain *maat* by promulgating law (Van Blerk 2006:18). The vizier was the king's delegate and the High-priest of Maat as well as head of the courts of justice (David 2002:288).

It was necessary for the king to delegate his authority (Shaw & Nicholson 2008:178). It is believed that the legal official wore a golden Maat pendant (Shaw & Nicholson 2008:178). The goddess Maat was important to judges and their sense of duty; they were regarded as 'priests of Maat', wearing a small figure of the goddess as a pendant around their necks symbolising their judicial office (Versteeg 2002:21). Surviving statues of high officials from the Late Period are shown wearing such pendants on a chain (Shaw & Nicholson 2008:179). The cases which these high officials examined

would be reported to the king, who would then be responsible for punishment in the more serious cases (Shaw & Nicholson 2008:178-9).

In ancient Egypt religion has always been significant in terms of legal relations between people (Allam 2007:264). This close relationship and interdependency between religion and law had one especially important consequence: since the gods were perceived as the guardians and source of the established order, they were consulted for a proper decision in doubtful cases (Allam 2007:264). The ancient Egyptians therefore employed, alongside the usual legal process, also divine judgement, which placed the omniscience of a divinity at the service of judicial proceedings (Allam 2007:264).

If the law were obeyed, one would be following the principle of *maat*, but if one went against *maat* by committing an offence, the law could be applied against the wrongdoer (Bedell 1985: 12). The ancient Egyptians' lives were governed by *maat*, with their law being justice in action (Van Blerk 2006:88). *Maat* became the focal point of the legal system (*hpw*) and if the laws (*hpw*) were obeyed, one would be following the principles of *maat* (Van Blerk 2006:8).

Throughout its long history the skilful ancient Egyptian government had guaranteed certain rights to the individual, which may be described as the Egyptian 'law' of the period (Theodorides 1971:320). According to Theodorides (1971:320), this 'law' was embodied in statutes and was protected by courts. Religious life was expressed in legal terms, like the setting up of foundations, contracts and donations (Theodorides 1971:320). Law regulated the entire day-to-day business of existence in the Nile valley (Theodorides 1971:320).

According to Allam (2007:265) an ultimate development in Egyptian history was the emergence of law as a notion separate from religion. Allam argues that the secularisation of law did not necessarily imply a blasphemous profaning of legal usages, for in many instances the emergence of truly legal concepts derived from religion. A good example of this is the emergence of private pious foundations (Allam 2007:265). These 'pious foundations will be discussed further in Chapter 6 of this study.

Theodorides (1971:291-292) questions whether one can talk about law before its elaboration by the Romans, because there is a lack of documentary evidence. There is no collection of laws from ancient Egypt, unlike Sumerian, Akkadian, Hittite and New Babylonian law collections (Theodorides 1971:292). To make it even more difficult, the

ancient Egyptians used everyday language regarding their legal concepts (Theodorides 1971:292).

Theodorides (1971:292) submits that by the beginning of the third millennium BCE the social and administrative system in ancient Egypt was based on the family. The Palermo Stone illustrates the ancient Egyptian Nile flood, the annual census of the population and a biennial census of 'gold and fields' from at least the Second Dynasty onwards (Theodorides 1971:292). It is important to note that this implies that the transfer of personal and landed property from one owner to another was known and that private property must therefore have existed (Theodorides 1971:292). Documentary evidence in funerary inscriptions confirms that private property did indeed exist and that it was transferable, with equality between husband and wife in the eyes of the law (Theodorides 1971:292).

When the Persians conquered Egypt, the fundamentally Egyptian institutions, based on the individual, were revived (Theodorides 1971:319). Tradition attributes a new codification of the existing laws to Darius (Theodorides 1971:319). Under the Ptolemies in the second century BCE, judgment was given in a matter regarding conflicting interests in a succession, with the procedure, although adapted, still retaining several elements of the old tradition (Theodorides 1971:319). Law was a living entity and therefore did not remain unchanged over the centuries; it changed because human aspirations, conditioned by new circumstances, necessitated change (Theodorides 1971:320). This change evolved between the poles of equality and liberty on the one hand and that of inequality on the other (Theodorides 1971:320). What is striking about ancient Egyptian law, according to Theodorides (1971:320), is its modernity. Although remote in time, it furnished the ancient Egyptian civilisation with a structure close to that with which we are familiar today (Theodorides 1971:320).

The application of law was coherent, despite peculiar features of procedure with laws to govern these (Theodorides 1971:292). From as early as the Old Kingdom women had the same legal status as men (Johnson 1996:175).

4.3 DEVELOPMENT OF LAW

Although sources of law in the Old Kingdom are rare, there are indirect references to law in the form of titles as well as to legal institutions (Jasnow 2003c:93). The corpus of

royal decrees of a legal nature in the Old Kingdom and the First Intermediate Period can be divided into seven categories, namely:

- decrees regarding administration
- decrees regarding tax exemptions
- endowments of offerings
- endowment decrees for immovable property
- decrees for appointments
- stipulations for the benefit of private individuals
- letters (Jasnow 2003c:94)

The main sources of law in the Middle Kingdom and the Second Intermediate Period are from royal inscriptions, administrative papyri, private documents, private inscriptions and literature (Jasnow 2003a:255).

Although no law codes have been found for the Middle Kingdom and the Second Intermediate Period, some texts imply the existence of if not an extensive code, then at least limited systematic collections of 'laws' (*hp.w*) (Jasnow 2003a:255). *Papyrus Brooklyn* 35.1446 (Thirteenth Dynasty) refers *inter alia* to 'the law pertaining to those who desert' and to 'the law pertaining to one who flees the prison' (Jasnow 2003a:255).

Some of the most important Middle Kingdom archives and documents in terms of their legal content are the Lahun archives, the Hekanakhte letters (for leasing and land holdings) and the Djefa-Hapi contracts (mortuary provisions) (Jasnow 2003a:256). Some of these texts will be discussed in Chapters 7 and 8. Tomb biographies, like those of Beni Hasan (Twelfth Dynasty) occasionally have statements referring to legal matters and administration (Jasnow 2003a:257). Texts initially written on papyrus were often inscribed on temple or chapel walls, obviously to provide security to the legal document (Jasnow 2003a:256-257).

Literary texts from the Middle Kingdom, such as the 'Tale of the Eloquent Peasant' and the story of Sinuhe also include legal material (Jasnow 2003a:257). In a passage from 'The Admonitions of an Egyptian Sage', which describes a society in chaos, the speaker says: 'Lo, the laws (*hpw*) of the chamber (prison?) – are thrown out, men walk on them in the streets, beggars tear them up in the alleys' (Jasnow 2003a:257). Religious texts,

such as the Coffin Texts, often also contain certain elements relating to law (Jasnow 2003c:97).

The New Kingdom has an abundant and a more varied corpus of legal texts than the earlier Old and Middle Kingdoms (Jasnow 2003b:289). Although the New Kingdom did not produce a law code, detailed royal edicts like the *Nauri Decree*, together with possible references to systematic law collections, exist (Jasnow 2003b:289). For example, in the *Decree of Horemheb* the King states: 'I have given to them (the judges) oral instructions and law(s) in their books' (quoted in Jasnow 2003b:289). In *Papyrus Bulaq 10*, for instance, one party cites the 'law of pharaoh' as a precedent and in *Papyrus Turin 2021* a man introduces a law with the words 'The King said ...' (Jasnow 2003b:289).

The New Kingdom documents are concerned with sales, loans, leases, disputes, litigation, marriage, adoption, partnerships and inheritance. Most of this material derives from Thebes in southern Egypt, while other documents, like the *Legal Text of Mes*, are from Memphis in the north of Egypt and contain references to court disputes, confirming the existence of government archives (Jasnow 2003b:292).

The lexical texts which were found comprise a mixture of paragraphs with some appearing to be excerpts for a law code while others apparently are clauses from standard contracts (Westbrook 2003c:11). This mixture of law-code paragraphs and contractual forms is found in the Demotic *Codex Hermopolis* (*Papyrus Mattha*) dated to the Hellenistic period (Westbrook 2003c:11). This document provides evidence that similar scholastic traditions must have existed in ancient Egypt despite the fact that none have been found yet (Westbrook 2003c:11). The *Codex Hermopolis* will be discussed under paragraph 4.4 (Jurisprudence) in this chapter.

The so-called *Codex Hermopolis* is a collection of texts, or rather a manual, which provides guidance for legal solutions in unusual or difficult cases (Manning 2003:821). The guidelines contained in this document were used by the priest-judges to resolve disputes and served as a guide to the writing of certain legal instruments (Manning 2003: 821).

Theodorides (1971:292) affirms that although ancient Egypt has not provided a legal code, the application of law is coherent, despite peculiar features of procedure. It is important to realise that there was a procedure in existence with laws to govern its use

(Theodorides 1971:292). It is not clear how the ancient Egyptians defined their various legal categories, but apparently they proceeded as though these were similarly defined to these in modern times (Theodorides 1971:292). For instance, a property transfer on death (law of succession) is clearly distinguished from a property transfer between living persons, in particular by the fact that the property does not change hands at the same time (Theodorides 1971:292). A surviving spouse is not automatically an heir, but can be made one (a legatee) owing to the freedom to make a will (Theodorides 1971:292), which led to new social and legal circumstances and subsequently the creation of new law (Theodorides 1971:321). With this will, the person making the settlement modifies the legal destination of the property (Theodorides 1971:321). The matter of the surviving spouse not being an automatic heir and the possibility of making a 'will' will be discussed in further detail in Chapter 6.

It is Theodorides' (1971:321) view that ancient Egypt does not present an example of the secularisation of law. On the contrary, it attained from the onset (during the Old Kingdom) a high level of institutional and juridical development (Theodorides 1971:321).

It is known that classical writers, such as Diodorus, wrote respectfully of law and justice in ancient Egypt (Allam 2007:272). Several law-makers, including probably Plato, travelled to Egypt in order to, among others, study law (Allam 2007:272). It is noteworthy that the Persian king Darius I is believed to have held Egyptian law in such high esteem that he ordered the collection of all that was known of Egyptian law before the Persian conquest and produced a codification written in Demotic script (Allam 2007:272). Allam (2007:272) correctly affirms that the history of law, which played itself out over millennia in the Mediterranean, had its foundation and origin in pharaonic Egypt.


4.4 JURISPRUDENCE

Jurisprudence is described as 'the science of philosophy of law' (Pollard 1995:435). One of the greatest Roman-Dutch jurists, Hugo de Groot (better known as Grotius) wrote the following in his book *Introduction into the Dutch Jurisprudence* (quoted in Maasdorp 1878:01):

Jurisprudence is the science of living according to justice. Justice is the moral virtue of doing what is just. That is just which is in accordance with right.

Grotius further states that the term 'right' is used in both a wide and a narrow sense (quoted in Maasdorp 1878:1). In its wider sense, 'right' is the agreement of the act of a reasonable being with reason in as far as another has an interest in such an act (Maasdorp 1878:1). In its narrow sense 'right' is the relation which exists between a reasonable being and something that belongs to the same being (Maasdorp 1878:01).

Allam (2007:268) argues that judging from the ancient texts; it appears that the ancient Egyptians had no concept of jurisprudence as a discipline. There is no attestation for theoretical deliberations as the basis of substantive law (Allam 2007:268). However, I am of the opinion that it is possible to attempt to identify key elements of jurisprudence in ancient Egyptian law.

The Egyptian word for law is *hp* (), which admits the same range of translations ('rule', 'regulation', 'habit', 'rite', 'ceremony', 'cycle') as *nt* (translated as 'custom') (Kruchten 2001:277). The underlying idea of both these terms is the idea of recurrence, exemplified by the cosmos and the behaviour of earthly beings (Kruchten 2001:277). Both *nt* and *hp* resorted under *maat*, which literally means 'the one who steers', the embodiment of order, which is the reason why both supposedly existed from the beginning of time (Kruchten 2001:277). The discussion on the notion of *maat* in Chapter 2 and 3 refers.

The *Codex Hermopolis* indicates that the consideration of legal questions in isolation and abstract elaboration of legal norms was known to the ancient Egyptians (Allam 2007:268). This papyrus is dated to approximately early third century BCE (Allam 2007:268).

The *Codex Hermopolis* was not confined to local use and thus several copies might have existed, circulating throughout ancient Egypt towards the onset of the Hellenistic era (Allam 2007:269-270). The mention of harvest time provides a clue to its date of origin (Pestman 1983:17). Harvesting occurs between May and June, which does not correspond with the calendar in use during the third century BCE when the text was transcribed (Pestman 1983:17). The harvest time mentioned in the papyrus corresponds rather to the calendar of the eighth century BCE, to the time when a fluctuating calendar was used (Pestman 1983:17). It can therefore be assumed that the relevant paragraphs were taken from a much older manuscript reflecting conditions of the 8th century BCE (Pestman 1983:17-18). The *Codex Hermopolis* contains portions of a

variety of texts from different periods, which have most probably been reworked by a jurist of the early third century BCE (Allam 2007:270). As the compiler-author proceeds from *inter alia* earlier sources, without stating this explicitly, it is possible he may have reworked laws of earlier kings, using them as the basis for his own decisions. Many papyri show that laws from pharaonic times were still valid in the early Hellenistic era (Allam 2007:270).

The *recto* contains texts dealing with an unusual subject, namely theoretical legal discussions divided into approximately 200 articles grouped into four sections (Allam 2007:268). According to Allam (2007:268) the first of these sections deals with tenant farming arrangements and disputes between the tenant and the owner/lessor. The texts include contract *formulae*, which served as templates, and the arrangements to be made, for instance, by the purchaser of a house to protect his interest against an unfair seller (Allam 2007:268). Included are also rental agreements for various types of buildings and an exposition of litigation arising from non-payments of rent (Allam 2007:268).

A partial marriage settlement is discussed in detail in this papyrus (Allam 2007:268). In this case the woman ceded a considerable part of capital to her husband, who in turn guaranteed her an endowment (Allam 2007:268). The concern was not with the marriage settlement as such, but rather in respect of the disputes that could arise between father-in-law and husband in case the contract was not honoured (Allam 2007:268-269).

This is followed by cases regarding immovable property, for instance, when a person built a dwelling on a plot of land and the title to said land was later claimed by another (Allam 2007:269). The procedure is then described to be applied in order to settle the dispute (Allam 2007:269). This is then followed by a discussion of various disputes among neighbours (Allam 2007:269).

The final texts of the *Codex Hermopolis* deal with the law of succession and more specifically with the position of the 'eldest son' in disputed cases (Allam 2007:269). It also addresses various actions regarding inheritance (Allam 2007:269). I shall revert to this point of the 'eldest son' and these various actions of inheritance in Chapter 6.

According to Allam (2007:269) it is clear from contemporary documents that all issues treated in the text are cases which reflect daily life issues. Procedures for the admission of evidence, on which the judge would make his decision, are mentioned (Allam

2007:269). Several types of admissible evidence, like oaths or entries in official registers, are known from other contemporary texts (Allam 2007:269). The papyrus therefore provides valuable overviews of law in Egypt during the early Hellenistic period (Allam 2007:269).

Importantly, as Allam (2007:269) notes, only questions relating to private property are discussed, omitting matters of criminal law. It appears that the compiler-author was only interested in matters pertaining to the property rights of individuals (Allam 2007:269). He therefore classified formulations in sections according to subject with appropriate subdivisions (Allam 2007:269). The arrangement of the material shows a jurist's mind at work; someone who knew very well how to systematically treat legal questions, although it might not entirely correspond to our systems today (Allam 2007:269). In order to discuss the topics, the compiler-author conceived apparent theoretical disputes and situations designed for guidance in the judgment of a relevant case (Allam 2007:269). He also provides definitions for 'defendant' and 'plaintiff', and also uses abstract classification, developing for example the notion 'thing' (*neket*) which the later Roman jurist would call *res* (Allam 2007:269).

Allam (2007:269) argues that when studying legal history it is important to realise that the compiler-author (of the *Codex Hermopolis* text) shows himself to be qualified as a jurist; he was a true jurisprudent. Previously it was doubted whether there were scholars in ancient Egypt who could qualify as jurists in the strict sense of the word, but today their existence is undisputed (Allam 2007:269).

Ancient Egyptian jurists treated legal material systematically and clearly followed a relevant principle of organisation with subdivisions in every category (Allam (2007:270). A deepening of juristic thought took place, which can be regarded as the point of departure for law as a rigorous scientific discipline and the beginning of genuine jurisprudence (Allam 2007:270-271).

Regarding elements of legal philosophy the following section from the 'Instruction of the Vizier', Rekhmire (ca. 1479-1425 BCE) is of importance:

I judge both (the insignificant) and the influential. I rescue the weak man from the strong man; I deflected the fury of the evil man and subdued the greedy man in his hour ... I succoured the widow who has no husband; I established the son and heir on the seat of his father. I gave (bread to the hungry), water to the thirsty, and meat, oil and clothes to him who had nothing ... I was not at all deaf to the indigent. Indeed, I never took a bribe from anyone (James 1984:57).

In Rekhmire's instructions it is laid down that justice is to be rendered in public and in such a way that every person shall at all times be able to secure his rights (Theodorides 1971:307). In this regard, an appeal is made to a sense of equity and by implication to jurisprudence, as it is pointed out that the records of all judgments are kept in the archives of the vizier to be consulted (Theodorides 1971:307). The composition of these instructions must go back to the Thirteenth Dynasty, but the best copy we have is that of Rekhmire's Instructions (Theodorides 1971:307-308).

Among the most influential precepts and values in the Egyptian jurisprudence are a strong preference for tradition,⁴¹ a view that theoretical skill should be admired and a desire to achieve impartiality and social equity – as Rekhmire's inscription demonstrates (Versteeg 2002:23).

Taking everything thus far said into account, it is my view that two very basic and fundamental elements of ancient Egyptian law can be identified, which will be discussed in the following subsections.

4.4.1 JUSTICE, BALANCE, AND IMPARTIALITY

Allam (2007:264) states that '*maat* subordinated the social order to a broad concept of equity'. Since the ancient Egyptians had a well-developed sense of justice, the choice of 'taking the law into one's own hands' was out of the question. The only admissible means of defending disputes was by due process in the courts (Allam 2007:264). With their sense of justice and social responsibility they did not only advocate their own rights but also those of others (Allam 2007:263).

The legal process itself is in essence an attempt to reach a result which both parties involved in a dispute are willing to accept (Versteeg 2002:26). To function fairly, a legal process must then allow adversaries to explain their respective points of view (Versteeg 2002:26). Because of the ancient Egyptians' keen interest in and love for rhetorical speech, this could facilitate a robust legal process, enhancing the capacity for the Egyptian courts to reach just verdicts (Versteeg 2002:26).

Law was therefore essentially based on a concept of justice which was antonymous to falsehood and injustice (Shupak 1992:15). The courts were governed by the principles

⁴¹ It was believed the world was basically secure and operating in a fixed, regular, routine and natural order (as embodied by *maat*) (Versteeg 2002:23).

of *maat* and the vizier in control of the law courts had the title of 'priest of Maat' (McDowell 1999:166).

Breasted (1909:242) observes the following:

[T]he social, agricultural and industrial world of the Nile dwellers under the Empire was therefore not at the mercy of an arbitrary whim, on the part of either the king or court, but was governed by a large body of long respected law, embodying principles of justice and humanity.

Social equality and impartiality are basic components of basic fairness (Versteeg 2002:26). These concepts dictate that everyone should be treated equally and the same before the law (Versteeg 2002:26). In ancient Egypt the pinnacle of concern for legal neutrality occurred during the First Intermediate Period (ca. 2200-2040 BCE) and the Middle Kingdom (ca. 2024-1674 BCE) (Versteeg 2002:26). From the instructions of the vizier Merikare, it is clear that it was seen as important to judge objectively (Versteeg 2002:26).

In the Middle Kingdom, a legal perspective was developed that everyone has equal rights and opportunities, or at least everyone should have them (Versteeg 2002:27). At this time it was believed that everyone should have access to social justice (Versteeg: 2002:27). This is a unique idea in human history, existing in ancient Egypt more than a thousand years before evidence of similar thinking by the Greeks and Hebrews.

4.4.2 TRADITION, PRECEDENT AND CUSTOM

The overarching first impression of Egyptian civilisation is that of a coherent entity that spans almost forty centuries of unchanging stability (Grimal 2000:17). The ancient Egyptians were conservative and very tradition bound (Grimal 2000:17). It might be that the internal geographical unity of the country contributed to the apparent lack of change (Grimal 2000:17) and that nature supplied a secure world with fixed harmonic routines. The topography of the Nile valley protected them from invasion while the consistent annual inundation of the Nile assured them of the orderliness of life (Versteeg 2002:24). This would probably dictate recurring rituals, farming practices and legal proceedings, like the redrawing of property boundaries (Versteeg 2002:24).

The law of the ancient Near East demonstrates a remarkable continuity in fundamental juridical concepts (Versteeg 2002:24). The appreciation and respect for the past influenced the development of law in at least two ways according to Versteeg (2002:24).

In the first instance, judges kept records of their legal decisions in the archives of the vizier in order to consult them later as precedent (Versteeg 2002:24). Secondly, because of the admiration for tradition, Egyptian law was very slow to evolve (Versteeg 2002:24). The obvious consequence of vigorously following precedent meant that laws remained in force for very long periods of time without modification (Versteeg 2002:24).

The ancient Near Eastern systems belonged in varying degrees to a common legal culture, which was, however, very different from what we have today (Westbrook 2003c:4). These systems share a way of looking at the law that reflect the world view of the cultures from which they evolved (Westbrook 2003c:4). The law probably did change and develop over a long period of time, although one must not assume that this was necessarily the case (Westbrook 2003c:22). Today our law changes often, but in the ancient Near East different conditions existed, and the basic features of law did not undergo any radical change for a very long period (Westbrook 2003c:22).

In the Old Kingdom, the king was in supreme control of legislation, but laws were conceived as expressions of ideal justice. A law promulgated remained in force so long as it was not modified or repealed (Theodorides 1971:294).

The judges, officials or parties responsible for law did not read the law in the same way as we do today (Westbrook 2003c:20). There was no interpretation of the exact wording of the text since the text was not regarded as autonomous or exhaustive (Westbrook 2003c:20).

General decrees can be divided into three main areas, namely constitutional law, administrative law and law concerning economic activity (Westbrook 2003c:15). In the ancient Near East references to decrees attest to their existence (Westbrook 2003c:19). However, they are not citations of the texts; the closest the early sources came to citations were the references to actions or decisions being in accordance with the words of the *stele* or tablet (Westbrook 2003c:19).⁴²

It would appear that statutes, in the form of edicts, orders and decrees, deal with specific matters of immediate interest, and that they did not establish a source of the basic

⁴² This is in contrast to the classical system of the Hellenistic or Roman Periods where there is an explosion of citation. Here, the statutes' exact words are quoted, analysed and obeyed and a legal ruling is justified by referring to the exact wording of the statute. As in modern law, the words of the text become the eventual point of reference for the law's meaning (Westbrook 2003c:20).

principles of law in a court (Westbrook 2003c:21). The majority of the law would have been customary in nature and is it here that 'the law codes, either in the written forms that we possess or as a larger oral canon from which the extant codes were drawn, could serve a vital function' (Westbrook 2003c:21). The achievement of these law codes was to constitute an intellectualisation of the mass of information that would have constituted customary law in the ancient Near East (Westbrook 2003c:21). According to Westbrook (2003c:14) there is evidence that previous decisions were regarded as a source of law. It is probable that most of the law applied by the courts was customary law, which derived from timeless tradition (Westbrook 2003c:14). Legislation according to Westbrook (2003c:14) include all orders issued by the king, his officials or local authorities. The ancient Near East orders are rather *ad hoc* commands, often regarding the rights of individuals or often a temporary device to address a current problem (Westbrook 2003c:14-15).

4.5 CONCLUSION

From the discussion in this chapter it appears that law in ancient Egypt emerged from religion and specifically from *maat*. The purpose of law was to maintain *maat* on earth. Religion played a fundamental role in the ancient Egyptians' understanding and development of law.

Although no law code has been found and it appears that the ancient Egyptians did not have specific legal terminology or legal categories, as we have today, it is clear that there are ample examples to indicate that law did indeed exist and that legal ideas and concepts were used as early as the Old Kingdom.

The most fundamental elements of ancient Egyptian jurisprudence were the importance of justice (which includes associated elements of balance, harmony, fairness, and impartiality) and tradition (which includes associated elements of custom and precedent).

CHAPTER 5

THE EMERGENCE OF SUCCESSION LAW

5.1 INTRODUCTION

In this chapter the notion of ‘succession law’ and its meaning shall be discussed.⁴³ An attempt will be made to indicate that succession law emerged from the ancient Egyptians’ belief in the afterlife and that the need for sustenance would lead to provisions made prior to death. These provisions represent the ‘birth’ of succession law and more specifically the ‘birth’ of the testamentary disposition. The question of what ‘documentation’ entails will be considered; for instance, does documentation only refer to written documentation? I shall explain what happened when someone died in ancient Egypt and the very important role of the ‘eldest son’. The discussion needs to be seen against the socio-economic background of the ancient Egyptians.

This chapter presents an exposition of the first signs of ancient Egyptian succession law. The law of succession determines what happens to someone’s property after death. It is proposed that the importance of the belief in the afterlife would form the basis for law of succession in ancient Egypt and more specifically the testamentary disposition. The belief in the afterlife is part of *maat*, the principle of harmony, order and justice. Together with the belief in the afterlife, it is necessary to take into consideration the socio-economic circumstances in ancient Egypt for an understanding of the emergence of succession law together with the important role the eldest son played.

5.2 WHAT IS SUCCESSION LAW?

Before looking at succession law in ancient Egypt it is necessary to understand what is meant with succession law. The law of succession is basically concerned with the transfer of property, as vested in a person at his death, to another person or persons. This presupposes the existence of the notion of private property (property owned by a person). I am of the opinion that the question of succession does not arise where the property belongs to a group, a family, etc., but arises in a society, which recognises that

⁴³ This chapter discusses a specific branch of law, namely succession law. In essence this chapter flows from the previous chapter since it focuses on a branch of general law, but also flows from Chapter 3. Chapter 5 gives an overview of this separate branch of law within the context of the socio-economic circumstances, the connection with the afterlife, and the basic tenets of succession law.

provision must be made for what needs to happen with the property when the owner of such property dies.

Succession law refers to the law applicable when someone dies, in other words, what happens to the assets, who takes care of the formalities, who inherits, etc. When a person dies, his assets pass by inheritance to people qualified to succeed the deceased (Schoeman & De Waal 2005:2). The rules of the law of succession determine who the qualified person or persons are and it also establishes the scope of the benefits (Schoeman & De Waal 2005:2). The law of succession is not always the most progressive or dynamic part of a civilisation's legal system (Pestman 1969:59), which means that we are actually able to form a proper understanding of a civilisation's idea of succession law. This is especially true in the case of ancient Egypt which was a more conservative and followed tradition, custom and precedent.

Van der Merwe and Rowland (1997:1) define succession law as follows:

Erfreg is die geheel van regsreëls wat die oorgang van daardie bates van 'n oorledene wat vir distribusie onder bevoorreedes vatbaar is, of die van 'n ander waarvoor eersgenoemde beskik het, beheer.

Schoeman and De Waal translate the above as follows (2005:2):

The law of succession is the totality of the legal rules which control the transfer of those assets of the deceased which are subject to distribution among beneficiaries, or those assets of another over which the deceased had the power of disposal.

In essence, as Corbett, Hofmeyer and Kahn (2001:1) put it quite simply, '[t]he law of succession deals with the rules governing the devolution of the estate of a person upon death'.

Succession as a legal term, means, according to Burdick (1989:546) 'an entering into the place and property rights of another'. It is effectively a way of acquiring legal rights whereby the rights of one person are transferred to another (Burdick 1989:546).

In Roman law the terms inheritance (*hereditas*) and succession (*successio*) are often used synonymously (Burdick 1989:546). In Roman law there may be succession to a single or a particular right of another, or to a number of such rights which is referred to as *successio singularis* (singular succession) (Burdick 1989:546-547). In Roman law there may also be a succession to all the proprietary rights and duties of another

considered as a whole which is referred to as *succession universalis* or universal succession (Burdick 1989:546-547).

It is important to remember that the law of succession should always be studied within its broader social context (Schoeman & De Waal 2005:2). The law of succession, like the law of things, the law of obligations and of intellectual property, constitutes part of the law relating to patrimony, which is a subdivision of private law. Therefore, principles and rules pertaining to other parts of the law relating to patrimony often have a bearing on the law of succession (Schoeman & De Waal 2005:2).

As has already been mentioned, the law of succession is concerned with the rules that control the transfer of proprietary rights in the assets of the deceased to his or her rightful successors (Schoeman & De Waal 2005:2). It is therefore apparent that the law of succession can only operate in a system that recognises the institution of private property. It therefore fulfils an important economic function with rules regulating the transfer of a deceased's assets upon death according to Schoeman & De Waal (2005:2). This economic function is supplemented by the principle of freedom of testation, which means a person may decide on the distribution of his or her assets after death (Schoeman & De Waal 2005:2).

In South Africa common law applies to testate succession (except if a court decides otherwise or a testator, living under customary law, prescribes otherwise in his will). Regarding all intestate matters, the Intestate Succession Act 81 of 1987 applies. In South Africa succession can therefore take place either testate or intestate, but also, thirdly, in terms of a contract (*pactum successorium*) contained in an antenuptial contract or a *donatio mortis causa*.

Corbett et al (2001:1) observe that the intestate succession branch is historically the oldest. In primitive legal systems the order of succession is fixed by custom and they contend that it cannot be changed by a will or testament. Corbett et al's assumption will be considered when texts relating to succession law in ancient Egypt are being dealt with later in this thesis in order to determine if it was possible in ancient Egypt to change the customary intestate succession law.

South African law of intestate succession originates from 17th-century Holland and the principles and main institutions on testate succession law form part of Roman-Dutch law (Corbett et al 2001:2). If a person dies without a will (or antenuptial agreement)

assets are inherited in terms of the law of intestate succession. If a person has left a will (a testator) , his estate is inherited in terms of such a will, for the rules of the law of testate succession are then applicable. It is therefore possible in South African law to change the intestate law of succession by means of a will (testate succession law).

Schoeman and De Waal (2005:3) define a will as follows: 'A will is a unilateral declaration of the wishes of the testator in which he sets out the way his assets must be apportioned after his death, to designated persons or institutions.' The deceased's estate includes his assets and liabilities, but today only the assets pass on to the beneficiaries. In Roman law the beneficiary inherited both the assets and liabilities. However, not all assets are inherited today; only the assets remaining after the deduction of debts and other liabilities are inherited (Schoeman & De Waal 2005:3).

As Van der Merwe and Rowland (1997:3) observe, the beneficiaries are the heirs (*heres*) and the legatees. The heir is the residual beneficiary, and the legatee is someone to whom a specific item has been bequeathed (Van der Merwe & Rowland 1997:3). The legatee enjoys preference when it comes to the distribution of the estate, while the heir only comes into the picture once the legatee has received his or her benefit (Van der Merwe & Rowland 1997:3). Obviously legacy is only possible in testate succession (and not in intestate succession) as the legatee can only be nominated in a will (Van der Merwe & Rowland 1997:3).

In Roman law the executor, who was also the necessary heir (*heres suus et necessarius*) could be forced to accept his appointment (Van der Merwe & Rowland 1997:2). The *heres* had to *inter alia* pay debts, then legatees and thereafter the heirs (Van der Merwe & Rowland 1997:2). In South Africa today the estate is administered by an executor in terms of the provisions of the Estates Act 66 of 1965, as amended, but in Roman law this function was executed by the *heres* (Van der Merwe & Rowland 1997:2).

The rules of the law of succession determine who the qualified beneficiaries are and also in my opinion establish the scope of the benefits. The rules of intestate succession apply where the deceased left no will, while the rules of testate succession apply where the deceased died with a will. The executor acts on behalf of the deceased in order to facilitate the process. With this background and understanding of what is meant by succession law, it is necessary to consider the socio-economic function of succession law in society.

5.3 SOCIO-ECONOMIC BACKGROUND

5.3.1 INTRODUCTION

It is important to note that the law of succession also fulfils a social function (Schoeman & De Waal 2005:2). This social function refers specifically to maintaining and protecting the family as a social unit, which explains why the law of succession is also influenced by the social trends affecting the family (Schoeman & De Waal 2005:2). Intestate succession law, for example, prescribes that the immediate family members are the beneficiaries of the *de cuius*' estate.

For this reason it is important to understand the socio-economic life and norms in ancient Egypt, which should be taken into account when studying the first signs of the development of succession law in ancient Egypt. I am of the view that the social context of ancient Egypt is extremely important seeing that the idea was for the immediate family, specifically the children, to inherit in order to sustain the deceased, and also to keep the family property together. The inheritance could go to the immediate family by way of the basic or customary process, or alternatively, in accordance to some instruction given by the deceased prior to death (like the pious foundation) as will be discussed later in this chapter and in Chapter 6. In practical terms someone had to take responsibility at the death of the *de cuius*⁴⁴ for certain matters pertaining to the burial process, as well as for matters pertaining to the deceased's property, of which the distribution of the inheritance was an important part. Of particular importance in ancient Egypt was the initial importance of and duty to sustain the deceased. This duty of managing the estate fell onto the 'eldest son' who acted in a way very similar to the modern-day executor of a deceased estate.

To describe social behaviour it is important to analyse the motivation behind actions, and not simply the actions themselves as listed in the text (Eyre1992:207). Although such an analysis might often seem subjective, it could well be the only way to put an isolated legal text into its wider context (Eyre 1992:207). It is therefore important to understand the ancient Egyptians world and the wider influences of their motivations,

⁴⁴ The *de cuius* refers to the deceased person. My definition of *de cuius* is a deceased person who has assets and thus an estate that needs to be dealt with after death. Hiemstra and Gonin (2013:405) translate *de cuius* as 'erflater' in Afrikaans and as 'testator' in English. In my opinion the Afrikaans translation is correct and it agrees with my own definition given above, while the English translation is incorrect, since 'testator' only refers to a case where there is a will. It would *prima facie* appear that English does not have a unambiguous word for the *de cuius*.

influenced by among others religion, family and economic factors when considering texts.

The law of succession, besides being a product of society, may also perform a function for the society according to Fleming (1978:233). Friedman (quoted in Fleming 1978:233), referring to succession, observes that the law and rules

... help define, maintain and strengthen the social and economic structure. They act as a kind of pattern or template through which the society reproduces itself each generation. Rules of inheritance and succession are, in a way, the genetic code of a society. They guarantee that the next generation will, more or less, have the same structure as the one that preceded it. In the long run, for example, there could be no upper class or aristocracy without rules about the inheritance of wealth and privilege, which permit the upper class or aristocracy to continue. And if rules permit free transfer of property and freedom of testation, a middle class society can be created and maintained.

It is Fleming's (1978:233-234) view that in a very general sense, all rules of law (which include all rules of succession) serve identifiable social functions. He goes on to say that the early entrance of free testation in Roman law had little to do with the increasing secularisation of the Republic's law, but rather that it was called for to permit the institution of a single heir (*institutio heredis*) in order to prevent peasant plots from being split into uneconomic units or having to support the result of repeated intestate succession by numerous co-heirs (*consortium*). According to Fleming (1978:234) by doing this Roman law achieved the same end as primogeniture⁴⁵ in modern systems which use special legislation for farm holdings. This very same concept of the institution of a single heir is also present in ancient Egypt with the important role played by the eldest son to prevent the split-up of property into uneconomic plots, but also to fulfil the important role of taking charge of the required sustenance of the deceased.⁴⁶

5.3.2 THE NUCLEAR FAMILY AND FAMILY PROPERTY

As Brewer and Teeter (1999:95) correctly observe, the nuclear family was the core of Egyptian society. Even the Egyptian gods were arranged into the same family groupings (Brewer & Teeter 1999:95). Many genealogical lists indicate how important family ties

⁴⁵ Primogeniture refers to being the firstborn child, the system according to which the eldest child (especially the eldest son) inherits his parents' property (Pollard 1995:633).

⁴⁶ Muhs (2016:5) is of the opinion that the ancient Egyptian state was primarily interested in protecting and enforcing its own property rights for tax collection purposes. Thus the responsibility for protecting and enforcing individual property rights was often shared with a variety of formal and informal organisations, or even private social control (Muhs 2016:5). According to Muhs (2016:5) this is most evident in the early first millennium BCE, when the Egyptian state fragmented and the temples took over the responsibility for enforcing property transfer agreements.

were (Brewer & Teeter 1999:95). From 'The Contendings of Horus and Seth' we know that values such as justice⁴⁷ and family solidarity were very dear to the Egyptians (Sweeney 2002:143). The earliest examples of inscriptions, texts and paintings reflect the importance of family in ancient Egypt and specifically the nuclear family.

Looking at the nuclear family in more detail: in ancient Egypt, social independence required a man to have a wife (Eyre 2007:224). As Pinch (2000:370) suggests, Egyptian society was based on the 'conjugal household'. The basic Egyptian family unit consisted of a man, a woman and children they might have (Pinch 2000:370-371). According to Eyre (2007:225) neither a man without a wife, nor a woman without a husband were fully integrated in society. Their full socialisation was probably marked by childbirth.

In order for an Egyptian to 'find a house' separate from his father's, he had to marry (Eyre 2007:224). For a man to remain in his father's household would leave him structurally and socially in the subordinate role of a son (Eyre 2007:224). It was possible for a young married couple to stay with either parents, but ideally a man did not marry until he could afford to establish his own household (Pinch 2000:371).

By marrying, the woman would then have to 'enter his (the man's) house' (Eyre 2007:224). As Eyre (2007:224) correctly states, this description is synonymous with marriage. It was also in the ancient Egyptians' view a necessary step, as only a woman could run a household (Eyre 2007:224). For the ancient Egyptians there was no alternative lifestyle (Eyre 2007:224). The idea of a man living alone, without a woman, would be outside normal experience and normal practice (Eyre 2007:224). The term for marriage was *meni* 'to moor (a boat)' and *grg pr* 'to found a house' (Brewer & Teeter 1999:96). These terms already convey the sense that the arrangement was about property (Brewer & Teeter 1999:96).

According to Brewer and Teeter (1999:96) marriage was purely a social arrangement in order to regulate property rights. There is no evidence of any form of legal or religious ceremony in order to establish the marriage (Johnson 1996:179). Unlike documents which referred to economic matters (like marriage contracts), marriages themselves were not registered (Brewer & Teeter 1999:96). Marriage was a private affair in ancient Egypt in which the state took no interest and or which it kept no record (Johnson

⁴⁷ As indicated in Chapter 2 and 3, justice was central to the Egyptian world and, as indicated in Chapter 4, a key element of Egyptian law.

1996:179). It would appear that there was no legal obligation to register a marriage, and no standard religious ceremony in a state-run temple (Pinch 2000:372). Once a couple started living together, they were regarded as being married (Brewer & Teeter 1999:96). There might have been a feast to mark the occasion of 'marriage' (Pinch 2002:372). The ancient Egyptians were monogamous (except for the king) with many records indicating that couples expressed true affection for each other (Brewer & Teeter 1999:95).

The husband would give the bride and the bride's family a gift (Brewer & Teeter 1999:96). It would appear that the financial aspect of the 'marriage' was the subject of lengthy negotiations between the two families of the bride and groom (Pinch 2002:372). The financial security of daughters appears to have been a matter of great concern for parents (Pinch 2002:372).

Each spouse maintained control of the property they brought into the family, while property they acquired during marriage was held jointly (Brewer & Teeter 1999:96). The Egyptian woman had the right to be provided for during marriage by receiving her subsistence from her husband, without which a marriage ceased to exist (Eyre 2007:225). It was customary that some households might be enlarged since widowed, divorced, or unmarried women lived with their closest male relative (Pinch 2002:371).

Pinch (2002:371) makes an important point about the prevalence of incest in ancient Egypt. She submits that it was common for all sons and daughters of a marriage to inherit equal shares in their parents' estate. This might have encouraged marriages between close relatives in order to keep property in the family (Pinch 2002:372). The modern consensus is that marriages between full brothers and sisters were not a true Egyptian tradition (Rowlandson & Takahashi 2009:109-110). There are also no undisputed instances of marriages between brothers and sisters among the families of the pharaohs, although consanguineous marriages became, at times, common, especially in the Eighteenth Dynasty (Rowlandson & Takahashi 2009:110).

Rowlandson and Takahashi (2009:110) go on to observe that the Egyptian concept *bwt*, which is closely equivalent to our notion of 'taboo', did not cover any regulation of sexual practice and marriage among the family members of the nuclear family. Simply put, incest is not subsumed into the category of things *bwt* (evil, chaos, things 'taboo'),

and therefore must be assumed to have had a different ontological status in ancient Egypt (Rowlandson & Takahashi 2009:110).

Egyptian kinship terms⁴⁸ lacked specific words to identify blood relatives beyond the nuclear family (Brewer & Teeter 1999:95). Although these terms would sometimes be combined to express exact relationships (son's son etc.), the simple terms commonly have an extended meaning covering several different biological and marital relationships (Rowlandson & Takahashi 2009:110).

It is for this reason that Rowlandson and Takahashi (2009:110) propose that the following translations can be given to certain Egyptian words:

- it* father, paternal/ maternal grandfather, father-in-law (male ascendant)
- mwt* mother, mother's mother, mother-in-law (female ascendant)
- sA* son, grandson, great-grandson, son-in-law (male descendant)
- sAt* daughter, granddaughter, daughter-in-law (female descendant)
- sn* brother, mother's brother, father's brother, father's brother's son, mother's sister's son, brother's son, sister's son, brother-in-law (male collateral), husband (as from the Eighteenth Dynasty)
- snt* sister, mother's sister, father's sister, mother's sister's daughter, sister's daughter, brother's daughter, sister-in-law (female collateral), wife (as from the Eighteenth Dynasty)

To make matters more confusing the Egyptians would also sometimes use the term for 'sister' to indicate 'wife', which might be an indication of the strength of the bond between spouses (Brewer & Teeter 1999:95). It is important to note that although marriage was taken seriously, divorce was not uncommon in ancient Egypt (Brewer & Teeter 1999:96). In reality divorce was an undertaking complicated enough to motivate the parties to rather stay together, especially when property was involved (Brewer & Teeter 1999:96).

⁴⁸ For a list of Egyptians words and concepts with English equivalents, see Addendum B of this study.

An extraordinary characteristic of ancient Egypt was the fact that women had greater freedom of choice and more equality under social and civil law than their contemporaries in Mesopotamia or even the women of the later Greek and Roman civilisations (Brewer & Teeter 1999:96). Women could, among others, inherit property, including immovable property (Brewer & Teeter 1999:96). Both men and women could inherit equally and from each parent separately (Brewer & Teeter 1999:97).

An aspect unique for the ancient world, according to Wilkinson (2016:133), was the fact that women in ancient Egypt enjoyed a legal status equal to that of men. Women maintained control over their property and after marriage one-third of the new commonly acquired property belonged to the wife (Wilkinson 2016:133). Women were free to dispose of their property as they wished or saw fit (Wilkinson 2016:133).

In ancient Egypt there was a formal system of private law under which property could be the subject of private transactions (David 2002:288). This is supported by Goedicke (1970:190) since private people could own property already in the Old Kingdom and we can therefore postulate a legal sphere that can be summarised under the modern term 'private law'. According to Goedicke (1970:190), 'law' and 'property' are intimately connected, so that the existence of rights by private individuals presupposes the existence of private property. It has already been discussed in Chapter 3 that the belief in the afterlife made it almost essential for in particular immovable or real property to stay intact within the family in order to sustain the deceased after his or her death. The *institutio heredis* was therefore a concept or idea not foreign to the ancient Egyptians, even though the concept might have been developed and defined by Roman law much later in history. The eldest son would take possession of the family property in order to prevent the property to be split up and in order for it to function as an economic unit in order to provide the necessary sustenance for the deceased.

It is important to note that immovable property was as a rule not divided among heirs, but was held jointly by the family (Brewer & Teeter 1999:97). It was however possible that land could be split up (divided), but this was usually avoided (Lippert 2013:2). It was however more difficult in the case of a house to be split up because it was difficult obviously to 'divide' a house (Lippert 2013:2). From the *Codex Hermopolis* we have an example of the latter in column 9.19-9.21 from which it is clear that the house itself is not divided but was held jointly, with the profit to be divided (by the eldest son) among the co-owners if the house was sold (Lippert 2013:2). It would appear that the initial

reason to keep the property intact was to make it economically functional for the duty of sustenance of the deceased, but that it later was purely done for economic reasons as the piety (for sustenance) diminished.

The fact is that in ancient Egypt the nuclear family was an essential part and even foundation of their social life together, with the emphasis on protecting the family property. This played an important role in the way they viewed their initial obligation for sustenance of the deceased and the resulting emergence of succession law.

5.4 THE EMERGENCE OF SUCCESSION LAW IN ANCIENT EGYPT

With an understanding of what succession law entails and what the socio-economic background is, the emergence of succession law in ancient Egypt can be considered. For the ancient Egyptians the living and the dead formed part of the same community, resulting in a moral relationship between the dead and the living (Baines 1991:147, 151). The deceased was dependent upon the actual delivery of food and drink by his or her family and survivors (Allam 2007:265). Since it was practice in ancient Egypt that the next generation would take responsibility for the care of the deceased, it was very important to have children (Baines 1991:144) who would receive the deceased's property (Pestman 1969:59). There was consequently a strong sense of obligation by the descendants (Allam 2007:265). The nuclear family was essentially responsible for this duty.

After death, the deceased would be sustained not only by prayers and inscriptions on the tomb walls and on funerary papyri, but also by an active mortuary cult. For the wealthy this responsibility lay with the priests and family, while the poor relied exclusively on family members for their offerings (Ikram 2007:349). This duty on the family fell on the nuclear family and would be the building blocks of customary intestate succession law.

According to Allam (2007a:13) there is a large number of texts reporting specifically that many kings bestowed lavish donations upon temples, and there were prestigious services for many pharaohs, constituted for their needs in the afterlife, for which abundant resources were dedicated. These deeds and benefactions were arranged in settlements and supervised by some state institutions (Allam 2007:13). As Allam (2007a:13) correctly states, many records attest to the fact that foundations or endowments were established as early as approximately 2500 BCE.

Examining, for instance, the tombs of Giza or Saqqara, one immediately gets the impression that a prominent motif in the decorations is the bringing of offerings for the deceased (Allam 2007:13). The Egyptians were always concerned with sustenance in the afterlife, since they aspired to have a life much like their earth-like existence after death (Allam 2007:13). They resorted to magic and rituals in the hope of securing sustenance for themselves in the afterlife and depended upon the actual delivery of food and drink at their tombs and in front of their statues (Allam 2007:13). This reaffirms the notion of the living and the dead being part of the same community in the ancient Egyptians' mind.

It is clear that the first signs of succession law have their feet firmly rooted in the religious environment. According to David (2002:288), because of the emphasis placed on funerary customs, many legal transactions are concerned with situations relating to funerary property. Special arrangements were made in order to ensure that the upkeep and provisioning of the tomb continued in perpetuity (David 2002:288). A special priest, the *ka*-priest, was appointed and undertook this duty in return for an income from the deceased's estate (David 2002:288-289). This duty was very often that of the eldest son.

It is obvious that sustenance after death, but also the burial of the deceased, was an important part of the process of dealing with the dead and the duty to bury the deceased in a tomb. Egyptian common law decreed that whoever buried a person inherited a large amount of the deceased's property (Romer 2003:77). The obligation to bury the deceased and perform certain burial duties that entitled a person to inherit, providing a direct *nexus* between the belief in the afterlife and succession.

There was thus a strong sense of obligation by the surviving family (Allam 2007:265), for the deceased was dependent upon the actual delivery of food and drink by them (Allam 2007:265). This is again a reflection of the importance of the nuclear family and indeed of the need to have a nuclear family. The assets of the deceased were to be used to sustain him or her and it was obvious that the family property should be protected. When a person died, the practice was that the deceased's children received his or her property (Pestman 1969:59). It was therefore extremely important for the deceased to have had children in his or her lifetime, since the next generation had to care for the deceased (Baines 1991:144). To this end the notion of adoption was well known in ancient Egypt and ensured a nuclear family. The eldest son held the position, as it were, as head of the family and was also responsible for matters to be dealt with upon the *de*

cuius' death (Pestman 1969:65). In my view, the obligation of the immediate family, more specifically the children, to sustain the deceased after death laid the foundation for succession law in ancient Egypt as it would form the basis for customary intestate succession law. The duty of sustenance fell on those who would also become the first customary intestate succession law heirs. The 'template' for customary intestate succession law was laid down by the arrangement of those family members who survived the deceased and had the duty to sustain the deceased.

Despite the strong sense of obligation to care for the deceased by surviving family members, this piety diminished over time, which gave rise to doubts as to whether an individual would be properly provided for after death by the survivors (Allam 2007:265). It therefore gradually became common to make arrangements during one's own lifetime for the provision of sustenance after death (Allam 2007:265). This was done by means of the above-mentioned foundation. Family members or even others outside the family could be enlisted for this task (Allam 2007:265). Thus in ancient Egypt the opportunity existed for a person to bequeath to such people fields or revenues, obliging them to present the required mortuary offerings and to celebrate the required services. However, if these people did not meet their obligations, others were to take their place. The fact is that the prescribed duties had to be fulfilled and compensation would then be received. Mortuary services could thus be provided from generation to generation (Allam 2007:265). Mush (2016:45) observes that whatever the source of revenues, the funerary offerings that the endowments generated usually reverted to the mortuary priests who performed the offerings, and thus constituted a private redistribution network. Of importance is that these arrangements made prior to death (initially the foundation) would provide the first signs and building blocks for testamentary dispositions and by implication testate succession law, for it also allowed the *de cuius* to effectively change the customary intestate succession law by nominating beneficiaries of his or her choice.

The continued survival of the dead relied to a large extent on the maintenance of a mortuary cult which would ensure that the deceased was nourished by a supply of offerings in perpetuity (Taylor 2001:174). This cult was performed by the relatives of the deceased or by the priests, but it required some means of long-term support, which often took the form of an endowment (Taylor 2001:174).

This endowment was often a plot of cultivatable land dedicated to the deceased as his mortuary estate, whilst the profit obtained from the land yielded the offerings of food, drink, incense and other items to be presented to the deceased (Taylor 2001:174). Profits of the endowment also provided payment for the cult officials (Taylor 2001:174).

Mortuary estates are depicted in the tomb chapels of the Old Kingdom and in some tombs, endowment documents are carved on the walls, recording the duties of the personnel, the content of the endowment and ways of protecting the interests of the cult (Taylor 2001:175).

The idea was that the main cult official was the son of the deceased, which ideologically reflected the myth of Osiris, in which Horus performed the funerary offices for his deceased father (Taylor 2001:175).

There was a link in the private sphere between the mortuary cult and the inheritance of property since inheritance was conditional upon the son's fulfilment of his cult duties towards the deceased estate (Taylor 2001:175). The task of the eldest son and the priests was to keep the *ka* of the deceased supplied, who would, in return for fulfilling his duty, receive a share of the largest endowment (Taylor 2001:175). Since the mortuary cult was intended to last in perpetuity it was hoped that the land set aside for the endowment would remain in the family from generation to generation (Taylor 2001:175).

Apart from the eldest son, the main personnel of the mortuary cult were the priests, called *hemu-ka* (literally servants of the *ka*), and a lector priest called *khery-hebet*, literally meaning 'the keeper of the sacred book' (Taylor 2001:175). This priest directed the cult proceedings, reading the words of the ritual from a papyrus scroll (Taylor 2001:175).

The mortuary cult started on the day of the burial when the first offerings to the deceased were made, the ritual being repeated at the numerous religious festivals on the calendar. Inscriptions on the false doors and tomb *stelae* often request offerings at specified festivals, such as feasts of particular gods, New Year's festivals, monthly and half-monthly festivals (Taylor 2001:177, 178).

In the New Kingdom the most important event was the arrival festival of the Valley, which took place at Thebes, when the image of the god Amun was taken from his shrine









in a temple of Karnak and ferried by barge across the Nile to the west bank. The purpose was to visit the mortuary temples of the deceased rulers. The image of the god would be followed by the people of Karnak in a procession, who would then visit the tombs of their dead relatives in the necropolis. This feast was crucial to maintaining the links between the living and the dead and would ensure that the dead were nourished (Taylor 2001:178).

5.5 WHAT HAPPENS WHEN THE TESTATOR DIES?

Nowadays, when someone dies, others may acquire rights to the property of the deceased and are said to 'succeed' to such property (Corbett et al 2001:33). These persons may succeed to the property of the deceased under the provisions of an antenuptial contract, a trust, a *donatio mortis causa*,⁴⁹ a will or codicil, or in terms of intestate succession (Corbett et al 2001:33).

In Roman law the deceased's estate was regarded as an entity, a *res incorporalis* which passed to the deceased's heirs. This estate, viewed as *universitas* (a 'whole'), was known as *hereditas* (Burdick 1989:548).

The person or persons who had the legal right to succeed to a decedent's estate were known as *heres* (heir) or *heredes* (heirs) and assumed all the deceased's rights and obligations (Burdick 1989:548).

The Egyptian word for 'to decease' is *xpt*  (Gardiner 2005:584).⁵⁰ The determinative is a mummy⁵¹ lying on a bed, according to Gardiner's (2005:447) sign list, A55. In this list *xpt*  is also given for 'deceased' (Gardiner 2005:537). In this instance the determinative (Z6, a stick)  is the hieratic substitute for A14 . The word *xpt*  was also the word for 'death' (Gardiner 2005:584); however, the word 'death'/'dead' could also be written as , , or  (Gardiner 2005:610). Faulkner (1962:188) transliterates it as *xpyt*. One can therefore use either *xpt* or *xpyt* to refer to the dead or the deceased.

⁴⁹ A *donatio mortis causa* is a gift made by the donor in contemplation of death, according to Corbett et al (2001:33).





⁵⁰ For a comprehensive list of Egyptian words and concepts relevant to this study, with their English equivalents, see Addendum B.

⁵¹ This is significant as it is an indication of the close relationship with religion, specifically the belief in the afterlife and the importance of the mummified body in the afterlife as discussed in paragraph 3.4.

According to Pestman (1969:64), everything needs to be organised: the deceased must be mummified and buried, bills have to be paid, burial tax must be paid and, if necessary, provision must be made for the widow and any minor children, etc. It is possible that the deceased him- or herself would have arranged these payments (Pestman 1969:64). But what happens if he or she did not make arrangements? In order to answer this question it is necessary to ascertain what actually happens with the inheritance itself (Pestman 1969:64).



Texts from earlier periods do not give us such informative details (Allam 2001:159). However, these earlier texts disclose that a community of heirs existed in one form or the other, perhaps to prevent the fragmentation of the estate (Allam 2001:159).

The word *iwa*

According to Faulkner (1962:12) the hieroglyph word for “inherit” is *iwa* ( or ). This word *iwa* could also be translated as ‘to inherit from someone’ according to Faulkner (1962:12). Faulkner (1962:12) also proposes ‘to succeed someone’ as a translation for the word *iwa* (). Another possibility as translation for the word *iwa* could be ‘to act as heir’ (); in other words, ‘to perform his funerary duties’ according to Faulkner (1962:12).⁵²


The word *iwaw*






It is Lippert’s (2013:1) view that the Egyptian word *iwaw* was used not only for the factual heir after the death of the ‘bequeather’ (I prefer to use the word *de cuius*), but also for the possible or future heir, i.e. the person who through either the ‘legal order of succession’ (I prefer the term ‘customary intestate succession’) or a ‘will document’ (for purposes of this study ‘testamentary disposition document’ is preferred), was supposed to become an heir.



According to Faulkner (1962:12) the word *iwaw* could be translated as ‘heir’. The plural of the word being  (as taken from the ‘Tale of the Eloquent Peasant’ B2, 101 according to Faulkner 1962:12), or  (Allen 2010).

⁵² This is an important observation of Faulkner as he equates being an heir to being responsible for the funerary obligations, indicating the interconnectedness between religion and first signs of succession law.

The word *iwat*

The word *iwat* () can be translated as 'heiress', according to Faulkner (1962:12). The word *iwat*, written differently in hieroglyphs, is translated by Faulkner (1962:13) as 'inheritance', or 'heritage' and its variant.

Gardiner (2005:616) gives the hieroglyph for 'inherit' as  and 'inheritance' as . In his sign list, Gardiner (2005:459) explains that the first sign of the hieroglyph , is a newborn bubalis or hartebeest (*Alcelaphus buselaphus*). The sign of the hartebeest is sometimes depicted only by its head  or its forepart  (Gardiner 2005:462).

Allen (2004:454) gives the signs for 'inherit' as  and for 'inheritance' as .

Pestman (1969:64) asserts that in the beginning the estate remained undivided and that this may have remained so for generations to come, as for instance in the case of the house which Pagonis bequeathed to his two daughters in the year 318/317 BCE (*Papyrus Phil.* 1) and which, sixty years later, was still unshared, apparently then in the hands of his granddaughters (*Papyrus Phil.* 15).

Versteeg (2002:139-140) is of the opinion that real (immovable) property ordinarily passed undivided in inheritance as it made practical sense to allow houses and agricultural fields to remain intact.

Indeed, the attachment to family possessions was so important that some sons even followed the example of a certain Teos and bought back family property which their father had previously sold (Pestman 1969:64)⁵³

We find, *inter alia*, a chapter on succession, with many cases presented, each provided with an appropriate decision, in the *Codex Hermopolis* (ca. 700 BCE) (Allam 2001:158).

⁵³ Pestman 1969:64 – *Papyrus BM 10.117* (6th century): Reich, *Papyri jurist*. Inhalts British Museum p. 9 ff; Malinine-Pirenne, *Archives d'Histoire du Droit Oriental* 5 (1950/1951) 25-28. For a similar case from the Egyptian-Greek domain see doc. 53 and 54 of the Peteharsemtheus Archive: Pestman, *Papyrologica Lugduno-Batava* 14 (1965) 70.

5.6 THE ROLE OF THE ELDEST SON AS CARETAKER/ADMINISTRATOR

From our legal history we know that in Roman law the principle known as universal succession meant that the heir succeeded to the assets as well as the liabilities of the deceased (Corbett 2001:33). However, with the introduction of the concept of an executor in our law the assets and liabilities of the deceased no longer devolve upon the heirs, but now comprise the 'estate' of the deceased (Corbett et al 2001:33). This estate of the deceased must then be administered by the deceased's executor who has the responsibility of paying the deceased's debts and then distributing any remaining assets among the beneficiaries entitled to them (Corbett et al 2001:33).

It is important to keep the above in mind when looking at the role of the eldest son⁵⁴ in ancient Egyptian succession law. It would appear, *prima facie*, that the eldest son's role in ancient Egypt was very similar to that of an executor or administrator. The eldest son often also inherited his father's job and position (Brewer & Teeter 1999:97).

The *Codex Hermopolis* (a collection of juridical instructions from the third century BCE) says on this point: 'If a man dies, leaving lands, gardens, temple offices [?] and slaves ... it is the eldest son who takes possession of the property of his father' (quoted in Pestman 1969:65). The word for 'eldest son' is *SraA* (Allam 2001:158). The *Codex Hermopolis* transmits to us a part of the Egyptian law code collected under Darius I (Lippert 2013:2).

Unless otherwise indicated, the undivided property was managed by the eldest son on behalf of all⁵⁵ the heirs (Pestman 1969:65). The eldest son held the position, as it were, as head of the family and was also responsible for the matters to be dealt with when someone died (Pestman 1969:65). The following wish is therefore understandable: 'May it be the compassionate brother in the family who acts therein as the eldest son' (quoted in Pestman 1969:65). The eldest son not only had the duty to look after other family members, but was also responsible for the burial of his parents (Lippert 213:1).

The eldest son played a very important role in the succession and he could be any of the sons, or even a daughter in the absence of sons (Allam 2001:158). The eldest son received more benefits and his or her share normally exceeded those of the other heirs

⁵⁴ See also discussion in Chapter 6 under par. 5.6 ('The eldest son and sole heir').

⁵⁵ The children may in some cases act all together, as they have a definite right to inherit. In some cases the mother acts for the children, probably because they are still minors (Pestman 1969:65).

(Allam 2001:158). Allam (2001:158) makes a valid observation that we might miss the point in a given succession if we always translate *SraA* by 'eldest son', because passages in the *Codex Hermopolis* as well as provisions in marriage contracts indicate that the firstborn was not necessarily the favourite, but the *SraA* did come from ranks of the descendants (Allam 2001:158). The *Codex Hermopolis* also gives an example of a case where the estate went to a son other than the *SraA*, and other similar situations are also mentioned in the law book (Allam 2001:158).




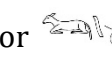

The 'eldest son' was preferably the firstborn male child of the deceased (Lippert 2013:3). If there was no male child, the rule was that a closer degree of kinship was more important than gender, which in turn was more important than order of birth (Lippert 2013:3). A daughter could thus become 'eldest son' if there should be no male children (column 9.14-9.16 of the *Codex Hermopolis*, quoted in Lippert 2013:3).

The *Codex Hermopolis* mentions that another child could take over the funerary obligations if the eldest son was unable or unwilling to do so, in which case this substitute 'eldest son' became entitled to the additional inheritance which had been earmarked for the biological eldest son (Versteeg 2002:139). According to Versteeg (2002:139) this substitute eldest son then administered his father's estate and became a guardian for his mother, brothers and sisters. If the deceased had no children it was possible for the deceased's brother to become 'eldest son' (Lippert 2013:3).

Lippert (2013:3) makes an important observation that the most complete evidence for the hierarchy of the 'eldest son' comes from the Late Period, but it is possible that it did not change much over time, as occasional glimpses from earlier periods show. I would also submit that one needs to take into account (as indicated in Chapter 4) that even though the *Codex Hermopolis* appears very late in Egyptian history, it was merely a compilation of earlier established law.

A cornerstone of Egyptian morality was the respect for one's parents, with the most fundamental duty of the eldest son (or occasionally daughter) being to care for his parents in their last days and to ensure that they receive a proper burial (Brewer & Teeter 1999:95). The eldest son had the responsibility for his parents' proper burial (Brewer & Teeter 1999:97).



The undivided property is managed by an appointed administrator who administers the estate on behalf of all the heirs, and who in some texts from the New Kingdom is referred to as “representative” (*rwDw* , ,  or ) (Pestman 1969:64).⁵⁶ It would appear from hieratic papyri and ostraca that individuals’ estates were looked after by a trustee (*rwD* ) who could be one of the heirs (Shaw & Nicolson 2008:158). The administrator is usually one of the heirs, but may also be appointed by the testator himself: ‘As regards all these matters about which I have spoken, they are assigned [*S.wAD*] to Patiu, my son’ (quoted in Pestman 1969:64),⁵⁷ or the administrator could be appointed by the court of law: ‘They made my mother, the lady Urnero, representative [*rwDw*] of her brothers and sisters’ (quoted in Pestman 1969:64).⁵⁸ Pestman (1969:64-65) makes the important point that although a woman could be appointed administrator (as in the above example), the eldest son was usually the obvious person to act as administrator in cases where no other arrangement was made.

The estate was usually under the control of an administrator or trustee (*rwD*) who could be one of the heirs (Allam 2001:159).

We find an example in the fourteenth century BCE where in the scribe Mose’s tomb inscription at Saqqara, mention is made of a woman, Urnero, who was appointed by an official from the supreme council to assume the responsibility of an administrator or trustee (*rwD*) on behalf of her five brothers and sisters (Allam 2001:159).

The task of the administrator or trustee was not easy as there are numerous examples of litigation initiated by the heirs opposing the administrator or trustee (Allam 2001:159).

In the dispute, mentioned by the scribe Mose, an official from the supreme council was called upon to carry out the division of the estate among the heirs (Allam 2001:150).

A series of Demotic texts exists, says Allam (2001:159), on which a lawsuit was based, with a record of the proceedings during the trial. Allam (2001:159) is of the opinion that this record, found in *Papyrus British Museum 10591 (recto)*, is the most elaborate record of judicial proceedings from the ancient world.

⁵⁶ Pestman 1969:64. Besides the passage from the *Inscription of Mes* (14th century), see also *Papyrus Berlin 3047.8* (13th century)(Helck 1963:65-73).

⁵⁷ Pestman 1969:64. See also *Adoption Papyrus*, verso 9-10 (11th century)(Gardiner 1940:23-29).

⁵⁸ Pestman 1969:64. See also *Inscription of Mes* (14th century)(Gardiner 1905:89-140).

Some family arrangements were made in 181/180 BCE by Petetum for the offspring of his two successive marriages (Allam 2001:159). When Petetum died there was initially no division of his real estate among his two sons, with the elder brother, Tuot, appearing to have kept control of it (Allam 2001:159).

Then, in 174/173, the younger brother, Tefhape, claimed his share (Allam 2001:159). Disagreements arose and the wife of the elder brother Tuot, Chratiankh, countered by starting legal proceedings against Tefhape (Allam 2001:159).

Her claim was essentially founded on her marriage settlement, made by her husband, Tuot, and confirmed by his father, Petetum, who, as she alleged, pledged the land to her as security (Allam 2001:159).

Chratiankh claimed the immovable property for her son (by Tuot), who was then still under age, but who would receive it in future (Allam 2001:159).

Allam (2001:158) then goes on to say that there exists documentation that gives us vivid glimpses of the ancient Egyptians' inheritance practices. He supplies some examples, which are summarised below:

- Example 1:- *Papyrus Moscow* (Demotic Papyrus), from Akhmim, 70 BCE records a *donatio mortis causa* (Allam 2001:158). In this papyrus, a father gives instructions regarding the division of his estate upon his death (Allam 2001:158). The father divides *inter alia* 97 arourae of fields, money, movables and other assets among his six sons, taking into consideration his wife and daughter (Allam 2001:158). In doing this, he in actual fact impressed his last will ultimately upon his *SraA*, appointing him, perhaps tacitly, as the executor (Allam 2001:158).
- Example 2:- *Papyrus Leiden*, from Memphis 257/256 BCE (Demotic Papyrus) illustrates that if an estate passed undivided to the heirs, they jointly had to manage it so that everyone received a part of its profits (Allam 2001:158). The *SraA* drew up a title for his sister, in a community of heirs (two sons, a daughter and the mother), acknowledging her one-fourth part of the estate in houses, revenues and other property inherited from their parents and other ancestors (Allam 2001:158-159). Yet, in this case, the other brother as well as their mother gave their consent (Allam 2001:159). There was no actual division, as no property within the mutual estate was vested in individuals (Allam 2110:159).

5.7 THE ROLE OF THE PERSON ASSISTING WITH THE BURIAL

A procedure of great importance within the context of the ancient Egyptians' religious beliefs was that the deceased's body was mummified in the correct way, then buried and finally regularly cared for by means of offerings (Pestman 1969:71).

The heirs were responsible for this, with the 'eldest son' playing a leading part (Pestman 1969:71). This was referred to in paragraph 5.6 above in the discussion of the role of the eldest son, and will be discussed in greater detail in Chapter 6 in the discussion of the eldest son as sole heir (par. 6.2.2.2).

According to Lippert (2013:4) the strong connection between the burial of the deceased and the inheritance of the deceased's property is already seen in the *Inscription of Tjenti* of the Fifth Dynasty. It can also be deduced from the inscription on a ceramic bowl (at present in the Pitt Rivers Museum in Oxford, UK) from the Second Intermediate Period which contains the injunction 'Bury him, succeed into his inheritance' (Lippert 2013:4). From at least the Second Intermediate period onwards this connection took on a life of its own which ultimately resulted in a law stating that 'the property is given to the one who buries' (cited in *Papyrus Cairo CG 58092 (recto)* and in *Ostrakon Petrie 16* of the Twentieth Dynasty (Lippert 2013:4).

Lippert (2013:4) submits that the duty to bury therefore changed from being a consequence of the inheritance to being a prerequisite. It would appear that this law was mainly invoked to defend the position of the sole heir against relatives who would have had a right to a share in terms of a 'testamentary disposition' (Lippert 2013:4). The position of the 'sole heir' and the notion of a 'testamentary disposition' will be discussed in more detail in Chapter 6.

We see this in a text from the year 324/323 (as translated in Pestman 1969:71) in which a father says the following to his eldest son, regarding the payment of the burial expenses: 'Phibis and Petekhons, two persons, my children, your younger brothers, will pay you the 2/3 share of the burial expenses, and you will pay the 1/3 share of it on the day of the funeral which you will decide upon.'

It is clear that there was a connection between receiving an inheritance and arranging the burial with everything that goes with it (Pestman 1969:71). This connection is established in one of the few laws which survived and which is cited in *Papyrus Bulaq 10*

from the 12th century: “Let the possessions be given to him who buries,” says the law of Pharaoh’ (Pestman 1969:71). In this text only one of the children has buried his parents, and is therefore the only one to inherit from his parents (Pestman 1969:71). According to Pestman (1969:71), the above-mentioned law can also be applied in other instances, also in the case where someone dies without heirs.

5.8 CONCLUSION

In this chapter it was explained what succession law is and argued that the ancient Egyptians did indeed have something we might call succession law. It is quite clear that the foundation of their succession law can be found in their religious beliefs. It was the ‘obsession’ with the afterlife that led the survivors to bury and care for the deceased; it was their duty to do so. This was in the first instance the duty of the children, with the ‘eldest son’ playing an important role – perhaps the predecessor of executor as found in Roman law.

It is apparent that succession law emerged and developed from the belief in the afterlife and the sustenance of the deceased. There is a very clear link between the belief in the afterlife and the law of succession. Succession law fulfilled a social and economic function.

The ancient Egyptians’ whole life was focused on the afterlife in the sense that everything was part of the bigger order as defined in the concept of *maat*. Everything they did was geared towards the attainment of the afterlife, for life did not end with death. Provisions relating to offerings after the deceased’s death were of paramount importance and were a given; it was part of life. In my view, it is from this virtual ‘obsession’ with the afterlife that we begin to see the very first signs of succession law, making provision for life after death.

It is clear, looking at the socio-economic background, that the family, and especially the nuclear family, was very important. The position of the ‘eldest son’ was especially important and appears to be a first prototype of what we today might call an executor or administrator. It is also clear that the protection of family property was very important. Socio-economic relations played a crucial role in daily life, and family solidarity was essential, together with the protection of family property.

To the ancient Egyptians, the living and dead were part of the same community, and therefore there was a moral relationship between the dead and the living. This explains why the ancient Egyptians were obsessed with sustenance in the afterlife, for the deceased was to be sustained after death, and was thus dependent upon the actual delivery of material goods by the family. This necessitated a strong sense of obligation by the survivors. There were, however, doubts as to whether an individual would be properly provided for after death by the survivors and it gradually became customary to arrange, during one's own lifetime, for the provision of sustenance after death by making use of pious foundations.

The deceased could also make provision regarding assets and for the provision of sustenance after death, which was initially tied up with this sustenance of the dead, i.e. the mortuary cult. This initial pious connection would later disappear, leaving one with legal relationships and concepts pertaining to succession law.

In my view it would be the obligation to bury and to sustain the need by the deceased to make prior arrangements (pious foundation) that would all work together forming the basis and the first building blocks of the ancient Egyptian law of succession, seen against the socio-economic background of the ancient Egyptians. It would be their belief in the afterlife that necessitated the emergence of something like law of succession.

It is submitted that these prior arrangements form the 'birth' of testate succession law. It is important to view these prior arrangements against the backdrop of documentation, which can be both oral and written.

CHAPTER 6

BASIC TENETS OF SUCCESSION LAW IN ANCIENT EGYPT

6.1 INTRODUCTION

In this chapter, the basic tenets of succession law in ancient Egypt are discussed against the backdrop of the belief in the afterlife and the socio-economic circumstances of the ancient Egyptians.⁵⁹ In order to consider and explain succession law in ancient Egypt, it is necessary to give some context to sources relevant to succession law. Two complementary systems of succession law developed in ancient Egypt. These two are the customary intestate succession law and succession by testamentary disposition (in today's terms this would be testate succession).

6.2 SUCCESSION LAW SOURCES IN ANCIENT EGYPT

The dating system used for documentation in ancient Egypt started with the reigning year of the present king,⁶⁰ followed by the king's titles/ names,⁶¹ the season, month and day of the month. The start of each king's reign was the first year of a new creation and a new cycle of time (Allen 2004:104). The year was divided into three seasons, which were the inundation, growing and harvest Allen (2004:103). Each of these seasons had four months, and each month had 30 days (Borghouts 2010:438).⁶²

The important role of documentation must be taken into account when studying ancient Egyptian law in general, and specifically ancient Egyptian succession law. Historical sources of law are inevitably documentary in nature; however, sources as legal authority may be in written or oral form (Westbrook 2003c:12). In the case of legal authority this relationship between the written and oral forms of law must be considered (Westbrook 2003c:12). In the examination of developed legal systems, it becomes clear that writing may play a number of roles. Writing may be necessary for establishing the validity of a

⁵⁹ This chapter provides a detailed description of ancient Egyptian succession law, indicating and discussing the different branches of succession law in ancient Egypt.

⁶⁰ Gardiner (2005:204) observes that the ancient Egyptians dated their texts by the years of their kings' reigns and they never made use of a continuous era throughout the whole of the Pharaonic history.

⁶¹ In ancient Egypt the king had an elaborate titular made up of his names, titles and epithets (Collier & Manley 2011:20). From the Fifth Dynasty onwards every king had five official names (Allen 2004:64).

⁶² The total number of days per year of 360 was supplemented with an additional 5 intercalary (so-called 'epagomenal') days (Borghouts 2010:438). The ancient Egyptians recognised that the year had 365 full days and it was for this reason that they accommodated the discrepancy (Allen 2004:103).

legal act, such as in wills and legislation (Westbrook 2003c:12). It could be said that in cases like these, the document itself is the legal act (Westbrook 2003c:12). The written document may serve as irrefutable evidence of an oral legal act, such as in the case of a marriage certificate (Westbrook 2003c:12). It may also be merely evidence of an oral legal act, which carries the same weight as other forms of evidence, for instance the minutes of a meeting (Westbrook 2003c:12). For the ancient Egyptians the written word created reality (Lippert 2013:4).

Oral documentation took the form of witnesses, human memories, and testimonies (Muhs 2016:5). These memories of important transactions could be strengthened by accompanying public spectacles and rituals (Muhs 2016:5). In ancient Egypt the development of writing did not immediately replace the oral form of record-keeping (Muhs 2016:5).

According to Haring (2003:258), it is the systematisation and uniformity attained by writing that finally convince people that written records have their own fixed forms,⁶³ reducing the barrier between oral practice and written record.⁶⁴ Haring (2003:258) suggests the change is 'partly because oral practice never entirely disappears'.⁶⁵

Oral culture, with its own fixed forms, resists the use of writing, but in spite of this resistance, writing does appear and its use spreads (Haring 2003:258-259). The increasing number and use of documents lead to the development of fixed norms in writing, and fixed forms make written records acceptable as sources of information (Haring 2003:259). However, one must keep in mind, as Sweeney (2002:143) correctly observes, that literacy was rare in ancient Egypt, with female literacy even more limited than that of men.⁶⁶ According to Haring (2003:260), texts were either recorded as pronounced, or the scribes paraphrased them, but in both cases, the result was an

⁶³ According to Haring (2003:261) depositions and oaths emerged as regular types of texts in the second half of the 19th Dynasty, becoming more abundant in the first half of the 20th Dynasty. These formulas can be seen as scribal instructions to the written versions of oral statements (Haring 2003:261). Oaths and depositions therefore developed into more or less formal documents, which testify to oral practice at the time at Deir el-Medina (Haring 2003:262).

⁶⁴ People start to trust texts if such texts are provided with a generally recognised mark of authority, like a seal or signature (Haring 2003: 258). This mark of authority is accepted or even required as legal evidence, in other words, oral practice partly gives way to writing when fixed written forms have developed (Haring 2003:258).

⁶⁵ Even in our highly literate Western culture oral conventions remain, especially in the judicial domain, for example, the oath and the word-as-act (for example, two people can be 'pronounced' husband and wife) (Haring 2003: 258).

⁶⁶ Orality was also a prime characteristic of the cultural life in Deir el-Medina (the New Kingdom village, to be discussed in Chapter 9); one way in which the texts reflect this oral culture is the predominant use of the narrative style, even in jurisdiction (Haring 2003:259).

account in full grammatical sentences. Exceptions to this practice are recurrent formulas and lists, which reflect a certain degree of formality and routinisation, but they usually consist of full sentences⁶⁷ (Haring 2003:260).

The practice of giving an oral version before the court and/or witnesses, which was then written down by professional scribes, was a general custom in ancient Egypt in respect of matters referring to legal documents (Černý 1945:42). Thus, the validity of a testator's last wishes was dependent upon the oral last wishes being written down (see Spiegelberg as quoted in Černý 1945:42). Witnesses, memories and oral testimonies were used alongside writings regarding testamentary dispositions in ancient Egypt, with the use of writing gradually increasing over time.

It is important to remember that the many 'contractual' documents recovered from ancient Egypt are not contracts as such, but rather protocols of the oral transaction, usually made before witnesses (Westbrook 2003c:12). The names of the witnesses to the oral proceedings were then appended to the written document to give it authenticity and also to provide a reference in case a dispute should arise (Westbrook 2003c:12). The court would then usually rely on the written document as evidence, although the evidence could be disputed by witnesses' testimony (Westbrook 2003c:12). Thus the written document was no more than evidence of an oral proceeding (Westbrook 2003c:12-13). As Muhs (2016:5) affirms, documentation did exist before writing in the form of witnesses, namely in the form of human memories and testimonies. Muhs (2016:5) continues to state that memories of important transactions could be reinforced by accompanying public spectacles and rituals. Muhs (2016:5) maintains that the development of writing did not replace non-written documentation.

Therefore, when we evaluate the sources of legal authority, we must take into account both oral and written forms (Westbrook 2003c:13). We must also recognise that the document in which the source is now found would not necessarily have played the same role as it would today in our modern law, and may not have been the same as the authoritative source itself, according to Westbrook (2003c:13).

⁶⁷ Explicit references to oral practice in Deir el-Medina are plentiful, especially in the judicial domain. For instance, court cases often start with oral depositions and end with oaths (Haring 2003:260). Oral procedure was, however, not confined to jurisdiction – there exist records of transactions between individuals often referring to the presence of witnesses and to taking oaths (Haring 2003:260).

Sources for ancient Egyptian law are scarce and this is equally true for sources of the Egyptian law of succession, such sources being documents like agreements, lawsuits, and more (Pestman 1969:58).⁶⁸ Some additional information is, however, available from authors from the Greek and Roman periods. The nature of the surviving sources is an advantage as it presents the law as it affected daily life, the practical application, therefore, of law (Pestman 1969:58) and not as a theoretical legal exposition. This is important since this provides valuable information and insight into the social life of an ancient culture and the relevance of understanding aspects of religion and the social context when studying Egyptian law of succession⁶⁹.

The basic principles of succession appear to have remained quite stable, but there were particular developments in the practice and the details of the laws (Lippert 2013:1). As Pestman (1969:59) points out, the law of succession is not usually the most progressive part of a civilisation's law. It remains difficult to determine exactly how and when changes occurred, since sources dating from before the Late Period in ancient Egypt are scarce (Lippert 2013:1-2). These changes which we observe, according to Pestman (1961:59) in general do not concern the actual legal rules themselves but rather their form, for instance the type of contract, the choice of words etc.

As Pestman (1969:58-59) correctly observes, it is only around 700 BCE that we have enough texts at our disposal to form a more complete picture of ancient Egyptian law. We find, *inter alia*, a chapter on succession, with many cases presented, each provided with an appropriate decision, in the *Codex Hermopolis*⁷⁰ (beginning 3rd century BCE (Allam 2001:158). It is important to remember, as indicated in Chapter 3, that the contents of the *Codex Hermopolis* appear to be much older, giving us a clearer idea of the ancient Egyptians' understanding of succession law over time.

⁶⁸ These written sources would include, especially from the Old Kingdom, carvings on walls and papyrus (Helck 1975:118-119). On papyrus the *recto* and *verso* (in order to expand the contents) would be used and the writing on one side could be horizontally and on the other vertically (Helck 1975:119).

⁶⁹ It is important to keep in mind that the law under discussion is of necessity the law of the upper stratum of the ancient Egyptian society. It is this relatively small group that speaks to us from the written documents (Pestman 1969:58).

⁷⁰ The *Codex of Hermopolis* (also discussed briefly in Chapter 3) was discovered by professor Sami Gabra in 1938-1939 at the ancient town of Hermopolis and is presently held at the Cairo Museum (Mattha 1975:xi). The papyrus was found in a jar in the debris of a ruined building opposite the room of mummification and is believed to be part of the temple archives (Mattha 1975:xi). The papyrus was found in eleven fragments of various sizes which are now mounted between glass (Mattha 1975:xi). According to Mattha (1975:xi) the fragments, put together, measure over two metres in length and around 35 cm in height. It appears that the papyrus originally contained at least twelve columns (Mattha 1975:xi). The preserved papyrus provides us with a very important document, both from a historical and juristic perspective (Mattha 1975:xi).

The columns on the papyrus refer to that branch of civil law dealing with the tenure of arable land, the ownership of immovable property, problems of endowments, inheritance and related matters (Mattha 1975:xi). For purposes of this study attention will be given to the references made to inheritance and/or succession. The contents of the *Codex Hermopolis* relevant for this study, which will be discussed below, refer to the columns describing matters pertaining to succession. Lippert (2013:2) is of the opinion that the *Codex Hermopolis* covers the topic of succession in columns 8.30-9.26, 9.29-30, and 9.32-10.17. However, I prefer to use the Roman numbers for these columns as they appear in Mattha's translation and thus shall be using Roman numbers when referring to columns from the *Codex Hermopolis*.

Unfortunately, our sources for succession law in ancient Egypt are very limited, although it is evident that the belief in the afterlife necessitated certain obligations, which in turn formed the basis of succession law in ancient Egypt. This was discussed in Chapter 5 in the overview of the emergence of succession law and some examples of the first signs of succession law in ancient Egypt which will be discussed in more detail in 6.3 and 6.4.

It is clear that in ancient Egypt, like in our modern societies, two complementary systems of succession developed, which can be traced back almost to the beginning of Pharaonic history (Lippert 2013:1). Lippert (2013:1) describes these two systems; one dealing with the 'legal order of succession' and the other which was established through a 'written declaration of intent'. I have chosen, for purposes of this study, to rather refer to 'customary intestate succession' and the 'testamentary disposition document' respectively which is discussed in paragraphs 6.3 and 6.4.

6.3 CUSTOMARY INTESTATE SUCCESSION

6.3.1 INTRODUCTION

In modern terms intestate succession law (*ab intestatio*) is a subdivision of succession law which is applicable where no will or an invalid will was left by the deceased (Schoeman & De Waal 2005:14). The law of intestate succession is important in determining who the beneficiaries of the deceased are (Schoeman & De Waal 2005:14).

At present intestate succession can take place in wide variety of instances, for instance where there is no will or an invalid will, or where there is a will but the testator fails to

bequeath all his or her assets, or there is a will, but an heir repudiates and the will does not make provision for substitution (Schoeman & De Waal (2005:14).

In South Africa it is possible to die partly testate and partly intestate (Schoeman & De Waal 2005:14). However, a Roman citizen could not leave a part of his estate testate and another part intestate (Burdick 1989:549). The Roman law principle *Nemo pro parte testatus pro parte intestatus decedere potest* [No-one can die partly intestate, partly testate] did not become part of the Roman Dutch law and therefore also not part of South African law (Schoeman & De Waal 2005:14).

According to Schoeman and De Waal (2005:16), a person's blood relatives can be divided into three categories, namely:

1. Descendants, who are the relatives who descend him or her directly (the children, grandchildren, great-grandchildren etc.)
2. Ascendants, who are those family members from whom a person descends (his or her parents, grandparents, great-grandparents etc.)
3. Collaterals,⁷¹ which refers to those family members who are not direct descendants or ancestors (the brothers, sisters, nephews, nieces etc.).

In law a particular parental group with its descendants is called a *parentela* (Schoeman & De Waal 2005:16). The deceased and his or her descendants form the first *parentela*, the second *parentela* would be the deceased's parents (and their descendants) and the third *parentela* would be the deceased's grandparents and their descendants (Schoeman & De Waal 2005:16).

A *stirps* (branch) refers to a surviving child of the deceased or to a predeceased child who is survived by descendants (Schoeman & De Waal 2005:16). This then also implies that a predeceased child with descendants forms one *stirps* (branch) (Schoeman & De Waal 2005:16). Representation takes place when an heir cannot or does not wish to inherit and one of his or her descendants takes his or her place, thereby 'representing' such a person (Schoeman & De Waal 2005:16). *Successio per stirpes* therefore means 'succession by (right of) representation' (Hiemstra & Gonin 2013:293).

⁷¹ Collaterals can refer to full-blood or half-blood relatives (Schoeman & De Waal 2005:16). A full-blood relative has two ancestors in common and a half-blood relative one ancestor in common with a person (Schoeman & De Waal 2005:16).

From a South African perspective, it is important to mention that the decision of the Constitutional Court in *Bhe v Magistrate Khayelitsha*⁷² had far-reaching consequences for intestate succession in the context of black customary law (De Waal & Schoeman-Malan 2015:18-19). In this case the Constitutional Court declared section 23 of the (now repealed) Black Administration Act 38 of 1927 unconstitutional (De Waal & Schoeman-Malan 2015:19). Section 23 included provisions that were only applicable to the intestate estates of black people in an attempt to implement black customary law (De Waal & Schoeman-Malan 2015:19). In addition, the Constitutional Court also declared unconstitutional the relevant part of section 1(4)(b) of the Intestate Succession Act (which provided for the exclusion of section 23 estates from the operation of the Act), and notably also the principle of male primogeniture in black customary law⁷³ (De Waal & Schoeman-Malan 2015:19).

Subsequent to the above-mentioned Constitutional Court case, the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 (the RCLSA) was enacted (De Waal & Schoeman-Malan 2015:19). Essentially the RCLSA confirms the legal position as it applied after the above-mentioned *Bhe* case and the repeal of the Black Administration Act, but in some respects it also expands on the Intestate Succession Act in order to give effect to aspects of black customary law (De Waal & Schoeman-Malan 2015:19).

Generally if someone dies intestate, it means he or she dies without a valid will. As Burdick (1989:550-551) correctly observes, in Roman law ⁷⁴ one died intestate when no will was made at all, or an invalid will was made, or a will was revoked, or a will was set aside.

In Chapter 5 it was indicated that succession law in ancient Egypt emerged from the belief in the afterlife and that intestate and testate succession law are identifiable. Lippert (2013:2) uses the term 'legal order of succession' in her discussion of ancient Egyptian intestate law, but I prefer to use the term 'customary intestate succession' for purpose of this study. In my opinion this notion represented the ancient Egyptians'

⁷² 2005 (1) SA 580 (CC).

⁷³ The Constitutional Court stipulated that the Intestate Succession Act 81 of 1987 would henceforth be applicable to all intestate estates previously regulated by section 23 (De Waal & Schoeman-Malan 2015:19).

⁷⁴ The *Ius Civile* was the 'old Roman law' which initially applied to intestate succession law, and was later supplanted by the praetorian law of *bonorum possessio* and later by the imperial law of Justinian (Burdick 1989:551).

customary way of dealing with intestate matters which was effectively the result of the obligation and duty for sustenance resting with the immediate nuclear family.

6.3.2 THE INHERITANCE PROCESS

6.3.2.1 Husband and wife

This discussion follows on the discussion of the nuclear family in Chapter 5, specifically where the marriage and the spouses were discussed (par. 5.3.2). According to Baines (1991:144) it does appear that marriage, being the prevalent state of Egyptian life, fell outside the religious context. The institution of marriage existed with concomitant sanctions against adultery, but without evidence that rituals or other religious observances were celebrated (Baines 1991:144).

The spouses could each own their own property and they could each inherit from their own family, but not from each other (Pestman 1969:71). As a rule husbands and wives did not inherit from each other (Pestman 1969:73). In my opinion this means that the spouse could only inherit when there was a 'testamentary disposition document' available. Lippert (2013:3) indicates spouses were not considered heirs in the legal order of succession (her terminology). In other words, spouses were not considered customary intestate succession heirs of each other.

Spouses could still inherit from their own families, financial arrangements might have been made on his or her behalf at the time of marriage, an alimentation obligation might rest on the children or there might be joint property, which the couple acquired jointly during the marriage (Pestman 1969:73). Matrimonial property (property acquired during the marriage) was generally divided into three parts (Pinch 2000:372). One part would go to the wife if she was widowed (or divorced) and the other two-thirds were held in trust for the children (Pinch 2000:372). If there were no children this share would go to the husband's parents or his siblings (Pinch 2000:372). In other words, the joint property was divided into two parts when one of the spouses died: with two-thirds going to the husband or his heirs, and one-third to the wife or her heirs (Pestman 1969:73). It would appear that at a woman's death, her children inherited her dowry and therefore upon the death of her husband, an Egyptian woman retained a life estate in her dowry (Versteeg 2002:138).

Lippert (2013:9) observes that the division of matrimonial property between the spouses, with one-third belonging to the wife, has often been regarded as a matter of

inheritance. According to Lippert (2013:9) one of the earliest examples of this 'one-third' principle is from the Seventeenth Dynasty (stela Cairo JE 52456) and we have several examples from the New Kingdom (*Papyrus Turin 2021*; *Papyrus Geneva D 409*; *Papyrus Ashmolean Museum 1945.97* (discussed in Chapter 9). This 'one-third' principle is commonly mentioned in Late Period and Ptolemaic marriage documents, for example *Papyrus BM 10120* (Lippert 2013:9).

However, it is submitted that this 'one-third' was not an inheritance at all, since the wife was already endowed with it during her husband's lifetime (Lippert 2013:9). This follows from the fact that the wife was also entitled to this 'one-third' in the case of divorce (*Papyrus Turin 2021* and *Papyrus Geneva D 409*) (Lippert 2013:9).

Reference to this 'one-third' principle far predates the earliest marriage documents (Lippert 2013:9). In these later marriage documents the 'one-third' principle is given as a well-known fact (Lippert 2013:9). It can therefore be assumed that it was not dependent upon individual arrangements but legally binding from at least the New Kingdom onward (Lippert 2013:9).

The wife's right of disposal in respect of this property was usually restricted so that it would fall automatically to her children after her death (Pestman 1961:120-121).

Even though it was the rule that a husband and wife do not inherit from each other (Pestman 1969:73) this did not mean that the widow or widower was not taken care of (Pestman 1969:73).

6.3.2.2 The eldest son as sole heir

In addition to the role of the eldest son⁷⁵ as discussed in paragraph 5.6, the following discussion focuses on the eldest son as sole heir. As indicated in paragraph 5.6, the notion of the eldest son does not necessarily refer to the first-born male child of the deceased.

According to Lippert (2013:10) it was stressed in ancient Egypt that the firstborn son of a marriage would be regarded as eldest son in terms of the legal order of succession (which I prefer to call the 'customary intestate succession') and in the process would

⁷⁵ The eldest son automatically took control of affairs where there was no testamentary disposition (Seidl 1957:57). In other words, he took control automatically when customary intestate succession law applied.

become the main or even the sole heir. We read the following in column VIII 29 – VIII 30 of the *Codex Hermopolis*: ‘The man to whom daughters are at first born and later on sons are born to him, it is the male children who furnish (literally “make for”) him with an eldest son’ (quoted in Mattha 1975:42).

The *Codex Hermopolis* defines the functions of the eldest son, but there is no doubt that these provisions can be projected back to earlier periods (Eyre 1992:216). The relevant passages confirm the eldest son as the natural or sole heir in terms of customary intestate succession, unless the *de cuius* made arrangements prior to death (see testamentary disposition documents, section 6.3) (Eyre 1992:216). In this regard columns VIII 30-31 state the following: ‘If a man dies, he having lands, gardens, temple-shares [?] and slaves, he having sons, and he having not assigned [literally “written”] shares to his children while alive, it is his eldest son who takes possession of his property [*or better estate*]’ (Mattha 1975:39). Of importance, in my opinion, is the fact that the customary intestate succession is confirmed here and specifically the role of the eldest son, who takes possession. It also affirms the role of the testamentary disposition in the sense that it is specifically mentioned that customary intestate succession will only apply if no testamentary disposition was drawn up before death. Noteworthy is also the fact that we have a clear indication here that ‘property’ could include both movable and immovable property.

The purpose of customary intestate succession, as Lippert (2013:2) argues, appears to have been the creation of a sole (male) heir. According to Lippert (2013:2) it is assumed that this person had a certain moral, although probably not a legal, obligation to care for his non-inheriting relatives.

This principle, however, was already weakened in the early New Kingdom as the heir is no longer a sole heir with moral obligations to support his siblings, but acts as a *rwḏw*, a caretaker administering the estate for the equal distribution of profits (Lippert 2013:2), as can be deducted from the *Codex Hermopolis*, column VIII 31-33, in the following statement:

If the younger brothers bring action against their elder brother saying ‘Let him give us shares of the estate [*lit. property*] of our father’, the elder brother is to write the list of names and write the number of his younger brothers, the children of his father, those alive and those who died before their father died, the eldest son likewise. And he is given the share he prefers ... (Mattha 1975:39).

It is submitted that the eldest son is acting here as caretaker. We are, however, also able, in my view, to ascertain that the eldest son had first choice to choose a portion, and it is also implied here that the predeceased children are to be represented by their children, confirming that the *per stirpes* principle applied in ancient Egypt.

However, the caretaker or administrator (*rwḏw*) did not always meet his obligations towards his siblings (Lippert 2013:2). In cases like these, the courts of the later New Kingdom went further to strengthen the position of the siblings (Lippert 2013:2).

This viewpoint might be behind the development described in the *Inscription of Mes* from the Nineteenth Dynasty (Lippert 2013:2). In this matter disputed land had originally (in the Eighteenth Dynasty) been passed undivided to heir after heir who acted as *rwḏw* caretakers for their non-inheriting siblings. However, when arguments arose regarding the distribution of income, a later court decided to split the land into smaller portions for each descendant (Lippert 2013:2). This allowed the parties belonging to the same *parentela* (see paragraph 6.2.1 above) more direct access to a share of the inheritance (Lippert 2013:2). According to Lippert (2013:2), the decision was later contested, by the descendants of the original caretakers who wanted to be reinstated into their more advantageous position.

Papyrus Berlin P 3047 is an example of a similar case where one member of the *parentela* sues his brother who was appointed caretaker because he had not been allowed to profit from his share of the inheritance (Lippert 2013:2). The *rwḏw* admits in court the brother's right and declares his consent to splitting the plaintiff's share of the inheritance, which is then rented to a temple in order to ensure an income (Lippert 2013:2).

It is Lippert's (2013:2) observation that the struggle between the older principle of sole heir and the later one of distribution between the descendants had not been fully resolved even in the Twentieth Dynasty. This can be seen from *Papyrus Cairo CG 58092 (recto)* where the writer recounts how he refuted the demands of his siblings for their shares of their parents' inheritance (Lippert 2013:2). It is important to note that his argument is not that he is the eldest son, but that he alone was burdened financially with the burial of his parents (Lippert 2013:2).

6.3.2.3 Children

When someone died, the practice in ancient Egypt was that the deceased's children inherited (Pestman 1969:59). Property first passed onto a deceased's children (Versteeg 2002:137). Children could inherit from both parents since men as well as women could own property (Pestman 1969:59; Johnson 1996:183). Children acquired rights at birth over their parents' matrimonial property and the parents' ability to dispose of such property was limited (Eyre 2007:242).

As Pestman (1969:59) suggests, when someone died in ancient Egypt, his or her children were the first to be considered as heirs to the property of the estate. From the passages of the *Codex Hermopolis* (third century BCE) concerning customary intestate succession it appears that by the Late Period, the rights of the other siblings as co-heirs were finally fully acknowledged (Lippert 2013:2). The eldest son still took possession of the property (inheritance) and was even allowed to sell part of it, but he was obligated to divide it (or the price, if sold) when his younger siblings demanded it (Lippert 2013:2). However, the eldest son retained the most advantageous position as he was entitled to a better or larger share (Lippert 2013:2; see discussion in previous paragraph).

The eldest son was also the only heir who was allowed to prove his claims to objects simply by referring, without documentation, to the fact that he inherited them from his father (Lippert 2013:3). Column IX 32 – IX 33 of the *Codex Hermopolis* states this as follows: 'No man can say "The property is mine, it is my father's", except the eldest son. He is entitled to say "The property is mine, it belongs to my father"' (Mattha 1975:42).

Property given before death as a gift (by a parent) to one of the other children was not regarded as part of the estate upon the parent's death (Lippert 2013:3). If there was no donation document, an oath had to be taken by the one who claimed the property (Lippert 2013:3). In this regard column IX 17 – IX 19 of the *Codex Hermopolis* reads as follows:

If a man dies and he has property in the hand [?] of the younger son, and if the elder son brings action against him because of it [the property], and if the younger brother says 'The property [for which he brings action against me is mine, my father is he who gave it to me] (?)', he is made to swear saying, 'It is my father who gave me this property saying "Take it to thyself"' (Mattha 1975:40-41).

Children normally inherited from both their father and mother individually and obviously the father and mother themselves inherited each from his or her own family (Allam 2001:159). As both the father and mother were allowed to own property, the basic principle implies two inheritances (Pestman 1969:59). This shows that the idea of inheritance in the direct line was deeply rooted in the mind-set of the ancient Egyptians (Allam 2001:159).

The above-mentioned principle of 'two inheritances' has implications in a situation where one of the parents remarries and has children born out of the second marriage (Pestman 1969:59). This would mean that the children of both marriages would be entitled to inherit from the relevant parent (Pestman 1969:60). It is submitted that children from the same *parentela* were therefore entitled to an equal share from the relevant parent's estate.

In cases where a son predeceased the *de cuius* but left descendants, these grandchildren would take their father's share *per stirpes* (Westbrook 2003c:57). It was therefore possible for the descendants to 'represent' a predeceased antecedent and thus this implies that the principle of *stirps* was known to ancient Egyptians. Westbrook (2003c:57) makes the important observation that daughters in ancient Egypt had the same right and the principle of inheriting *per stirpes* therefore applied to both sons and daughters.

In ancient Egypt children of the deceased preceded siblings of the deceased as legal heirs (Lippert 2013:3). As indicated in paragraph 6.2, the inheritance first went 'down' to descendants, which included children or their children, effectively applying the principle of *per stirpes* succession. It was only when there were no descendants that siblings were considered. According to Lippert (2013:3) it is possible to observe this system already in the Old Kingdom from the order in which descendants were listed in enumerations of possible heirs, with the *Inscription of Kaemnofret* being an example. The *Inscription of Kaemnofret* consistently names children before brothers and sisters (Lippert 2013:3).

According to Versteeg (2002:138) there seems to have been some degree of preference in respect of the inheritance of the eldest son. Lippert (2013:1) is in agreement on this matter, confirming that the norm was for the eldest son (first-born son) to inherit the property of his deceased father (and in my view, by implication, also the deceased mother) while at the same time carrying out the duty to bury him (by implication, both

the parents) and to take care of the other family members. Pestman (1969:58, 66) is of the opinion that the eldest son does not only have more obligations, but also more rights than the other heirs. It was also the eldest son who was obliged to make funeral arrangements for his parents and it would appear that he therefore inherited a larger share as a kind of compensation for these duties (Versteeg 2002:138-139).

As mentioned in paragraph 5.3.2 above, the custom was to keep immovable property intact. Versteeg (2002:140) maintains it is for this reason that the children usually inherited immovable property jointly, with the eldest son (or in some cases another sibling acting as the substitute eldest son) managing the jointly owned immovable property for the benefit of the group as a whole.

The principle of *per stirpes* is supported by Lippert's (2013:2) observation that the eldest son received the inheritance of those siblings who died childless, as is confirmed in the *Codex Hermopolis*, column IX 5–IX 9. On this point the *Codex* states the following in column IX 5 – IX 9 (translated in Mattha 1975:39-40):

If the younger brother brings action saying "The children whom our eldest brother said "They existed [*i.e.* belonged] to our father", did not exist as sons [to him] [?]. He who existed. [If] [?] the younger brother says, 'They did not Exist to our father', the eldest brother is made to swear concerning them saying 'The children whom I said they existed [to our father, they existed as sons to him] (?) [... There is no] falsehood therein.' He is made to declare 'They were not at all (*lit.* once) with their mother'. Form of the oath which he is made to take: 'So-and-So [Son of So-and-So] said [...] existed as sons to my father; they died before their father died.' The one concerning whom he does not swear is not allotted a share. [The one concerning whom he swears] is allotted a share.

However, this applied only where a son was acting as eldest son and not where a daughter was doing so (Lippert 2013:3). In the case where a daughter was acting as eldest son and there was a childless sibling, the whole inheritance was divided by the number of surviving siblings plus one and she would receive a double share (Lippert 2013:3). In this regard we read the following in column IX 14–17 from the *Codex Hermopolis*:

... man dies and he has no son but he has a daughter [...] she (?) is given one (?) share in addition to her share (?). If it be (?) daughters whom he has (?), [they give] (?) an extra share to his eldest daughter in addition to her share (?); [it is given in addition (?)] to (?) her (?) one (?) share (?). the eldest daughter is not allowed to say 'Since other children (?) of his are minors (?), let me be given their share (?).' She is not given [their share] (?) [...] (Mattha 1975:40).

It would appear that there was a rule of 'male before female' among the deceased's children regarding their inheritance (Lippert 2013:3). It is possible that this rule also applied to the other categories of siblings and parents of the deceased, but there is no evidence to support this (Lippert 2013:3). In ancient Egypt among children of the same gender the older children preceded the younger (Lippert 2013:3). This preference of 'older over younger' appears also to have applied to siblings (Lippert 2013:4). If someone died childless, for instance, the deceased's share of the paternal property fell to the deceased's eldest brother, but the same was not applicable to an all-female group (Lippert 2003:4).

Regarding gender equality, it would appear that in the legal order of succession there was a clear preference for male children (Lippert 2013:3). This prevailed despite the fact that Egyptian women could hold property independently from their husbands and were able to pass it on to whomever they liked (Lippert 2013:3). I shall discuss examples of this later in this study in paragraphs 7.3 and 9.3 where the *Inscription of Metjen* from the Third/Fourth Dynasty and *Papyrus Ashmolean Museum 1945.97* from the Twentieth Dynasty are analysed as part of the discussion of testamentary dispositions. The fact is however, male children preceded female children as legal heirs and birth-order played an important role. In this regard, column IX 2-3 of the *Codex Hermopolis* is applicable: '... property is next divided into shares according to the number of his children. Then his sons receive shares according to their order (*or* rank) (of birth) and his daughters receive after them according to their rank of birth' (Mattha 1975:39).

Older children also preceded younger children among children of the same gender in the customary intestate succession (Lippert 2013:3). For the ancient Egyptians the ideal heir was the eldest son (Lippert 2013:3).

According to Allam (2001:159) in Hellenistic and Roman writings mention is often made of the specific Egyptian legal device called *katochè*, which gave the children a type of preferential claim regarding the devolution of their father's estate. The children enjoyed a claim to their father's property during his lifetime and the father could not dispose of it as he pleased without their consent (Allam 2001:159). After the father's death, the children's claim became a property title (Allam 2001:159).



Pestman (1969:60) makes an important observation that although the children only received their inheritance when the *de cuius* died, this does not change the fact that the children already had certain rights to this inheritance. The mere fact that they were children of the parents gave them certain rights to the property of the parents (Pestman 1969:62).

In summary, it appears that the inheritance was to go first to the descendants *per stirpes* although *prima facie* the eldest son had some priority.

6.3.2.4 Brothers and sisters

If a deceased did not have surviving children, the *Codex Hermopolis* informs us that under these circumstances the estate would revert to the deceased's brothers and sisters (Pestman 1969:68). In my opinion this would by implication mean such a person also did not have any surviving grandchildren, or rather any descendants at all, because of the *per stirpes* principle applicable in ancient Egypt.

According to Pestman (1969:68) the principle that the brothers and sisters would inherit if there were no descendants of the *de cuius* is found in texts right from the beginning of the second millennium. From the *Stèle Juridique* we have the example of Kebsi, who wanted to leave his official position to someone, having inherited it from his father, and who says: '[It came] to my father as a property of his brother ... who died without children' (Pestman 1969:68).

6.3.2.5 Parents

If the *de cuius* had no children, nor any brothers or sisters, his parents would inherit his estate (Pestman 1969:70). Lippert (2013:3) maintains that such a scenario is not attested to and was probably quite rare.

Pestman (1969:70) affirms that there is not a single case known to us where it indeed happened that the parents inherited in circumstances where there were no children nor brothers and sisters, but we do find signs in some texts, which support the idea.

An example from a seventh-century deed is *Papyrus Turin 2118* where a brother and sister sell a piece of land, and with the authority of the heirs in mind, they include the following clause: 'We have no son, daughter, brother, sister, father, mother or anyone else in the world who could "go to law" about it' (Pestman 1969:70). In my opinion the

fact that the father and mother are mentioned in the clause implies that they could also be heirs in terms of customary intestate succession.

6.3.2.6 Other family members

Not a single reference is found in available texts to indicate that other family members might be eligible to inherit from the *de cuius*. It is submitted that the clause from *Papyrus Turin 2118* quoted in paragraph 6.2.2.4 might also be seen as a reference to other members of the family, or rather the extended family beyond the parents, because reference is made to 'anyone else'. It is mentioned at the end after the mentioning of descendants and antecedents and would in my view refer to siblings within the extended family; in other words, the nearest blood relative beyond the parents. This is a principle familiar to modern-day law of intestate succession.

6.4 THE TESTAMENTARY DISPOSITION DOCUMENT

6.4.1 INTRODUCTION

Lippert (2013:1) argues, correctly, that in reality there might have existed different scenarios in ancient Egypt, which made it impossible or undesirable to execute the customary intestate rules of succession. These might include, among others, that there were no male children, or no children at all, or that the eldest son was not trustworthy (Lippert 2013:1). It is for this reason that Lippert (2013:1) suggests that Egyptian law prepared for these eventualities by allowing for intentional changes in succession. In addition, as I have indicated in Chapter 3 and 5 of this study, the belief in the afterlife and the need to make provision for sustenance after death, taking care of family property and the nuclear family was a major reason for the very first appearance of arrangements made prior to death, which in effect represent the very first testamentary dispositions. In my opinion, the testamentary disposition document was a way to alter customary intestate succession. As Mrsich (1975:1251) observes, it is important to keep in mind that it is conceivable that the ancient Egyptians did not necessarily use only one specific document to achieve this, but used a range of possible documents. It would also appear that the ancient Egyptian had 'testamentary freedom' (Mrsich 1975:1236).

As indicated in paragraph 6.2.2.2 above, the children of the parents had certain entrenched rights to their parents' property, which in my opinion formed part of the customary intestate succession law. However, it was possible for the parents to make certain arrangements for succession prior to death (Pestman 1969:62). Children might

have had an equal claim on a parent's estate, but this could be altered by the parent when leaving a last will, as in the case of Naunakht (Wilkinson 2016:133), to be discussed in Chapter 9. The will of Naunakht is also an example of the disposal of property by means of a testamentary disposition (division) by a woman in ancient Egypt.

If someone wanted to leave his property to someone after his death, he or she needed to make his or her wishes known in a document which we today would call a last will or testament (Schoeman & De Waal 2005:34).⁷⁶ In a will testators can make their wishes known and dispose of their property at their own discretion; this capacity of the testator is known as freedom of testation⁷⁷ (Schoeman & De Waal 2005:120). As Westbrook (2003c:58) correctly points out, we have examples of testaments in ancient Egypt dating from the Old Kingdom. This will be discussed in greater detail in Chapter 7, 8 and 9.

It is thus clear that we find the very first signs of testate succession law in ancient Egypt. These appear specifically in the provisions someone made prior to his or her death, as discussed earlier in this thesis, rooted very clearly in the belief in the afterlife, and seen against the backdrop of the ancient Egyptians' socio-economic environment. It is submitted that these provisions or arrangements made prior to death are the building blocks of what we today call testate succession law. The ancient Egyptians did not necessarily use terminology like testate and intestate law as we do today, but it is very clear, in my view, that these very early provisions made by someone prior to death represent a way to alter the customary or intestate succession law. This will be further expanded upon in this chapter, but also in Chapters 7, 8 and 9.

Initially the focus in making these provisions prior to death was to provide sustenance to the deceased in the afterlife. These very first provisions made before death are referred to as 'pious foundations' because of their close relationship with religion, especially the belief in the afterlife. It is however very clear from the oldest documents that we are immediately able to identify elements and signs of succession law concepts that would later be defined as, among others, trusts, usufruct and *fideicommissum*. These early pious foundations, in my opinion, would have been influenced by the socio-

⁷⁶ In South Africa today the Wills Act 70 of 1953 regulates all formalities, requirements etc. relating to wills (Schoeman & De Waal 2005:34).

⁷⁷ In South Africa there is at present no complete freedom of testation as there are limitations to this right. Some common law and statutory limitations are applicable which limit the freedom of testation (Schoeman & De Waal 2005:120).

economic environment of the ancient Egyptians, necessitating, the gradual, normal development of what I will call the testamentary disposition in all its different forms in ancient Egypt.

As there is no clear term for a will in ancient Egypt, and because some documents are strictly speaking not wills, yet they contain elements of testate succession law, I have decided to rather use the term 'testamentary dispositions'. It is important to note, as Lippert (2013:4) affirms, that different types of documents were used, depending on the era and on how the inheritance was to be distributed.

As Lippert (2013:4) points out, modern legal historians are reluctant to use the term 'will' or 'testament' for these documents as they do not conform strictly to the Roman legal definition of *testamentum*. For purposes of this study the term 'testamentary disposition' refers to any disposition of property by the *de cuius* prior to death, only becoming effective upon the *de cuius*'s death, taking on the form of a variety of documents in ancient Egypt. As Seidl (1957:57) indicates, we have evidence as early as the Old Kingdom that the deceased owners of property relied on dispositions made prior to death.

If a person in ancient Egypt wanted to bequeath property to someone other than the expected heirs in terms of customary intestate succession, he or she had to draw up a document (Lippert 2013:4). This document could also be used to ensure and emphasise the inheritance rights of a specific person, even though this person might already be a heir in terms of customary intestate succession (Lippert 2013:4). The document could also be used to give effect to special terms, or to exclude an heir or heirs (Lippert 2013:4). It is important to take note that legal documents drawn up by private people generally remain within this closed sphere and have no direct relationship with the public administration of the state (Goedicke 1970:1). These documents, in their nature, deal primarily with questions of ownership and property (Goedicke 1970:1). It would appear that there is some uniformity in style, suggesting the existence of a legal style (Goedicke 1970:2).

In my opinion the earliest endowments in the form of pious foundations with their close relationship with the mortuary cult already contain elements of succession law, and this is apparent from the Egyptians' earliest 'transfer documents'. It is important for this study to focus on the broader denominator of testamentary dispositions in order to be

able to identify and discuss the very important legal succession law concepts and elements relating to testate succession law.

Jasnow (2003c:123) is of the view that mortuary endowments may be considered a special type of property transfer, because the person endowing the property places special stipulations upon it in order to avoid the division and loss which might adversely affect his or her cult offerings. As Eyre (1992:210) correctly observes, it is typical of ancient Egyptian documents that a 'will' is virtually indistinguishable from any other class of property transfer.

The discussion in this chapter on the testamentary disposition, when it comes into effect and related matters, will be continued in Chapters 7, 8 and 9 when some important examples of applicable texts will be discussed and analysed.

6.4.2 THE PIOUS FOUNDATION

As indicated in Chapter 4, law emerged from religion in ancient Egypt. In many cases the emergence of truly legal concepts derived its impulse from religion itself (Allam 2007:265). A good example given by Allam (2007:265) is the private pious foundation. This concept is in my opinion important in the understanding of succession law in general and its development, and especially in understanding the nature of testamentary dispositions. The foundation was initially the prerogative of the king who donated lavish gifts to temples in order to make provision prior to death for the afterlife (Allam 2007:13). At the beginning of the Old Kingdom, the beneficiaries were the deceased king and officials, and the supplies (mainly foodstuffs) were supplied from the 'fields' (Helck & Otto 1982:590), but private foundations did become more popular later on (Helck & Otto 1982:592). Private foundations (endowments) were established as early as the middle of the third millennium BCE (Allam 2007:13). According to Goedicke (1970:205) the primary objective of private legal inscriptions in the Old Kingdom was the pious private foundation (*Totenstiftung*). This forms the material prerequisite for the service of the dead, which was essentially for the survival of the deceased's needs (Goedicke 1970:205). Provision made in these pious private foundations referred to the use of property rights in either land or income incurred from it (Goedicke 1970:206).

The word 'pious' obviously refers to the religious⁷⁸ background of the concept of a pious foundation. As indicated in Chapter 3, the ancient Egyptians' belief in the afterlife necessitated the provision of sustenance and offerings to the deceased. With the private foundation, sustenance (bringing of offerings) was the responsibility of the family (Allam 2007:13). The Egyptians believed in this commitment and trusted the pious loyalty of their descendants (Allam 2007:13). The deceased had to rely on his or her descendants for this sustenance after death. This piety diminished over time (as previously indicated in paragraph 6.3) and it became necessary to make arrangements prior to death for sustenance after death. Mortuary services could thus be provided for. As Allam (2007:265) correctly observes, the pious private foundation set up by the deceased prior to death came into being as a permanently established juridical mechanism.

According to Kemp (2001:85) the pious foundation was a fundamental part of ancient Egyptian society and was intended to ensure the perpetual maintenance of the cult of statues. Kemp (2001:85) continues to say that this cult of statues refers to gods, kings and private individuals. These foundations took the form of a fund, established by an initial donation or contracts, which referred to property or the securing of income from elsewhere (Kemp 2001:85). The fund had to be kept intact as a unit, in theory, for perpetuity (Kemp 2001:85). The income was assigned to those persons assigned to maintain the cult (Kemp 2001:85). The most important pious foundations in the Old and Middle Kingdoms were the pyramid temples (Kemp 2001:85). Kemp makes an important point that these pyramids must be regarded first and foremost as temples for the royal statues with a royal tomb attached to each. This acted as a huge reliquary and gave enormous authority to what was in essence an ancestor cult and an important factor in the stability of the government, according to Kemp (2001:85). This phenomenon would repeat itself on different scales throughout ancient Egyptian society in the form of private funerary cults (Kemp 2001:85). This observation by Kemp is noteworthy as it may imply that the emphasis on tombs and chapels in private burials were most probably a replication of the royal pyramid-tomb and temple, in the process enhancing not only stability in government but also stability in the wider ancient Egyptian society.

⁷⁸ It is a fact that the foundation in ancient Egypt sprang up out of religious concerns (Allam 2007:13). In essence, these were the belief in the afterlife and how to make provision for perpetual sustenance.

Today a foundation is defined as ‘a juristic person consisting of a collection of assets or fund devoted to a defined (usually charitable) purpose and managed by administrators’ (Cameron et al 1985:48). The Latin term usually found in connection with a foundation is *ad pias causas*, meaning ‘for charitable purposes’ (Hiemstra & Gonin 2013:153).

Cameron et al (1985:55) go on to state the following:

[A] foundation is not an alternative to a trust. It is simply a possible owner of trust assets, like a trust corporation to whom the founder makes a gift of the trust assets, or a corporate beneficiary to which he makes a gift of property to be administered by an administrator by way of bequest. It has no special role other than that of enlarging the range of legal persons who may play a part in the law of trusts.

Cameron et al (1985:49) make an important point when they state the following: ‘[T]he foundation is not a fiduciary institution alternative to the trust ... It is a juristic person, like a *universitas*, and, like it, may act as a trustee or have its assets managed by trustees or administrators.’

Returning to the ancient Egyptian foundation, the religious and ethical injunction to care for the deceased lost its force over time and a legal obligation was created in its place (Allam 2007:265). In this sense Allam (2007:272) is of the view that the foundation is meant here in the broader sense. It is meant as an institution designed by a human objective with its appointed purpose being the fulfilment of an enduring goal. According to Allam (2007:272), in order to achieve this goal, two things were necessary. In the first instance a lucrative property which the endower ceded from his property was needed. Secondly, a lasting, i.e. renewable, personal association which would be responsible for administration of the foundation’s aims was required (Allam 2007:272).

The founder sought also to protect himself against the possible neglect of the endowed intent (Allam 2007:265). This ‘protection’ was obtained by enlisting the local temple, represented by the priesthood (Allam 2007:265). The continuation of the mortuary offerings was secured by their incorporation into the temple service (Allam 2007:265). Allam (2007:265) submits that texts from the Old Kingdom onwards testify that the ancient Egyptians entrusted their mortuary rites to priests.

From the above we can see how a juridical obligation, in the form of the private foundation, came into existence (Allam 2007:266). It is also an indication of how for the first time in history the Egyptians developed it into an institution that kept on growing

through the centuries, having taken on sophisticated forms (Allam 2007:266). According to Allam (2007:266), and I agree, it continued to develop well into modern times.

These testamentary dispositions were essentially arrangements made prior to death and contained right from the start succession law elements and concepts.

The force of law would even find expression in religious belief, for instance in the mythological conflict between Horus and Seth where the gods themselves had to appear before a court (Allam 2007:266). Another important example is the so-called 'judgement of the dead' which took place in a special court and occupied a prominent place in Egyptian belief (Allam 2007:266).

In Chapter 5 reference was made to some of these very early provisions made prior to death, like the *Inscription of Metjen* and other texts which indicate the close link with religion and more specifically the belief in the afterlife. These examples will be discussed in more detail in Chapters 7, 8 and 9. It is my view that these very early provisions made by someone prior to his or her death, in the form of the 'foundation', were the very first precursors of testamentary dispositions. From these humble beginnings the concepts and elements of succession law relating to testamentary dispositions would develop. These first foundations formed the building blocks for the testamentary disposition, and for what we later would call a testament or will, and specifically also contained elements of legal concepts such as trusts, usufruct and *fideicommissum*, among others.

I am in agreement with Westbrook (2003c:87) that although ancient Egyptian law lacked features of modern law, the seeds of many modern legal institutions are already in evidence. The legacy to later legal systems must be sought in these 'embryonic forms' rather than in developed structures.



6.4.3 THE *IMYT-PR* DOCUMENT

A so-called *imyt-pr* document was generally used, according to Pestman (1969:62) when someone wished to transfer property rights to another person in the case of a bequest of property to an heir, but also in the case of the sale of property to a buyer. If someone wished to leave property to someone else than the expected heirs (in terms of customary intestate succession), the *imyt-pr* could be used to ensure the wishes of the

deceased were honoured (Brewer & Teeter 1999:97).⁷⁹ Goedicke (1970:204) suggests that two forms of inheritance can be distinguished namely ‘direct’ (customary intestate succession law) and *imyt-pr* (*rdi m imyt-pr*). This meant people who would otherwise not be able to inherit, were able to inherit in terms of an *imyt-pr* (Johnson 1999:177). The *imyt-pr* document was used to transfer personal assets as well as real estate from one individual to another (Pestman 1969:62); in other words both movable and immovable property.

An ancient Egyptian could avoid intestacy by using the *imyt-pr* as a ‘will’ (Versteeg 2002:140-141). According to Versteeg (2002:140) the ancient Egyptians gave legal effect to written wills. Logan (2000:49) confirms that the word *imyt-pr* has also been translated as ‘will’. The *imyt-pr* is the best-known form of a will from ancient Egypt (Lippert 2013:5).

Versteeg (2002:140-141) affirms that the *imyt-pr* was the same term that referred to the written document used to validate other types of property transfer. He continues to observe that by using the *imyt-pr* as a ‘will to transfer either real (immovable), personal property or other forms of wealth either as a whole to persons or in proportions, the ancient Egyptians could ‘change’ or ‘alter’ the scenario that would have ensued from intestate succession.

Helck & Otto (1980:141-142) translates *imyt-pr* to mean ‘Hausurkunde’ (‘house document’); according to him it refers to ‘what is in the house’. Gardiner (2005:553) gives the hieroglyph  and the transliteration *imyt-pr*; the translation is given as meaning ‘estate’, ‘property’, ‘will’ (literally ‘content of house’). However, Faulkner (2006:18) gives the transliteration as *imt-pr* and translates it as ‘will’ or ‘testament’. According to Gardiner (2005:553) the word *imyt-pr* comes from the word *imy* () which means ‘being in’ and which is the adjective of the preposition *m*. Gardiner (2005:61) observes that the ending -y is employed to form adjectives from nouns and prepositions. The adjective derived from a preposition may, like the latter, govern a noun or pronoun (Gardiner 2005:62). I prefer the transliteration of Gardiner as discussed here and agree that the word *imyt-pr* comes from the word *imy* which is

⁷⁹ It must be kept in mind that one cannot translate the word *imyt-pr* as ‘testament’ as it is merely a document to transfer property, and the notion and word ‘testament’ derives from Roman law (Seidl 1957:58).

indeed the adjective of the preposition *m*. I shall therefore be using Gardiner's transliteration in this study.

Allan (2004:90) translates the word *imyt-pr* as either 'that which is in the house' or, probably better, 'that which the house is in' (in other words, the document itself). The word *imyt* is a prepositional nisbe⁸⁰ and is often translated into English as 'who is in' or 'which is in' (Allan 2004:90). It is however important to remember that such translations are only approximations of the nisbe's meaning (Allan 2004:90). The nisbe itself is an adjective; in this case meaning something similar to 'inherent' (Allan 2004:90). Lippert (2013:5) argues that both these translations are unsatisfactory translations as the assets usually transferred through the *imyt-pr* were typically immovable property, sometimes including personnel and 'offices'.

It is however important to remember that according to Allan (2004:90) the complete phrase is *mDAṭ imyt-pr*, which literally means 'the scroll that is in the house'. In this phrase *imyt-pr* is an adjectival phrase indicating where the *mDAṭ* ('the scroll') is (Allan 2004:90). Although *imyt* refers to *mDAṭ*, it is actually *pr* ('the house') that is 'in' something and not *mDAṭ* ('the scroll') (Allan 2004:90). Therefore, *imyt-pr* means 'the scroll that the house is in' (Allan 2004:90). The phrase *imyt-pr*, without *mDAṭ*, is actually the Egyptian idiom for 'will' or 'testament' (Allan 2004:90).⁸¹ It refers to a papyrus scroll listing the contents of a person's estate, his *pr* ('house') (Allan 2004:90)⁸². This is called a 'reverse' nisbe (Allan 2004:90).

I disagree with Lippert and agree with Gardiner and Allen. I would suggest that the literal meaning might refer to the initial meaning of *imyt-pr*, in other words that it literally referred to the contents of the house in early ancient Egypt, when the idea of private ownership of immovable property was not possible. It might be the case, in my view, that when private ownership of immovable property became possible, the terminology was retained when referring to the property of the household. The meaning was broadened effectively to refer not just to the contents of the house, but rather the 'property of the household'. This view corresponds with Allen's submission that it refers to 'the contents of a person's estate' as discussed above.

⁸⁰ According to Allen (2001:59) Egyptologists use the word 'nisbe', taken from Arabic grammar, as a term for derived adjectives. Derived adjectives are made from prepositions or nouns (Allen 2001:59).

⁸¹ The word *imyt-pr* is later translated as 'testament' and even as 'inventories' or 'property' (Lesko 1982:31).

⁸² The word *pr* is translated by Lesko (1982:174) to include 'household'.

Logan (2000:49) states that there are two camps when it comes to the translation of *imyt-pr*. On the one hand there are the German scholars and on the other hand the French (Logan 2000:49). The German scholars favour an ambiguous translation of *Hausurkunde* used to dispose or convey the contents of the house, namely *Verfügungen über Hausvermögen* or *Güterüberweisung* (Logan 2000:49). The French favour a translation meaning ‘conveyance consequent upon death’, in other words, a will or testamentary disposition or a deed of transfer by gift (Logan 2000:49). The French scholars’ view was followed by Breasted: he uses ‘will’ in his translation of the *Inscription of Metjen* (discussed in Chapter 7) and Harari (who uses ‘disposal document’ or ‘conveyance of property’) (Logan 2000:50).

More recently, scholars have attempted to assign a proper meaning and function to the *imyt-pr* document (Logan 2000:50). It is noteworthy that Logan (2000:50) submits that it was concluded that the *imyt-pr* was a ‘disposition’ in the Old Kingdom made to organise a person’s funerary cult. This is an important observation as it confirms the close relationship between the belief in the afterlife and the ‘birth’ of the testamentary disposition. Logan (2000:50) maintains that the contractual nature of the document and the importance to keep the property as a whole was also emphasised. (Van den Boorn 1988:180) This is again of fundamental importance as it reflects on the socio-economic background of the ancient Egyptian world. Pestman (1969:62) is of the opinion that the *imyt-pr* document dates from the Middle and New Kingdom and was effectively a ‘fictitious lawsuit’ used to transfer property rights to a person, not only as a bequest to an heir, but also to a buyer of property. He gives the example of *Papyrus UC 32037* (also known as *Papyrus Kahun VII 1*, discussed in Chapter 8) as a bequest by *imyt-pr* where a father says: ‘I give my office as headman of the phyle to my son ... as support of my old age because I have become old.’

Logan (2000:50) suggests that there might be several reasons why various scholars have translated *imyt-pr* differently. These reasons might include that the meaning may have changed over time, or literary references may use the term in an inexact way (Logan 2000:50). In my opinion, given the fact of ancient Egypt’s exceptionally long history it is a convincing argument that the meaning may have changed over time.

Logan (2000:50) refers to Van den Boorn (1988:180) who is of the opinion that no translation is conclusive and therefore he does not translate the word, because of the diverging opinions scholars have. According to Van den Boorn (1988:180) the word

imyt-pr is a *terminus technicus* that has been attracting scholars' attention for a long time. Van Den Boorn (1988:180) adds that the word *imyt-pr* occurs throughout Egypt's history from the Fourth Dynasty to the Late Period.

In the final instance, however, Logan (2000:50) suggests the translation of *imyt-pr* as 'transfer document'. The *imyt-pr* has always been recognised as a document which transferred property from one person to another (Logan 2000:70). An important point is that the *imyt-pr* transferred permanent legal right to ownership of the property, but was also used to bequeath the property (Logan 2000:70). Lippert (2013:5) is correct when she observes that interpretations of the purpose of the *imyt-pr* differ from being donations or property transfers or wills. It is thus quite clear that there is no consensus among scholars on the exact meaning of the *imyt-pr* document.

However, Lippert (2013:5) submits there can be no doubt that the ancient Egyptians used the *imyt-pr* as a will. This viewpoint is supported by the fact that the *imyt-pr* documents transfer property without compensation. Another reason why the *imyt-pr* was used as a will, according to Lippert (2013:5), was that *imyt-pr* documents only became effective when the *de cuius* died. In support of this, *Papyrus UC 32037* (to be discussed in Chapter 8) is an example where an earlier *imyt-pr* was revoked and replaced by a new one. This 'revocation', Lippert (2013:5) submits, would only be possible if the previous *imyt-pr* has not been executed when it was written. The *imyt-pr* was so closely linked to succession that it would be necessary to make explicit provisions in the *imyt-pr* for it to be executed before the death of the *de cuius* (Lippert 2013:5).

A further reason, according to Lippert (2013:5), for the *imyt-pr* to be used as a will is the fact that the beneficiaries of *imyt-pr* documents were mainly siblings and specifically children of the *de cuius* (Lippert 2013:5). The *Inscription of Metjen* (to be discussed in Chapter 7) is an example; an exception is *Papyrus UC 32055* (to be discussed in Chapter 8) (Lippert 2013:5). The standard phrase in Old Kingdom regulations relating to private funerary foundations supports this argument (Lippert 2013:5). This phrase forbids the funerary personnel to sell or give away their office by *imyt-pr* to anyone except a son (Lippert 2013:5). An example of this (to be discussed in Chapter 7) is the *Inscription of Niankhka*. However, in the *Inscription of Sennuankh* the word 'son' is replaced by 'children', indicating that it was possible to write these documents also for primary heirs to inherit (Lippert 2013:5).

In general *imyt-pr* documents are introduced by a date, title and name of the author, followed by *Dd . ʕ*, followed by a reference to the subject matter (a ‘concerning’ line) and the execution of the document using a form of the word *rdi* (‘to give’) (Helck & Otto 1980:142). The inclusion of the word *rdi* (or forms thereof) indicates that a sale is not intended and thus that the document should be distinguished from sale agreements (Helck & Otto 1980:142). The *imyt-pr* is authenticated by the inclusion of witnesses (Helck & Otto 1980:142).

The first reference to the *imyt-pr* document is from the Old Kingdom during the Third and Fourth Dynasties, for example the *Inscription of Metjen* (discussed in Chapter 7) (Lippert 2013:5). However, no document from the Old Kingdom is referred to as an *imyt-pr* in its own right (Lippert 2013:5). Inscriptions on tomb walls provide transcripts of documents in which property is transferred ‘gratuitously’ (without compensation) to siblings, which might thus be regarded as *imyt-pr* documents, for example the *Inscription of Nikaure* (discussed in Chapter 7) and the *Inscription of Wepemnofret* (Lippert 2013:5).

According to Lippert (2013:5-6) there are two examples of *imyt-pr* documents in the Middle Kingdom, labelled as such in their introductory formulae. These two are *Papyrus UC 32037* and *Papyrus UC 32058* (both of which will be discussed in Chapter 8). These documents from the Middle Kingdom resemble gratuitous property transfer documents of the Old Kingdom, but contain additional provisions, which appear to have been contained in separate documents in the Old Kingdom (Lippert 2013:6). The first known *imyt-pr* document drawn up for payment purposes (likely for a security) is *Papyrus UC 32055* from the Twelfth Dynasty (Lippert 2013:6). It would appear that this practice continued, as *Stèle Juridique* is a similar example from the Seventeenth Dynasty (Lippert 2013:6).

The *imyt-pr* documents continued to be used in the New Kingdom (Lippert 2013:6). An example where reference is made to *imyt-pr* is the *Instruction for the Vizier* (Lippert 2013:6). There are no actual *imyt-pr* documents from the New Kingdom, but there is a possible draft on an *ostrakon* (*O.DeM 108*) and a transcript on a *stela* (*Stela Cairo CG 34016*) (Lippert 2013:6). *Stela Cairo CG 34016* is damaged, but it is clear that the husband bequeathed his property to his wife and children, stipulating that the wife was to hold it during her lifetime and that it should be divided among the children when she died (expressed as ‘after her old age’ (Lippert 2013:6). This appears to be evidence of a *fideicommissum* structure in my opinion, which will be discussed in Chapters 7 and 8.

It is thus clear that it remains difficult to ascribe an exact meaning to the *imyt-pr* document. It is quite evident that the *imyt-pr* was indeed closely related to matters of succession. It is for this reason that I shall rather use the more general term ‘testamentary disposition’ in referring to the *imyt-pr* and other documents that served a similar purpose.

As Theodorides (1971:321) very eloquently observes, there could be nothing simpler yet as effective as an Egyptian will conceived as a declaration of a last intent.

6.4.4 DONATIONS

In the New Kingdom *imyt-pr* documents appear side by side with donations (not explicitly qualified as *imyt-pr*) (Lippert 2013:6). It is not clear why this happened, but it would appear that the *imyt-pr* had by then become a type of document reserved for the bequeathing of offices and important property (Lippert 2013:6). Lippert (2013:6) makes a valuable observation that the requirement to have the *imyt-pr* sealed by the vizier might have made the procedure more complicated and might have contributed to a limited use by the lower classes. An example⁸³ is the fragmentary O. Gardiner 55 in which a man recapitulates his modest possessions and how he became the owner before he awarded all his property to his wife and children (Lippert 2013:6).

However, as Lippert (2013:6) indicates, there are, as in the Old Kingdom, documents which belong to the *imyt-pr* type that are not explicitly identified as such within the text. It is therefore possible that the abbreviated transcripts of two wills, in the form of donations on the *Amarah Stela*, may well go back on original *imyt-pr* documents (Lippert 2013:6). These two wills on the *Amarah Stela* are however merely called *r* (‘declaration’) within the *stela* itself⁸⁴ (Lippert 2013:6).

According to Lippert (2013:7) there is no clear evidence for the use of donation documents as wills after the New Kingdom. An early Ptolemaic donation document (P. BM 10827) concerning ‘tombs’ may be connected to inheritance according to Lippert (2013:7) because the beneficiary was the niece of the donator and the transferred

⁸³ Other examples are *Papyrus Turin 2021* and *Papyrus Geneva D 409* which might also include the adoption of the beneficiary wife (Lippert 2013:6).

⁸⁴ A similar example is the underlying document of the divine degree commemorated on *Stela Cairo JE 31882* (the so-called *Stèle de Papanage*) which might have been an *imyt-pr* document or a single donation document (Lippert 2013:6-7).

property partly derived from the property of her grandfather. The reference here to 'tombs' refers to the income from choachyte services at these tombs (Lippert 2013:7).

6.4.5 FICTITIOUS SALES

Pestman (1969:62) submits that the concept of a 'fictitious sale' applies where the purposes of a will could be effected by such a 'sale'. Pestman (1969:62) gives the example of *Papyrus BM 10.073* (from the third century BCE) where a woman (the testatrix) makes a bequest by a 'sale' of part of her property which she wished to leave to her daughter.

Demotic sales documents do not mention prices and therefore the possibility opens up that most of these documents ostensibly dealing with a sale of property from parent to child, even though not mentioning either the death or burial of the 'seller', functioned as wills (Lippert 2013:7). Of course this would not exclude the possibility that some of these documents might indeed have been proper sales or transfers during the parent's lifetime, for example at the marriage of a daughter (Lippert 2013:7).

The 'fictitious sales as wills' appear to have become more frequent during the Late Period and specifically in the Ptolemaic and Roman Periods, with 'donations as wills' practically disappearing during this time (Lippert 2013:7). However, according to Lippert (2013:7) this might reflect a shift in the perception of the strength of titles based on the respective documents. These 'fictitious sales as wills' may resemble the typical Late Period 'division documents' but purport that the transfer of property was in exchange for money (Lippert 2013:7).

The only example where it is declared that transfer is only effective after the 'seller's' death is *Papyrus Vienna KHM Dem. 9479* (Lippert 2013:7).

According to Lippert (2013:7) a special type of fictitious sales document is the 'contract for sinecure with cession of property' (*Verpfändungsvertrag mit Vermögensabtretung*) by means of which a husband awarded all his property to his wife in exchange for her to take care of him in life and to be responsible for burying him after his death. The beneficiary wife appears to only become owner of the property upon the *de cuius's* death (Lippert 2013:7). These documents play the same role, according to Lippert (2013:7), as the adoption documents for wives of the New Kingdom. In the process the wife acquires the functions of the eldest son and becomes sole heir, and is responsible for the funeral

of the deceased. Lippert (2013:7) submits that it is theoretically possible that these documents could also be used for other people than only the wife of the deceased. In this regard he refers to a similar arrangement entered into by a woman with her daughter-in-law in P. Philadelphia 2.

6.4.6 DIVISIONS

Lippert (2013:7) suggests that through 'division documents' property could be awarded to several prospective heirs (usually the children of the testator) in equal or unequal portions. An example of one of the earliest 'divisions' of property between children of the deceased is Clay Tablet 3689-7 + 8 + 11 from Balat from the Sixth Dynasty (Lippert 2013:7). In this case there were four sons, one received eight water wells, one four, and two received two respectively (Lippert 2013:7). It is however not clear if this reflected the wishes of the father or if the children wished to divide their inheritance *in specie* (Lippert 2013:7). The possibility can also not be excluded, according to Lippert (2013:7), that the administrative council to whom this clay tablet was addressed enacted the division.

The examples of 'division documents' from the New Kingdom suggest that the procedure at that time consisted of a public oral declaration of intent (*r*) by the testator regarding which property should go to which heir; this was then recorded in writing (Lippert 2013:7-8). An example of this is P. Cairo CG 58092 *verso* (Lippert 2013:8).

Also from the New Kingdom the *Papyrus Ashmolean Museum 1945.97*, better known as the Naunakht documents (to be discussed in Chapter 9), calls itself a 'document about property' (*hry n 3ht*) (Lippert 2013:8). According to Lippert (2013:8) this document is a protocol of a division, although it also includes the disinheritance of some children.

A similar example is a later redistribution of property among heirs from O. Louvre E 13156, but which is referred to as an 'account of division' (*tp n ps*), a term which was in use until at least the Twenty-sixth Dynasty (Lippert 2013:8).

During the Late Period the practice of testamentary division changed from a public declaration to individual documents for each heir and also from the award of specific items to a division of property into proportional parts, for example one half, one third etc. (Lippert 2013:8). However, Lippert (2013:8) argues that it still might have been

possible that another type of document was simply used if the testator wanted to award a specific item to someone, like the ‘fictitious sale’.

Of special interest, according to Lippert (2013:8), is *Papyrus Moscow 123*, dating from 68 BCE (from the Ptolemaic period) since it states clearly that the division is to become effective ‘after the lifetime’ of the testator and ‘when [he is] dead’. It is also noteworthy because it resembles the New Kingdom divisions, which was one document addressed to the ‘eldest son’ as main heir, specifying the complete division for all co-heirs (Lippert 2013:8). The importance of this is that it would imply only one document was used, since it appears that there were no additional documents for each heir (Lippert 2013:8).

6.4.7 ADOPTION

As indicated in paragraph 6.2 the ‘customary intestate succession’ of the ancient Egyptians did provide for the inheritance to go to the deceased’s siblings if there were no descendants. It was however expected from childless couples in ancient Egypt to adopt an orphan, who would then act as their ‘eldest son’ (Lippert 2013:4)⁸⁵.

The adopted child had the same rights of inheritance as a biological child (Lippert 2013:4). In my opinion this means that once was child is adopted, he or she would be able to inherit from the deceased in terms of the principles of customary intestate succession.

As indicated in paragraph 6.2 above, spouses could not inherit from each other in terms of customary intestate succession, but there are examples from the New Kingdom of a childless husband who adopts his wife (Lippert 2013:4). One of these example⁸⁶ is found in *Papyrus Ashmolean Museum 1945.96* (the so-called *Adoption Papyrus*) which will be discussed in Chapter 9). As Eyre (1992:210) affirms, the *Adoption Papyrus* might actually be a will, since the purpose of the adoption was explicitly to provide security for the wife in the matrimonial property once the husband died.

It is noteworthy, according to Lippert (2013:9), that in two similar cases of wives being established as heirs from the New Kingdom it was effected not by an *imyt-pr* document, but through the process of adopting’ the wife.

⁸⁵ Lippert (2013:4) gives the example of *O. Berlin P 10627*.

⁸⁶ Another possible example, according to Lippert (2013:4), might be *Papyrus Turin 2021* and *Papyrus Geneva D 409*.

It was also possible in ancient Egypt for slaves to be adopted for the same purpose as discussed above (Lippert 2013:4). *Papyrus Ashmolean Museum 1945.96* is also an example of this, which is to be discussed in Chapter 9.

Lippert (2013:4) is of the view that it remains unclear whether written documentation was required to give effect to adoption, or if adoption could be done by public announcement.

It would appear that in order to institute someone other than the customary intestate heir as sole heir, from at least the Late Period onward, it was necessary to draw up a document; in the process obviously excluding the *de cuius's* siblings from any rights to inherit (Lippert 2013:8).

According to Lippert (2013:8), adoption was probably the usual way where the *de cuius* was childless and wanted to prevent the inheritance falling to his or her siblings in terms of customary intestate succession. Adoption was also used where the intended heir was a child of the *de cuius* but not the firstborn (Lippert 2013:8). In cases like the latter the *de cuius* could, from at least the Late Period onwards, declare the child his or her 'eldest son' (*Codex Hermopolis* columns 9.21-22) (Lippert 2013:8). The adoption could also be applicable to the 'eldest son' later in Egyptian history, since by the Late Period he was no longer the sole heir and it was necessary to follow the adoption process in order to prevent the siblings from claiming their shares (Lippert 2013:8).

Eyre (1992:221) suggests, correctly, that the device of adoption was used to enable property to be transferred out of the normal line of succession. The real issue, Eyre (1992:221) continues, is not one of legal technicality, but of custom and social behaviour.

The process of adoption, in my view, was therefore a way to alter the customary intestate succession. Once there was an adopted child, there was a 'descendant' that was able to inherit, in the process terminating the *de cuius's* siblings' right to inherit in terms of customary intestate succession.

6.4.8 MARRIAGE SETTLEMENTS

The Egyptian will or testament is replaced in the Demotic record by complex post-nuptial marriage settlements between spouses (Westbrook 2003c:58). The property only vested in the beneficiary on the *de cuius's* death (Westbrook 2003c:59).

A written contract was not a prerequisite for an ancient Egyptian marriage settlement (Eyre 1992:210). Furthermore, documents that do record marriage settlements were not necessarily written on the occasion of the marriage, nor do they typically record all the terms of the 'contract' (Eyre 1992:210). It is important to note, as Eyre (1992:210) submits, that the normal terms of the contract were understood and oral agreements to the negotiated detail sufficed.

According to Eyre (2007:223) the practical and legal distinction between a marriage settlement and a will is blurred in ancient Egypt. Eyre (2007:232) suggests that the first *imyt-pr* found in *Papyrus UC 32037* (discussed in Chapter 8) must be understood to be a standard marriage settlement with the eye on the production of an heir and not in the modern sense a will. Eyre (2007:232) continues to submit that *Papyrus UC*, the closely comparable 'will' of Ihyseneb/Wah, is best understood in a similar way. This papyrus will also be discussed in Chapter 8.

In the Late, Ptolemaic and Roman Periods, 'fictitious sales' with burial obligation or special clauses within marriage documents were used in order to establish the wife as heir (Lippert 2013:9).

The marriage settlement clarified the wife's rights to property in the joint estate, but it did not necessarily involve an actual distribution of resources until the eventual dissolution of the marriage (through death or divorce) (Eyre 2007:233).

When a man made a marriage settlement and thereafter married again because his first wife died, or he got divorced, he could only draw up another marriage settlement if the first wife and/or his 'eldest son' agreed to it in writing (Lippert 2013:10). The reason was that he had already pledged his property as security for the maintenance of the first wife, and even more important, had promised it as inheritance to the wife and/or the children from his first marriage (Lippert 2013:10). According to Lippert (2013:10) this is clearly stated in a law cited by the judges of the so-called Siut trial (*Papyrus BM 10591* (*recto*) columns 10.7-9).

6.4.9 WHEN DOES THE TESTAMENTARY DISPOSITION COME INTO EFFECT?

It is important to ascertain whether it is possible to fix the moment at which these bequests by *imyt-pr* and 'sales' actually came into force. Pestman (1969:63) submits that as a rule the bequest by *imyt-pr* came into force when the *de cuius* (testator) died. For

instance, Pestman (1969:63) submits, it was still possible for the testator to recall his earlier made *imyt-pr*, as is clear from *Papyrus UC 32037* (discussed in Chapter 8) where the testator states the following: ‘As regards the *imyt pr* which I made for his mother before: my back to it [i.e. it is cancelled].’

According to Lippert (2016:4) the ancient Egyptians avoided stating in their testamentary disposition documents that the documents were meant to become effective at death of the *de cuius*. The reason for this, Lippert (2013:4) suggests, is because of the well-known Egyptian belief in the power of the written word to create reality. Documents in ancient Egypt did not as a rule become effective when they were drawn up, but rather when they were handed to the beneficiary (Lippert 2013:4-5). This could be delayed until after the *de cuius*’s death by depositing it with a trustworthy third party (Lippert 2013:5).

Papyrus Vienna KHM Dem. 9479 and *Papyrus Moscow 123*, both dating from the first century BCE, are the only two ‘will’ documents where reference is made to the *de cuius*’s death (Lippert 2013:5). Importantly, Lippert (2013:5) observes that this might have been a consequence of the influence of Greek wills.

Pestman (1969:63) gives an example of a bequest by *imyt-pr* which came into force before the *de cuius*’s death, found in *Papyrus UC 32037* (discussed in Chapter 8), where the father, after stating that he has given an office to his son, continues as follows: ‘...grant that he may immediately be promoted [to this office].’

An example of a bequest by ‘sale’ coming into effect before the *de cuius*’ death is found in *Papyrus Phil. 10*, where the woman Taminis. makes a sale of all her property in favour of her eldest son Osoroëris in the year 293/292 BCE (Pestman 1969:63). Then, twelve years later, she effects this ‘sale’ by drawing up the second document in which she declares that she has no further rights to the property ‘sold’ previously (Pestman 1969:63). In this case, therefore, the bequest by ‘sale’ came into operation during the *de cuius*’s lifetime (Pestman 1969:63). Pestman (1969:63) declares, that as a rule, the second document is not drawn up so that the bequest by ‘sale’ is not made effective and one may assume that it is only made effective by the *de cuius*’s death.

The bequest by ‘sale’ already mentioned above, *Papyrus BM 10.073* from the year 219/218 BCE, is partly a confirmation and partly an extension of an earlier bequest by

'sale' (*Papyrus Berlin 3096* from 223/222 BCE) between the same parties and points in the same direction (Pestman 1969:63).

6.4.10 THE EGYPTIAN WILL TRANSCENDED TO THE FUTURE

It is remarkable, in my opinion, that the testamentary disposition was already present very early in ancient Egyptian history. From my discussion thus far it is clear that a variety of documents could fulfil the purpose of the testamentary disposition in ancient Egypt. It is submitted that these would form the building blocks of what we later would call 'testate succession law'.

Stern (2000:414) is of the opinion that there was a preponderance of will-making by the Romans, which was evident in all levels of the population, and not only among the rich. He continues to observe that if someone died without a will, he or she was considered intestate; so was a testator whose will had not become operative or had not been accepted by his or her heir(s). It was possible in Roman times to make an oral will (Stern 2000:415). Stern (2000:418) observes that the funerary inscriptions bearing the formula *ex testamento* are omnipresent, and testify to the widespread habit of will-making among all the *strata* of the Roman population. Stern (2000:420-421) mentions the universality of will-making and the preservation of *Papyrus. Hamburg 72*, which was a standard form for wills, found in Egypt, to be completed with the details of individual will-makers. These 'ready-to-use' forms were to serve society as a whole (the wealthy as well as the poor) continually (Stern 2000:421).

6.5 CONCLUSION

Surviving sources for succession law in ancient Egypt are inevitably documentary in nature and include both oral and written documentation. As writing developed, it did not replace oral documentation, since oral documentation only partly gave way to written documentation when fixed written forms developed. Writing however spread and texts would be regarded as having been pronounced with scribes paraphrasing them. The practice developed of giving an oral version before the court and/or witnesses, which was then written down by professional scribes, especially in matters referring to legal documents. The witnesses gave the document authenticity. The validity of a testator's last wishes would be dependent upon the oral last wishes being written down. The written document would serve as irrefutable evidence of the oral legal act.

In this chapter the basic tenets of succession law in ancient Egypt were dealt with. Two complementary systems developed which can be traced back to early Pharaonic Egypt. On the one hand they had a system of customary intestate succession law and secondly they had ways to alter this by means of testamentary disposition documents (testate succession).

In the case of customary intestate succession law, the property (or rather the estate) went to the descendants first. For the ancient Egyptians the ideal was for the eldest son to be the sole heir for the purpose of sustenance, taking care of the nuclear family and protecting family property. This position of the eldest son as sole heir eventually weakened as he acted as caretaker for his siblings (who effectively also became intestate heirs). The children were the intestate heirs, and male and older children preceded. The principle of *per stirpes* was applied and the descendants of the first *parentela* had priority over the second and further *parentela*. In the absence of descendants, the estate went to the deceased's brothers and sisters. In their absence the estate went to the parents and in their absence to the deceased's collaterals. Husbands and wives did not inherit from each other in terms of customary intestate succession.

Customary intestate succession law could be changed by making prior arrangements before death by the *de cuius*. There could be circumstances making it impossible or undesirable to execute customary intestate succession arrangements and ways developed to effect intentional changes to customary intestate succession principles. These arrangements made before death represent the very first signs of testamentary dispositions, forming the building blocks of what we today call testate succession law. There is a reluctance to use modern terminology like 'will' as the ancient Egyptians had no clear term for a will and different documents served this purpose. It is for this reason that the term 'testamentary disposition' is preferred. Initially the focus was on sustenance, family property and the nuclear family and the endowments in the pious foundations, which reflects the close relationship with religion and contain definite elements and concepts of succession law.

The religious and ethical instructions to care for the dead lost their force when legal obligations replaced it, presenting us with the very first signs of testate succession law in ancient Egypt. The ancient Egyptian *imyt-pr* document played an important role in the development of the testamentary disposition document in my view. However, it remains difficult to ascribe an exact meaning to the *imyt-pr* document. It is quite clear that the

imyt-pr was indeed closely related to matters of succession. It is submitted that part of the problem experienced in defining this term is that we tend, with our modern legal ideas and legal terminology, to attribute a certain term such as 'will' or 'testament' to the *imyt-pr*. This seems to be the wrong approach as the ancient Egyptians viewed these matters very differently. That it was related to succession and indeed has the resemblance of a modern will is a fact, but I recommend using the more general term 'testamentary disposition' in referring to the *imyt-pr* and other documents that served a similar purpose.

In the development and emergence of the testamentary disposition document in general the following played a role: the 'pious foundation', the *imyt-pr*, 'donations', 'fictitious sales' and the so-called 'divisions'. In my opinion documents pertaining to adoptions and marriage settlements are also relevant for purposes of this study as documents pertaining to testamentary dispositions, since their intention was *inter alia* to alter the customary intestate succession law.

The testamentary disposition document of ancient Egypt must be one of the oldest examples of testate succession law known to us today. It represents the 'birth' and first building block of modern-day wills. Although very remote in time, the modernity of the purpose and basic features of the ancient Egyptian testamentary disposition document is astonishing. These testamentary disposition documents and concepts pertaining to succession law were well known, established and in use in ancient Egypt centuries before Rome was founded. The resemblance to our modern-day wills and testaments through our Roman testate succession law heritage is remarkable in my view.

CHAPTER 7

TESTAMENTARY DISPOSITION DOCUMENTS FROM THE OLD KINGDOM

7.1 INTRODUCTION

This chapter places focus on some important texts from the Old Kingdom (ca. 2686–2181 BCE), in particular from Saqqara (the necropolis of Memphis), in order to identify and discuss concepts and elements pertaining to succession law in general, but with special emphasis on testamentary dispositions.

7.2 CONTEXT OF TESTAMENTARY DISPOSITION TEXTS OF THIS ERA

During the Old Kingdom⁸⁷ most of the royal pyramid complexes and private *mastaba* tombs of the Memphite necropolis were built (Shaw & Nicholson 2008:234). The antiquity, monumentality, perfection and mystery of ancient Egypt's pyramids sum up everything that has enthralled the Western mind since Napoleon's expedition at the end of the 18th century (Wilkinson 2007a:41). The Great Pyramid and its two companions at Giza are the best known, but the vast necropolis of Memphis, ancient Egypt's traditional capital, is littered with pyramids (Wilkinson 2007a:41). The era that saw the construction of these extraordinary buildings is known today as the Old Kingdom and represents the first great period of strong, centralised rule, also often referred to as the Pyramid Age (Wilkinson 2007a:41).

Monumental architecture and the pictorial arts developed parallel to writing systems⁸⁸ (Assmann 2002:48). The hieroglyphic script became a fully developed system, which was also used on the monuments (Malek 2000:108). Mortuary provisions for sustenance and rituals after death were extremely important, and the scenes and texts⁸⁹ in the tombs of the Old Kingdom in particular provide valuable insights into many aspects of ancient Egyptian culture (Wilkinson 2007a:42). At this stage in Egyptian history most inscriptions refer to the nobility. As Goedicke (1970:1) indicates, we have from the Old Kingdom inscriptions regarding legal and administrative matters. Regarding legal

⁸⁷ The historical context of this period is discussed in paragraph 2.2.

⁸⁸ A residential culture took shape, which included not only writing, art and architecture, but also a corpus of knowledge, a semantic system, a standard language and a code of ethics (Assmann 2002:48).

⁸⁹ These refer to scenes and texts relating to craftsmanship, farming practices, the structure of the administration and lifestyle of the elite (Wilkinson 2007:42).

documents we can distinguish between the royal legal document and the private legal document (Goedicke 1970:1). Apart from nobility, we sometimes also have private people as authors of documents (Goedicke 1970:1).

Theodorides (1971:295) makes an important and valid point, which actually holds true for most of ancient Egyptian history: that one cannot and should not form a picture of social, economic and legal life in ancient Egypt during the Old Kingdom based on the evidence from these representations since they are valid only for the nobility, with its special and separate set of social conditions.

It is the view of Theodorides (1971:292) that evidence of documents handed down in an incomplete form in funerary inscriptions, indicates that private property did indeed exist and that it was transferable.⁹⁰ Jasnow (2003c:101) adds that it seems that private property was known in this period, because people were able to alienate, bequeath or sell property without explicit recourse to the state. It is interesting that from the Fourth Dynasty (with the emphasis on royal supremacy) a private law inscription has been preserved (Nikaure – discussed below in paragraph 7.4; see Goedicke 1970:191). Although Nikaure was from the royal family, there seems to be no doubt to question the existence of a private law sphere for this period (Goedicke 1970:191). Since people could already own property in the Old Kingdom, it is therefore only natural that the private law inscriptions are primarily concerned with questions of property and possession (Goedicke 1970:190). Individuals, particularly those of higher status and those exercising official functions, may often have been supported by usufruct of state- or temple-owned property (Jasnow 2003c:100-101). The Royal Archives took care of the deeds for land ownership and held copies of documents recording civil actions, which essentially consisted of contracts and testaments as well as the texts of royal decrees (Grimal 2000:91).⁹¹ It also appears that local courts had jurisdiction over private property disputes (Muhs 2016:27). Property transfer documents from this period mention that a local court witnessed them and that a record of a trial that probably took place at a local court situated at Elephantine Island dealt with the authenticity of a

⁹⁰ According to Theodorides (1971:292) the state guaranteed the execution of the deed of conveyance by registering them, as shown for example by the document called ‘the contract for the sale of a small house’ at Khufu, dating from the early Fourth Dynasty.

⁹¹ These documents provided the statutory basis of justice, which was concerned with the application of laws (*hpw*) (Grimal 2000:91). The word *hpw* is the plural of the word *hp* (law) which was discussed in paragraph 4.3.

property transfer contract (Muhs 2016:27). According to Muhs (2016:28) it was possible for contracts to be drawn up before such courts.⁹²

Muhs (2016:34) further suggests that most of the surviving transcripts of verbal agreements are either wills/testaments or transfers and that all these texts survive as inscriptions or fragments of inscriptions in tomb chapels. There are a few important texts from this period which do give us some valuable information relating to testamentary dispositions. They all come from Saqqara – the kings ruled from Memphis and the Memphite necropolis comprised Saqqara⁹³ as nucleus as well as Giza, Dashur and Abusir (Shaw & Nicholson 2008:201). During the Old Kingdom most of the royal pyramid complexes and private *mastaba* tombs of the Memphite necropolis were built (Shaw & Nicholson 2008:234). These texts might refer only to persons of royal birth or to elite members of society, but the essence of certain concepts and elements of succession law pertaining to testamentary dispositions is clearly identifiable and universal in nature, irrespective of the social status of its participants.

7.3 INSCRIPTION OF METJEN

7.3.1 BACKGROUND

Metjen⁹⁴ was an official who lived at the end of the Third Dynasty and beginning of the Fourth Dynasty (Wilkinson 2005:154). According to Breasted (2001:76) Metjen died in the reign of Snefru and was buried next to the Step Pyramid of Djoser in Saqqara.

Metjen's *mastaba* chamber was discovered by Lepsius at Saqqara and is now in the Berlin Museum (Numbers 1105, 1106) and a copy of the inscription was published by Lepsius, Schaefer and Sethe (quoted in Breasted 2001:76). His *mastaba* is inscribed with

⁹² It must be kept in mind, as Muhs (2016:52) correctly observes, that individual ownership and transfers of land and property were primarily documented orally with local witnesses, and only rarely transcribed into writing.

⁹³ According to Shaw and Nicholson (2008:234) Djoser was the first significant ruler of the Third Dynasty, and his step pyramid still dominates the skyline of Saqqara. The kings ruled from Memphis and built their tombs at nearby Saqqara (Muhs 2016:21). The credit for the first successfully completed large stone building in the world, the Step Pyramid, goes to Djoser (Malek 2000:91). This new architectural form ushered in a new historical period, but had a clear link with the past because in its initial design it was a *mastaba* with a rectangular ground plan which was a typical royal tomb of the Early Dynastic period (Malek 2000:91). The perfection of pyramid design and construction reached its peak under Sneferu's son and successor, Khufu, with the building of the Great Pyramid of Giza (Malek 2000:94-95).

⁹⁴ Metjen's statue has also survived and is a good example of early Old Kingdom sculpture (Wilkinson 2005:154). The name Metjen is transliterated by Gödecke (1976:10) as *Mtn*.

an autobiographical text⁹⁵ detailing his career within government and is an important source for knowledge about early Egypt (Wilkinson 2005:154).

The *Inscription of Metjen*, according to Logan (2000:51), consists of Metjen's various titles as well as extracts from various legal contracts and royal decrees which guaranteed the continued maintenance of his various estates and funerary cult. This is an indication of provision for sustenance and rituals for the deceased. Metjen's inscriptions are probably the earliest to expand beyond the listing of offerings, names and titles, since we find additional statements about the founding of his funerary property (Strudwick 2005:192).

The inscription tells us of Metjen's rise from being a scribe and overseer of a provision warehouse to governing a number of towns and districts in the Delta (Breasted 2001:76). Metjen was rewarded with gifts of land, acquired more titles, and reports on the size of his house and accounts of the grounds (Breasted 2001:76). It would appear the texts are taken from an original series of decrees setting up the foundations (Strudwick 2005:192).

7.3.2 THE TEXT

I am using Strudwick's (2005:192-194) translation⁹⁶ and have consulted Sethe's *Urkunden* (1903) for the hieroglyphs.

Decree I⁹⁷

(To) the ruler of the nome, leader of the land, overseer of commissions of the eastern part of the sixth nome of Upper Egypt (regarding) the judge in charge of offering, controller of the great estate of the third and fourth/fifth nomes of Lower Egypt, overseer of the troops of the western border:

He has bought 200 arouras of land from many royal colonists.

⁹⁵ The *Inscription of Metjen* is important as it is the earliest document of its kind. It deals with the geography and administration at this early period, from which we know almost nothing from other sources (Breasted 2001:76).

⁹⁶ I shall engage and have consulted various translations in my discussion of this text and others. According to Strudwig, (2005:57) the following text conventions are generally used in the translation of Egyptian texts:

[] enclose translations of restored text. Text in these brackets, in italics, is specifically speculative.

() enclose words that are not in the original text, but are added to clarify the translation. Text within these parentheses, in italics, serve the purpose to explain.

... indicate gaps in the text or words which cannot be translated.

< > enclose words or parts of words which are omitted in the original text.

(?) follows words or phrases of which the translation is doubtful.

⁹⁷ Strudwick (2005:192) only translates the titles which are applicable to the context of these 'decrees'. This is obvious for the context and sufficient for the context of this present study.

He has given 50 arouras of land to (his) mother Nebesneit when she set up her will for the children, and their share was set down in a royal document for every office.

Decree II

(To) the controller of the mansion of Huni in the second nome of Lower Egypt:

He was given together with his son 12 arouras of land with dependents and herds of cattle.

Decree III

(To) the leader of the land, ruler of the nome, overseer of commissions in the seventeenth nome of Upper Egypt, overseer of messengers:

(regarding) the sixteenth nome of Lower Egypt, 4 arouras of land in Baseh (with) dependents and all things which are contained in a decree of the scribe of the office of provisioning; while he is (still) on earth, it was given to (his) only son and it was seen to that the decree was brought into his presence.

Decree IV

(To) the overseer of commissions of the fourth/fifth and third nomes of Lower Egypt:

12 'foundations of Metjen' have been founded for him in the fourth/fifth, sixth and second nomes of Lower Egypt (along with) their products for him in the dining room. These have been bought for 20 arouras of land from many royal colonists, (along with) 100 portions of funerary offerings which come daily from the soul chapel of the royal mother Nymaathap (and with) a walled estate 200 cubits long and 200 broad, set out with fine trees, and a large pool made in it; it was planted with fig trees and vines.

It is written down in a royal document, and their names are (recorded likewise) on (this) royal document.

The trees and the vines were planted in great numbers, and the wine therefrom was produced in great quantity (or 'of great quality'). A garden was made for him on land of 1 *kha* and 2 *ta* within the enclosure, which was planted with trees.

(It was named) Iymeres, a 'foundation of Metjen', and Iatsobek, a 'foundation of Metjen';

The property of his father the judge and scribe Inpuemankh was given to him, without wheat and barley and the property of the estate, but with dependents and herds of donkeys and pigs (?).

He was promoted to first of the scribes of the office of provisioning and overseer of the office of provisioning;

He was promoted to be the 'strong of voice' among those involved in agricultural production when the boundary official of the sixth nome of Lower Egypt was in charge of the judge and supervisors of reversionary offerings in the sixth nome of Lower Egypt, who should take the job of judge and 'strong of voice',

and he was promoted to be overseer of all linen products of the king;

and he was promoted to be ruler of the Per-Desu and the towns which are under the same control (?);

and he was promoted to be the boundary official of the people of Buto and controller of the estate of Per-Sedjaut and Per-Sepa and boundary official of the fourth/fifth nome of Lower Egypt and controller of the estate of Senet and the nomes under the same control, controller of Per-Sheptjet, and controller of the towns of the Great Mansion of the southern lake (*the Fayum*).

The 'foundations of Metjen' have been founded out of what his father Inpuemankh gave him.

7.3.3 CONCEPTS AND ELEMENTS IDENTIFIED

7.3.3.1 Date

According to Logan (2000:51) the date can be ascertained from Metjen's titles which include the names of Huni and Snefru and mention the funerary estate of Nimaathapi, who was the mother of Snefru and accordingly the date can be set around the end of the Third Dynasty to the early Fourth Dynasty.

It is important to note that it is possible to determine the date. For obvious reasons an indication of the date is important in any testamentary disposition. For now, it is important that we are able to determine a date for this inscription and also to determine that it dates from a very early period in ancient Egyptian history. In my opinion, the dating refers obviously to the *Inscription of Metjen* itself being carved into the tomb walls. It might be referring to the pious foundation and is considered as a testamentary disposition for reasons discussed earlier (see paragraph 6.3).

It is also important that mention is made in the *Inscription of Metjen* of an earlier testamentary disposition, namely the *imyt-pr* drawn up by his mother at an earlier stage. We cannot, however, ascertain a date for this earlier *imyt-pr* document from the *Inscription of Metjen*, but it was obviously done prior to the *Inscription of Metjen* itself.

7.3.3.2 Disposition

It is important to keep in mind, for purposes of this study, that the *Inscription of Metjen* refers to two testamentary dispositions; the one being the *Inscription of Metjen* itself (pious foundation), and also the earlier *imyt-pr* drafted by the mother.

It is mentioned in the *Inscription of Metjen*, according to Breasted (2001:79, line 14-15 of the text) that 'there were conveyed to him 50 stat of land by (his) mother Nebsent (*Nb-*

snt); she made a will thereof to (her) children; it was placed in their possession by the king's writings (in) every place'.

Gödecken (1976:11) gives the following translation:

Er hat (dafür) gegeben die 50 Aruren Feld der Mutter Nb.s-Neith, da sie ein imj.t-pr darüber gemacht hat für die Kinder, indem ihre Anteile gelegt wurden (d.h. eingetragen wurden) zu den königlichen Akten eines jeden Büros.

Logan (2000:51) translates it as follows:

... that 50 arura of arable land were given to him belonging to his mother Nebset, she made an *imyt-pr*-document thereof to my children. That which will belong (*hrj*) to them was put into a royal document in every place (office?).

It is Logan's (2000:66) view that the testatrix effectively here awarded the property to Metjen's children ('my [Metjen's] children'), in the process skipping a generation. Breasted (2001:79) is of the view that it cannot be translated as 'my [= Metjen's] children' but rather as 'her children' since it refers to the testatrix's children. Gödecken (1976:11) translates it merely as 'the children'. Strudwick (2005:192) also translates it as 'for the children'. It would, however, appear that the *imyt-pr* of the mother awarded her property not only to the eldest son as sole heir but also to her other children. The children therefore appear to be those of the mother. The mother made the testamentary disposition(*imyt-pr*) for the eldest son, but also for her other children. This shows that the *imyt-pr*, that is, the testamentary disposition document, was used in this case to alter the customary intestate succession law.

It is important to note that we have a reference here to an *imyt-pr* made by the mother to her children. As discussed and explained in paragraph 6.3 above, it is difficult to give a correct translation for the word *imyt-pr*, but as previously explained I am using the broader translation of 'testamentary disposition' for, *inter alia*, the *imyt-pr*. It is clear that we have here a very early, if not the very first, reference to a disposition and specifically a testamentary disposition drawn up by the mother.

As indicated in paragraph 6.3, it thus appears that the *imyt-pr* was used as testamentary disposition document especially in cases where the beneficiaries were siblings of the testator. The *Inscription of Metjen* is an example of this. It is submitted that the earlier *imyt-pr* drafted by the mother was for the benefit of her own children.



The earlier *imyt-pr* of the mother is referred to in the *Inscription of Metjen* which is essentially a testamentary disposition (pious foundation). According to Muhs (2016:36) there are a number of transcripts of verbal agreements from the Old Kingdom that are not explicitly identified as wills or transfers but probably served the same purpose. Many of these survive as inscriptions in tomb chapels or fragments of such inscriptions, for example the *Inscription of Sennuankh* from his tomb at Saqqara (Muhs 2016:36). The contents and purpose of Metjen's inscriptions make it very clear that this is essentially a testamentary disposition (pious foundation).

The decrees and contracts of Metjen inscribed into the tomb walls represent the second disposition. This second disposition refers to matters which would ensure the future maintenance of Metjen's funerary cult and the estates. This, in my opinion, refers to the pious foundation being the origin of the testamentary disposition.

7.3.3.3 Testator

It is evident in the case of the *Inscription of Metjen* that the reference made to the *imyt-pr* refers to Metjen's mother as being the testatrix of the will. This is an important fact as it gives us an indication of the existence of testamentary dispositions very early in ancient Egyptian civilisation. It is also significant that it is a *woman* making the will, indicating that women could make a testamentary disposition as early as the end of the Third Dynasty or the beginning of the Fourth Dynasty. It is unclear what the testatrix's (Metjen's mother) status was, but there is no doubt that she was the owner of immovable property as this was bequeathed to Metjen.

The *Inscription of Metjen* implies that Metjen himself was the 'testator' as the *Inscription of Metjen* actually refers to legal contracts and decrees which guaranteed the continued maintenance of his various estates and funerary cult. Its primary purpose was to make provision prior to death for sustenance. In essence the testamentary disposition is about making arrangements prior to death for one's estate, albeit at this very early stage in history for the mortuary cult. The foundation for testate succession law has been laid.

7.3.3.4 Testamentary capacity

From the *Inscription of Metjen* one can deduce that women had the capacity not only to have their own property, in this case immovable property, but that they were also able to make a testamentary disposition and bequeath their assets in terms of such a disposition. This right of free disposal by the mother is significant as the mother was

apparently able to award immovable property, implying that she herself was the owner of such assets and not the king, as would be expected in early ancient Egypt.

From the provisions made in the second testamentary disposition it is evident that Metjen had the testamentary capacity to make these provisions that would be applicable after his death. Metjen as an adult, making a testamentary disposition by means of the inscriptions in his tomb, clearly has the testamentary capacity to make his wishes known.

7.3.3.5 Beneficiaries

The beneficiaries of the mother's testamentary disposition were Metjen and his siblings, whereas the beneficiary of Metjen's testamentary disposition was the 'foundation' in order to provide for the mortuary cult. Thus the beneficiaries of the second testamentary disposition are effectively the estates and funerary cult. These 'beneficiaries' receive the benefit in order to fulfil an obligation; the obligation being effectively to sustain the deceased.

7.3.3.6 Use of the verb *rdi* ('to bequeath') and its translations

It is important to discuss the terminology used here. In modern terminology we use the verb 'to bequeath' when giving something by means of a testamentary disposition. The ancient Egyptians did not necessarily have the same terminology. The phrase 'I have given to thee' refers to an act of the transferor and was typical of Egyptian formulary style for centuries (Yaron 1960:381). Egyptian documents use only one verb, *di*, meaning 'to give' (Yaron 1960:382). In respect of the *Inscription of Metjen* the translation chosen for the word for the bequest being made is 'given', but it could also be translated as 'awarded' or 'bequeathed' in the context of the mother making a testamentary disposition.

7.3.3.7 Specific assets

As has already been mentioned in paragraph 7.3.2.2 above, immovable property was awarded to the beneficiaries. It is remarkable to note the emergence of free disposal in a society where everything initially belonged to the king, and important to examine at what period in time which types of property appear as objects of inheritance and by what means they were transferred (Lippert 2013:10). Lippert (2013:10) argues that in this process we can learn more about the development of personal property. For

instance, regarding immovable property (including land and buildings) we have evidence dating from the Old Kingdom where immovable property was the object of inheritance (Lippert 2013:10). The *Inscription of Metjen* is an excellent and very early example. Immovable property in the Old Kingdom usually included personnel, but they were not slaves but serfs, as they could not be sold independently from the land to which they belonged (Lippert 2013:10).

The main focus of documents of inheritance was usually on immovable property (Lippert 2013:10). This supports my argument that property was initially transferred in order to make provision for the supplying of sustenance and the required offering rituals for the deceased. In Metjen's case several references are made to the 'foundations' as vehicles of providing the necessary sustenance. However, movable property such as furniture and household implements were occasionally bequeathed, especially if there seems to have been no other property (see for example *Papyrus Ashmolean Museum 1945.97*, discussed in Chapter 9) and *Ostrakon Gardiner 55* (see Lippert 2013:10).

From the Third to Fourth Dynasty of the Old Kingdom we know that Metjen makes reference to compensation of land, implying the ability to transfer these rights freely (Jasnow 2003c:102; Sethe 1903:8-11), by means of an *imyt-pr* document, which enabled someone to transfer personal and real estate to another person (Logan 2000:49).

It would appear that there was a constant interflow between royal and private mortuary cult property (Jasnow 2003c:102). There are few references in the Old Kingdom to the purchase, sale and inheritance of agricultural land, such as the purchase of 200 arourae⁹⁸ of fields to establish a funerary foundation in the inscription of Metjen (Muhs 2016:46). From Metjen's inscriptions, we know that the continued maintenance of his various estates and funerary cult were guaranteed (Logan 2000:51).

7.3.3.8 Origin of property

It is noteworthy that an effort is made to state the origin of the deceased's assets. It is stated exactly which property comes from the mother and which from the father and which was bought by Metjen. This appears, *prima facie*, to be a feature of testamentary dispositions from ancient Egypt, appearing already this early in ancient Egyptian

⁹⁸ An ancient Egyptian unit of land measure equal to 0,677 acres (27,4 ares).

history. It appears to have been important to indicate the origin of the property, in all probability to prove ownership. The origin of the property is mentioned by the testator in order to indicate his legal right to dispose of it as he wishes (Der Manuelian 1986:15).

In this regard it is also important to note that we have the two testamentary dispositions referred to above from the *Inscription of Metjen* each mentioning the origin of the property which now forms the deceased estate, but more importantly we also have confirmation of the customary intestate succession law in the *Inscription of Metjen*. Even if the property did not belong to Metjen as owner, but to the state, the stipulations in the inscription represent an important feature of succession law. I make this deduction because mention is also made, when referring to the origin of property, that certain property was inherited by Metjen from his father in terms of *prima facie* the customary intestate succession law, where it is stated in lines 2-4 as follows:

A field of four aruras and the people and everything in the funerary-estate decree [*wḏt-mdw*] of the scribe of stores [Metjen's father] is given to his one son (Metjen) ... (as translated in Logan 2000:51).

7.3.3.9 Record office

From the inscription it appears that reference is made to the fact that a document stating what property belonged to the beneficiaries in terms of the *imyt-pr* was placed in a record office. The words used are that the record was 'put in a royal document in every place'. Apparently, there was from very early on a need to keep record of the distribution of assets in terms of a testamentary disposition, albeit to keep record of immovable property in ancient Egypt. This is similar to the role and function of the present-day Master of the High Court for last wills and testaments and the Deeds Office for transfers of immovable property in South Africa.

7.3.3.10 Witnesses

The purpose of the witnesses to a testamentary disposition was to serve to authenticate the wishes of the *de cuius*. It would appear that the names of witnesses were most often omitted when the inscriptions were done in tombs. In the case of an inscription in a tomb, like the *Inscription of Metjen* under discussion, it would appear that there was no need to have witnesses, as the priests responsible for the mortuary sustenance and rituals were effectively the witnesses ensuring the fulfilment of the wishes of the deceased and serving to the wishes. The inscriptions mainly referred to the royal and elite group of society who had the benefit of priests looking after the mortuary cult. With

private people the role of the *ka*-priest was mostly performed by the eldest son, but it was also possible for private people to 'share' priests. This was typical of the pious foundation. No mention is made of witnesses in the inscription, because the mortuary priests, by sustaining the deceased, effectively authenticate the *de cuius*'s testamentary disposition. The lasting inscriptions on tomb walls instead of on perishable papyri is indicative of among others the *de cuius*'s ownership of certain identifiable property. Its visible nature would ensure the protection of these property rights and compel the mortuary priests (as implied witnesses to these 'contracts') to comply to the provisions contained in the inscriptions.

From the available evidence we do not have any indication about the details of the prior *imyt-pr* drafted by the mother and therefore we do not know if any witnesses were involved and if so, how many.

7.3.3.11 Mortuary provisions

From Metjen's inscriptions, we know that the continued maintenance of his various estates and funerary cult was guaranteed (Logan 2000:51). The *Inscription of Metjen* provides very early evidence of the purchase, sale and inheritance of agricultural land, such as the purchase of fields to establish a funerary foundation (Lippert 2013:10). As Teeter (2011:129) affirms, the *Inscription of Metjen* shows that his food offerings were raised in different locations of Lower Egypt and then conveyed to his tomb at Saqqara.

In the *Inscription of Metjen* mention is made of his mother's testamentary disposition, but we do not have the testamentary disposition itself to determine any pious origins from it. We do, however, know from the *Inscription of Metjen* that Metjen received from his father a field of four aruras, the people and everything in the funerary estate decree and that Metjen bought a field of 200 aruras in order to make provisions for sustenance. It is clear from the above evidence that the process relating to assets and their transfer at death was closely aligned with religious practices. The mention of the funerary estate and the bread to be provided for the offering hall shows the pious foundations of succession law. It is clear that the purpose of these arrangements made prior to death and inscribed on the tomb walls was to ensure the future sustenance of the deceased.

The most important fact, for purposes of confirming the mortuary connection, is the fact that the *Inscription of Metjen* is inscribed in the tomb itself. This was done to emphasise

and confirm the testamentary disposition (in the form of a pious foundation) and the implied duties of the priests (and family) for sustenance and rituals after death.

According to Muhs (2016:34) these inscriptions usually established rules for the mortuary cult of the deceased buried in the burial chambers.


7.4 THE INSCRIPTION OF NIKAURE

7.4.1 BACKGROUND

According to Logan (2000:52) the *Inscription of Nikaure* dates from the Fourth Dynasty. Nikaure⁹⁹ was a prince, being the son of Khafre¹⁰⁰ (Breasted 2001:88). It is assumed he was Khafre's son¹⁰¹ because of the location of Nature's tomb, Giza LG87 (Dobson & Hilton 2004:61).

The text was published by Lepsius (1975; *Denkmäler* II, 15 a) and Sethe (1903; *Urkunden* I, 16, 17)¹⁰² (collated with Berlin drawing No. 253, and Berlin squeezes Nos. 35 and 38) (Breasted 2001:88). We do not know whether the *Inscription of Nikaure*, carved on the wall of his tomb, was carved before or after his death, written perhaps by his scribe on papyrus and used by a mason as a guide for his carving (Boucher 1987:72). And, as Boucher (1987:72) also mentions, the important question arises what will or testament clause precedents were available at the time of drafting of the *Inscription of Nikaure*. These are important observations which must be kept in mind when looking at these ancient testamentary disposition documents from ancient Egypt.

It is Breasted's (2001:89) view that this is the only document of its kind from the Old Kingdom, which has survived in such a state of 'excellent preservation'. In contrast, Logan (2000:52) is of the opinion that the text is in such fragmentary condition that it is

⁹⁹ The spelling used by Breasted (2001:88) is Nekure. The name Nikaure in the original text is given by Sethe (1903:16) as . The name is transcribed as 'Nikaure' by Dobson and Hilton (2004:53). This appears to be correct as my transliteration is 'n kaw re'.

¹⁰⁰ Khafre, or Khafra, (2558-2532 BCE) was the son of Khufu, fourth ruler of the Fourth Dynasty and builder of the second pyramid at Giza (Shaw & Nicholson 2008:167). Khafra became ruler after the death of his half-brother Djedefra, and his royal titulary included the new *sa Ra* ('son of Ra') epithet, which Djedefra had used for the first time (Shaw & Nicholson 2008:167). According to Shaw and Nicholson (2008:167) it is assumed that the head of the great sphinx was a portrait of Khafra as it is situated immediately next to his causeway and valley temple. Although there have been suggestions that the geological condition of the sphinx indicates that it was carved earlier, the archaeological and circumstantial evidence appear to support its synchronicity with the Fourth Dynasty pyramid complexes (Shaw & Nicholson 2008:167).

¹⁰¹ It also appears from the contents of the text itself that Nikaure was Khafre's son.

¹⁰² See Addendum C.1 for the hieroglyphic layout of the text given by Sethe, which is important in the discussion to follow.

impossible to tell whether it was a legal document or perhaps a literary depiction of a legal matter. My view on the matter is that the *Inscription of Nikaure* clearly refers to a testamentary disposition and that there are certain concepts and elements in this document which refer to elements of testate succession.

7.4.2 THE TEXT

The translation used is by Breasted (2001:89-90). Other translations will be referred to in the discussion of this text below. For the hieroglyph text, see Addendum C.1. In the discussion reference will be made to this hieroglyph text.

Date

Year of the twelfth [occurrence] of the numbering of large and sm[all] cattle.

Introduction

King's son, Nekure¹⁰³ (Ra-n-kaw) he makes the (following) [command], (while) living upon his two feet without ailing in any respect.

First Legacy

I have given to the king's-confidant, Nekennebti (N-ka-n-nbty), (in) -, (the towns of) "Khafre- -", and "Khafre- -".

Second Legacy

His son, the king's-confidant, Nekure (in) the eastern back-land, (the towns of) ["Khafre- -", "Khafre- -" and "Khafre- -"].

Third Legacy

His daughter, the king's-confidant, Hetephires, (in) the eastern district, (the town of) "Khafre- -"; (in) the eastern back-land, (the town of) "Khafre- -".

Fourth Legacy

[His son] the king's-confidant, Kennebtiwer (Ka-n-nbty-wr) (in) -, (the town of) "Great-is-[the-Fame]-of-Khafre", (in) the Mendesian nome, (the towns of) "Khafre- -", and "Khafre- -".

Fifth Legacy

-----, (in) the Mendesian nome, (the towns of) "Khafre- -" and "Khafre- -".

Sixth Legacy

His beloved wife, the king's-confidante, Nekennebti (N-ka-n-nbty), (in) the nome of the Cerastes-Mountain, (the town of) "Beautiful-is-Khafre"; (in) the nome of Upper (the town of) "Brilliant-is-Khafre" (xaf-Ra-[x]a); (in the pyramid-town) "Great-is-Khafre", the estate of his daughter, - and -.

¹⁰³ As indicated in footnote 92 this is the spelling used by Breasted (2001) for Nikaure.

7.4.3 CONCEPTS AND ELEMENTS IDENTIFIED


7.4.3.1 Date

Logan (2000:52) goes on to say that the fact that the document starts with a date is an indication of a legal text. Line 1 is translated by Breasted (2001:80) as 'Year of the twelfth [occurrence] of the numbering of large and sm[all] cattle'.

The dating of testamentary dispositions is to this day very important as it gives an indication when the will was drafted, and also of subsequent wills which would then revoke earlier dispositions.¹⁰⁴




7.4.3.2 Disposition



A core feature of a testamentary disposition is that there must be a declaration of intent by a testator to dispose of his property, as mentioned in his will (testamentary disposition document) (Dal Pont & Mackie 2013:14). Dal Pont and Mackie (2013:15) continue to say that a testamentary instrument has no legal effect until the testator's death and that this is the true test of a testamentary instrument. If the person drawing up a testamentary disposition intends that it shall not take effect until after his death, it is testamentary in nature (Dal Pont & Mackie 2013:15). The will (testamentary disposition) is a declaration in written form by the testator regarding the devolution of his property after death (Corbett, Hofmeyer & Kahn 2013:34).

According to Sethe (1903:16), Line 2 is as follows: , which Breasted (2001:89) translates as 'King's son, Nekure (Ra-n-kaw) - - he makes the (following) [command]'.

Breasted (2001:89) is of the opinion that the determinative of a document is visible at the end of the *lacuna* in this case. The word 'command/edict' (*wDt-mdt*) is, according to Breasted (2001:89) placed after 'make' or 'made' in this regard. Logan (2000:52) affirms this view held by Breasted, that Nikaure's text most probably refers to a *wDt-mdw*-document. This portion of the sentence is translated by Logan (2000:52) as follows: 'He (Nikaure) made a ///', and he affirms that the word which follows and which is illegible, must refer to a document as the book roll determinative is visible, which is the determinative for the hieroglyph word 'document'.

¹⁰⁴ A discussion of the system of dating documents in ancient Egypt appears in paragraph 6.2.

Gardiner (2005:563) gives the translation for ‘command’ as the verb wD , and he translates $wDt-mdw$ as the noun ‘command’. Allen (2001:457) translates the verb wD  as ‘command’, and the word wDt  wDt , the noun, as ‘command’. Faulkner (2006:73) also translates the verb as ‘command’. The word wD is also translated as ‘to decree, to ordain, to commit, to assign’ (Lesko 1982:137).

Interestingly, Gardiner (2005:563) gives the word  and its transliteration swD and later  $sw(A)D$ with the English translation of ‘hand over’, ‘bequeath’.

The word ‘command’ could be translated with a different word, perhaps with ‘disposition’, but the essence appears to be that it is a declaration by the deceased.

According to Boucher (1987:66) the *Inscription of Nikaure* might not be the first of Egyptian wills or testamentary dispositions, and it is most likely that a precedent for it existed written on papyrus. We might never know to whom the scribe of Nikaure’s will or testamentary disposition turned for guidance when drafting the will, but surely the pattern of Nikaure’s testamentary disposition was not something that was dreamed up on the spot (Boucher 1987:69). A ‘book of forms’ might have been available and used at the time of drafting of the *Inscription of Nikaure*, which might have survived had it not been for the destruction of the library of Alexandria (Boucher 1987:70).

7.4.3.3 Testator

The testator is the person making the declaration regarding the devolution of the testator’s property after the testator’s death (Corbett, Hofmeyer & Kahn 2001:34). The text starts out to identify the testator, Nikaure, for the text begins with ‘king’s son, Nikaure’. According to Boucher (1987:70), this practice of making reference to the reign of the sovereign was probably made for the sole purpose of identifying Nikaure rather than making reference to the sovereign for the purpose of dating the testamentary disposition.

7.4.3.4 Testamentary capacity

In order for the testamentary disposition to be valid, the testator must have sufficient mental capacity to draw up such a document, according to Dal Pont and Mackie (2013:36). Testamentary capacity requires that the testator must have the required

mental capacity, in other words, he should be of sound mind (Dal Pont & Mackie 2013:38).

The line 'being of sound mind' (line 2), is engraved horizontally over the following columns and appears to be the prescript or title of the testamentary disposition (Breasted 2001:89). The translation of this 'being of sound mind' is given by Breasted (2001:89) as '... he (Nikaure) makes the (following) [command] [decree] (while) living upon his two feet without ailing in any respect'.

According to Boucher (1987:69) one may assume that the reference to the testator's health was an important and customary declaration in a testamentary disposition, and undoubtedly a declaration that had been in use long before we see it in the *Inscription of Nikaure*.

The reference to 'being of sound mind' in Nikaure's testamentary disposition is significant as this appears to be an essential principle in ancient Egyptian testamentary dispositions. In our modern law of succession this element is still of the utmost importance. As De Waal and Schoeman-Malan (2015:37) indicate, in order to make a valid (modern) will, the testator must have the necessary testamentary capacity at the time of execution of the will; if this capacity is absent, the supposed will is invalid *ab initio* (from the beginning).

The mental capacity of making a will is today still as important and applicable as in ancient Egypt. In South Africa, for instance, section 4 of the Wills Act 7 of 1953, which governs testamentary capacity, states the following *inter alia*: 'Every person of the age of sixteen years¹⁰⁵ or more may make a will unless at the time of making the will he is mentally incapable of appreciating the nature and effect of his act...' (De Waal & Schoeman-Malan 2015:38).

The necessity of being of 'sound mind' is obvious, as the testator must be mentally capable of understanding the nature and effect of his or her act at the time of making the will, and the Wills Act in South Africa makes it clear that this mental capacity must be present at the time of making or executing the will (De Waal & Schoeman-Malan 2015:38).

¹⁰⁵ The age was moved up to 16 in the Wills Act, but according to common law a minor could make a valid will on reaching puberty, which was 12 years for girls and 14 years for boys (De Waal & Schoeman-Malan 2015:38).

This mental capability, according to De Waal and Schoeman-Malan (2015:42), would entail an appreciation by the testator of the nature of the testamentary act of disposing of one's property to named beneficiaries after one's death. In the case of *Harlow v Becker* 1998 (4) SA 639 (D) the court found that the testatrix was mentally incapable of appreciating the nature and effect of her act in executing her will and that she therefore did not have the necessary mental capacity to make a will (De Waal & Schoeman-Malan 2015:42-43).

Today, in the modern world, an impairment (like undue influence, duress or mistake) of the testator's free testamentary expression at the making of the will, may also result in the will being invalid (De Waal & Schoeman-Malan (2015:44).

This introductory clause of Nikaure's testamentary disposition (where he refers to his health) is remarkable in the light of the continued practice of will writing for hundreds of years to come (Boucher 1987:63).

7.4.3.5 Beneficiaries

The persons who receive an inheritance from the testator are called the beneficiaries and we distinguish between heirs and legatees. Obviously the question whether a beneficiary is an heir or legatee will be determined by taking into account the contents of the specific testamentary disposition and is therefore a question of interpretation.

Prior to the testator's death, nominated beneficiaries under a testamentary disposition have no more than a contingent interest, a mere expectancy, of inheriting (Dal Pont & Mackie 2013:14). This expectancy or interest is by its very nature unenforceable in law until the testator dies (Dal Pont & Mackie 2013:14).

As Corbett, Hofmeyer and Kahn (2001:33) indicate, others may acquire certain rights upon the death of the testator and may succeed to the property of the deceased under the provisions of *inter alia* a will. They further make the point that ownership of property terminates when the owner dies, and that any system of law recognising private ownership must make provision for the devolution of the owner's property on the owner's death (2001:33).


In the *Inscription of Nikaure* there are eight subjoined columns, with each column being headed by the name of an heir and the legacy bequeathed to the specific heir underneath (Breasted 2001:89).

As set out by De Waal and Schoeman-Malan (2015:130), an heir is a beneficiary who inherits the entire estate, a proportional part of it, a particular part of it or the residue of the inheritance, while a legatee always inherits a specific or determinable asset or a specific amount of money.

In the *Inscription of Nikaure* there are eight columns with each column headed by the name of a beneficiary. In order to determine whether the beneficiary is an heir or legatee, we need to have a closer look at the bequest itself which follows the name of the beneficiary in each case.

7.4.3.6 Words and translations used for ‘to bequeathe’



The word used in the text is ‘give’,  (r)di rX nsw. It is evident from the text that the formula ‘I have given’ is omitted after its first occurrence, hence ‘his son’ instead of ‘my son’ (Breasted 2001:90). This is important to keep in mind in order to translate and interpret the testamentary disposition correctly.

As indicated above, Breasted translates the hieroglyph in this case as ‘I have given’, but my submission is that there is not necessarily an indication of the use of the past tense in the text itself. There is therefore no reason why the hieroglyphs cannot be translated in the present tense (at the time of writing the disposition) to read ‘I give’. Furthermore, the possibility must be considered to rather translate the hieroglyph with ‘I bequeath’ in view of the context of this document, it being a testamentary disposition.

The bequests made by Nikaure refer to very specific assets awarded to specific beneficiaries (legatees).

7.4.3.7 Specific assets

From the text it is clear that every bequest (to each of these eight beneficiaries mentioned above) is a town or towns, with the district or nome given first, followed by the name of the town, with the names being compounded with that of Khafre (Breasted 2001:89). The assets Nikaure bequeathed to his heirs consisted of fourteen towns¹⁰⁶ and two estates in the pyramid city of his father (Breasted 2001:89). These two estates alluded to must have included his ‘town house’ and gardens (Breasted 2001:89). The

¹⁰⁶ According to Breasted (2001:89) eleven of these fourteen towns are named after Khafre, and there is no reason to doubt that the other three were also so named, but these names are unfortunately now unreadable.

fourteen towns were left to five heirs: his wife and his three children, with the fifth name being lost (Breasted 2001:89).

It is therefore clear that specific assets are bequeathed to specific beneficiaries, making these bequests legacies and the beneficiaries legatees. From a modern perspective we know that a legacy can be in any form, for example the testator's farm, his or her shares in a company, or a fixed amount of money, and that a legatee can only be nominated in a will or an antenuptial agreement (De Waal & Schoeman-Malan 2015:130). It is important to remember that there can be no intestate legatees as there are only heirs in the law of intestate succession (De Waal & Schoeman-Malan 2015:130).

7.4.3.8 Separate clauses

What strikes one is the remarkable simplicity and yet great effectiveness of the *Inscription of Nikaure* as a testamentary disposition. Nikaure nominates the different legatees with each legacy in a separate column in the text and thus effectively creates different 'clauses' in his testamentary disposition in this way. Each legatee and legacy is dealt with in a clause. In modern times we still do exactly the same in order to have a clear understanding of the last wishes of the testator. This appears *prima facie* to be a fascinating precedent for future testamentary clauses as this form is still being used today. This is an important feature so early in ancient Egyptian culture and it will again be considered in other texts to be analysed in order to ascertain if this was a general feature of testamentary dispositions in ancient Egypt.

7.4.3.9 Revocation and codicils

As Dal Pont and Mackie (2013:14) correctly state, a will as a form of testamentary disposition represents no more than a declaration of intent and can therefore be altered or revoked by the testator at any time prior to taking effect, assuming that the testator has the mental capacity to effect the revocation or amendment.

According to Breasted (2001:89) Nikaure left the estates (referring to the town house and gardens) to a daughter, but she evidently predeceased him, and therefore on the reversion of the legacy to Nikaure, he left it to his wife.

7.4.3.10 Mortuary provisions

Apart from these fourteen towns, Nikaure also had at least twelve towns in his mortuary endowment of his tomb, but it is impossible to determine whether these had belonged to

Nikaure's estate, or whether they were donated by the reigning king at Nikaure's death (Breasted 2001:89).

It was the duty of the surviving family to provide offerings and sustenance for the deceased and it became necessary to make arrangements for this prior to death by the deceased (as previously discussed in this thesis in general, but specifically in Chapter 5). As Allam (2007:14) indicates, in order to ensure that the deceased's relatives, retainers or outsiders would meet the need of sustenance after death, the deceased would bequeath to these people fields or durable resources in order to enable them to bring the deceased mortuary offerings, celebrate certain services and maintain the tomb.

From the bequests in the *Inscription of Nikaure* to the different legatees it is clear that Nikaure bequeathed towns, nomes, and land to these legatees precisely to make provision for his mortuary offerings and/or sustenance.

7.5 HETI

7.5.1 BACKGROUND

The text of Heti dates from the Fourth Dynasty, according to Theodorides (1971:293). We do not know much about Heti, apart from the fact that, as stated by Theodorides (1971: 293), Heti was an 'important individual'. It would appear, *prima facie*, that we have therefore here yet another example of a testamentary disposition from the elite group of Egyptian society.

It is Jasnow's (2003c:124) belief that it remains unclear whether the transfers of property took place immediately or upon death in these testamentary dispositions. There are clear instances in the Old Kingdom of a division of property instituted through a testament (Jasnow 2003c:124).

7.5.2 TEXT

Theodorides (1971:293) refers to Sethe (1903; *Urkunden* i 162 f, and gives the following translation:

As for all my children, truly, that which I have constituted for them, as assets of which they shall enjoy the usufruct, I have not granted any of them the right to dispose of his (share), as a gift or in consideration of payment (?) ... an exception being made for the son he may have and to whom he shall transfer (it). They are to act under my eldest son's authority as they would act with regard to their own

property; for I have appointed an heir against the day – the latest possible – when I shall go to the West.

These funerary priests who shall act under his authority, he shall call upon them for my funerary offerings each day and on (such-and-such) festivals ..., but I have not granted him the right to require of them any service whatever, other than the funerary offering (which shall be made) for me each day ...

7.5.3 CONCEPTS AND ELEMENTS IDENTIFIED

7.5.3.1 Date

Jasnow (2003c:124) says it is expressly stated in these documents that they are drawn up while the party drafting them is still alive.

7.5.3.2 Disposition

According to Theodorides (1971:293) Heti made a will, or as stated literally, he gave out an 'order' from his 'living mouth'. Jasnow (2003c:124) agrees with this observation. It is clear that Heti made a testamentary disposition.

According to Boochs (1982:22) the *imyt-pr* was a substitute for the will. It usually explains the origin and nature of the owner's ownership, his or her legal claim to the property and his or her intent to dispose of it, despite variations of terminology (Der Manuelian 1986:15). Heti's testamentary disposition represents one of the earliest examples of the 'adaption' of the pious foundation to serve the purpose of a traditional will. This represents the evolution of the testamentary disposition document. Elements of the pious foundation are present, yet the children and eldest son are now directly incorporated in this testamentary disposition by Heti.

7.5.3.3 Testator

The author of a testamentary disposition is called the testator and needs to be identified. In this document the testator is clearly Heti as it becomes clear that he intended to make a testamentary disposition prior to death in order to avoid a situation where the income of the endowment would not go to his heirs.

7.5.3.4 Testamentary capacity

As has already been mentioned above, Theodorides (1971:293) confirms that Heti made a will, he gave out an 'order' from his 'living mouth'. Jasnow (2003c:124) affirms that Heti made the will, speaking with 'his living mouth' and that he gives property to his children 'in order that they may live'.

This reference to 'living mouth' is in my view similar to Nikaure's phrase 'while he was alive upon his two feet'. Jasnow (2003c:124) refers to Sethe (1903 *Urkunden* I, 24-32) where the official is represented as 'he speaks with his mouth before his children, while he is upon his two legs, alive before the king'. This clearly indicates that it was important to confirm that the testator had the mental capacity to draw up a testamentary disposition.

7.5.3.5 Beneficiaries

The beneficiaries appear to be the children of the testator Heti. The children are in actual fact *fiduciarius* heirs as I shall explain and discuss in the next paragraph.

7.5.3.6 Eldest son

In terms of our modern-day law of succession an executor must be appointed in every estate, testate or intestate (De Waal & Schoeman-Malan 2005:239). This is necessary as someone needs to take control of the deceased's estate and should be responsible for the administration of the estate. In Heti's testamentary disposition the eldest son is specifically important as he must supervise the mortuary priests performing the rites for the deceased Heti (Jasnow 2003c:124). The assets as well as the other children are also placed under the eldest son's care. It is clear that the eldest son is acting as an 'administrator', a modern-day executor.

7.5.3.7 Usufruct and *fideicommissum*

As De Waal & Schoeman-Malan (2005:132) correctly observe, a bequest can be made unconditionally, conditionally or subject to a *dies* (time clause). If a bequest is not attached to a condition or *dies*, it is regarded as a pure bequest (De Waal & Schoeman-Malan 2005:132). In other words, the bequest is unconditional if the benefit vests unencumbered in the beneficiary immediately upon the testator's death (De Waal & Schoeman-Malan 2005:132).

On the other hand, a conditional bequest is encumbered as it is subject to an uncertain future event and in the case of a *dies* (time clause), the bequest is subject to a certain future event (De Waal & Schoeman-Malan 2005:132). In other words, a bequest is conditional if the testator leaves something to a beneficiary and the bequest is not 'pure', but linked to the occurrence of an uncertain future event, which can be express or tacit (De Waal & Schoeman-Malan 2005:133).

A testamentary condition is described as follows by Van der Merwe and Rowland (1990:273, translated from the original Afrikaans):

A testamentary condition is a particular clause or provision in a will in terms of which the existence or continuation of a beneficiary's right regarding the benefit allocated to him is made subject to the occurrence or otherwise of an uncertain future event. An uncertain future event means that it is uncertain whether such an event will take place or not.

However, if it is clear that the event will take place at some future time, the bequest is not conditional, but subject to a *dies* (time clause) (De Waal & Schoeman-Malan 2005:133). There are various types of conditions, such as suspensive conditions, resolutive conditions, potestative, casual and mixed conditions, among others (De Waal & Schoeman-Malan 2005:133-139).

In his testamentary disposition Heti sets conditions on his bequest, namely that the beneficiaries cannot give the property away, or sell it to a stranger (Jasnow 2003c:124). The word 'gift', translated and used by Jasnow, should rather be translated as 'bequest' in this case. Of significance is the fact that we have already in this very ancient document the element of a condition. The condition entailed that the beneficiaries could only transfer the property to their own children (Jasnow 2003c:124). In my view this is, very importantly, already an early example of an implicit *fideicommissum*.

It can be presumed that Heti, the author of the testamentary disposition, is turning property into an endowment to provide for his mortuary cult (Theodorides 1971:294). Theodorides (1971:294) suggests that some of Heti's contemporaries made contractual agreements with priests, but that Heti wants to avoid letting any part of the endowment's revenues be lost to his heirs. According to Theodorides (1971:294), this is why Heti makes his children into a family 'syndicate', placed as a consequence of his disposition under the authority of his eldest son, who is to administer the estate (Theodorides 1971:294). This deed of foundation (a testamentary disposition for purposes of this study) by Heti, makes it clear that each member of this family syndicate will receive only the revenue from this estate, which has been made indivisible in perpetuity (Theodorides 1971:294).

Theodorides (1971:294) is of the opinion that the founder (Heti) is transferring the property to an association of individuals, but it is clear, nonetheless, that the association is conceived as such and that it has its own personality.¹⁰⁷

As indicated above a *fideicommissum* has effectively been created in Heti's case. According to De Waal & Schoeman-Malan (2005:147-148) a *fideicommissum* is a legal institution in terms of which a person (the *fideicommittens*) transfers a benefit to a particular beneficiary (the fiduciary or *fiduciarius*) subject to a provision or condition that the benefit goes to a further beneficiary (the fideicommissary or *fideicommissarius*) at a later stage.

It is possible to create a *fideicommissum* between living people (*inter vivos*) or by means of a last will or testament (*mortis causa*) (De Waal & Schoeman-Malan 2005:148). For the purpose of this thesis, I shall obviously be focusing on the *mortis causa fideicommissum* as it is my opinion that Heti created such a *fideicommissum* in his testamentary disposition.

De Waal and Schoeman-Malan (2005:148) correctly observe that fideicommissary substitution must be distinguished from direct substitution; the difference being that direct substitution provides for alternative beneficiaries while the characteristic of fideicommissary substitution is the fact that the beneficiaries follow each other successively (De Waal & Schoeman-Malan 2005:148).

It is common practice that when there is any doubt in a specific case whether direct or fideicommissary substitution is meant, the presumption is always that the intention was to create direct substitution (De Waal & Schoeman-Malan 2005:148). The idea behind this is that bequests should be interpreted in such a way as to burden the beneficiary as little as possible (De Waal & Schoeman-Malan 2005:148).

On the other hand it is also important to keep in mind that where there is doubt whether a *fideicommissum* or a usufruct is intended, the provision will be interpreted as a *fideicommissum* (De Waal & Schoeman-Malan 2005:148). This is noteworthy since many of the Egyptian testamentary disposition documents are translated using the words 'usufruct' or 'usufructuary'. It is submitted that this is not necessarily the correct

¹⁰⁷ According to Theodorides (1971:294) the same is true of temples, whose estates are regarded as belonging to the gods to whom they are dedicated and which may be represented at law.

translation as it often appears to refer rather to a *fideicommissum*, created by the testator of the testamentary disposition document.

Requirements today for a valid *fideicommissum*, according to De Waal & Schoeman-Malan (2005:148-150), would be the following (among others):

- It must be clear from the will that the testator intended to create a *fideicommissum*, and not a usufruct, direct substitution or a *modus*.
- There can only be a *fideicommissum* if there was an effective 'gift over' in favour of the fideicommissary upon fulfilment of the fideicommissary condition.
- There must be a clear indication of the fideicommissary assets, the fiduciary and the fideicommissary.
- The fideicommissary condition must be a valid condition.

A *fideicommissum* is most often attached to immovable property, but may also relate to movable and incorporeal things (De Waal & Schoeman-Malan 2005:148).

Regarding the creation of a *fideicommissum*, we distinguish between an express creation (*fideicommissum expressum*) and a tacit or implied creation (*fideicommissum tacitum*) (De Waal & Schoeman-Malan 2005:150). An example of a *fideicommissum expressum*, according to De Waal and Schoeman-Malan (2005:150), would be the following: 'I bequeath my farm to my son X. Upon X's death the farm must go to X's daughter, Y.' The intention to create a *fideicommissum* is therefore clear, even though no specific words or *formulae* are being used (De Waal & Schoeman-Malan 2005:150).

With reference to the *fideicommissum tacitum*, we distinguish between (i) the *si sine liberis decesserit* clause, and (ii) the prohibition against alienation (De Waal & Schoeman-Malan 2005:150).

An example of the *si sine liberis decesserit* clause, according to De Waal and Schoeman-Malan (2005:150) would be: 'I bequeath my farm to my daughter X. If X dies childless after my death, the farm must go to Y.' It would however be problematic if X dies being survived by children, in which case the question arises if a *tacit fideicommissum* in favour of X's children must be implied (De Waal & Schoeman-Malan 2005:151). In South Africa this matter has been resolved by the Appellate Division of the High Court in *Du*

*Plessis v. Strauss*¹⁰⁸ where the judge said, *inter alia*: '[I]n our law a *sine liberis* provision, coupled to a conditional *fideicommissum*, gives rise to a presumption that the testator tacitly appointed the *liberi* (the children) as fideicommissary beneficiaries...' (De Waal & Schoeman-Malan 2005:151).

With reference to *fideicommissum tacitum* the second point is the prohibition against alienation. De Waal and Schoeman-Malan (2005:152) give the following example: 'I bequeath my farm to my daughter X. X may not alienate the farm to anyone else other than Y.' Unless there are indications to the contrary in the will, the testator has created a *fideicommissum tacitum* by means of the prohibition against alienation (De Waal & Schoeman-Malan 2005:152; see also Corbett et al 341-357; Van der Merwe & Rowland 1997:313-315). X therefore becomes the fiduciary and Y the fideicommissary, and should X act in contravention of the prohibition against alienation and for instance sell the farm to a third party, then Y can claim the farm, being the fideicommissary (De Waal & Schoeman-Malan 2005:152).

De Waal and Schoeman-Malan (2005:152) correctly observe that a prohibition against alienation usually occurs in the context of a so-called 'family *fideicommissum*' where the testator prohibits the alienation of assets outside of a particular family. An interesting, and relevant recent case example, given by De Waal and Schoeman-Malan (2005:152), is *Ex parte Wessels*¹⁰⁹ where the relevant provision in the will reads as follows: 'The bequest of the farms ... is made subject to the express condition that this heir may never during his lifetime ... sell the farm or in any way alienate it, except to one of my immediate family members.' In a case like this, the presumption would be that the testator created a tacit *fideicommissum* in favour of some of his family members in whose interests the prohibition against alienation operates (De Waal & Schoeman-Malan 2005:152).

It is important to remember that the requirements for a valid *fideicommissum* must be kept in mind, especially the requirement that there should be an effective 'gift over' (De Waal & Schoeman-Malan 2005:152). It must also be kept in mind that a prohibition against alienation without an indication of the person(s) in whose interest it must operate is regarded as a *nudum praeceptum* ('nude prohibition') and therefore would be unenforceable (De Waal & Schoeman-Malan 2005:152).

¹⁰⁸ 1988 (2) SA 105 (A).

¹⁰⁹ [1999] 2 All SA 22(0) (translated from the original Afrikaans).

Where there is a succession of fideicommissaries, it is known as a *fideicommissum multiplex* and in the case of only one it is known as a *fideicommissum simplex* (De Waal & Schoeman-Malan 2005:153). In common law there was no limitation as to the number of successive fideicommissaries for which a testator could make provision, but the common-law position regarding immovable property has been changed by legislation¹¹⁰ and is now limited to two successive fideicommissaries (De Waal & Schoeman-Malan 2005:153).

When a *fideicommissum* gives the fiduciary the power of alienation, it is known as a *fideicommissum residui* and this power may be given expressly or tacitly (De Waal & Schoeman-Malan 2005:161). The *fideicommissum* terminates *inter alia* (i) when the duration of the *fideicommissum* prescribed in a will has been completed, (ii) when the interested parties (provided they are majors and otherwise qualified) agree to its termination and (iii) if the fideicommissary condition has been fulfilled and no provision has been made for a further fideicommissary substitution (De Waal & Schoeman-Malan 2005:163).

One needs to distinguish clearly between the two legal institutions of *fideicommissum* and usufruct since one needs to ascertain what the testator intended (De Waal & Schoeman-Malan 2005:164). According to De Waal and Schoeman-Malan (2005:164-165) an explanation of this distinction which has been broadly accepted in South African courts is the one in *Estate Watkins-Pitchford v CIR*¹¹¹ in which the court held as follows:

[T]he broad distinction between a fiduciary interest and a usufructuary interest is that in the case of a fiduciary interest, the fiduciary has a vested right in the *corpus* of the fideicommissary property and may on the failure of fideicommissaries, acquire full *dominium* in the property in respect of which he holds a fiduciary interest, whereas in the case of a usufructuary interest the usufructuary has no vested right in the *corpus* of the property in respect of which the usufruct is held and can never acquire the full *dominium* of that property.

Taking the discussion above into account, we have in the case of the testamentary disposition document of Heti an example of a family *fideicommissum*. Furthermore, it is clear that in his testamentary disposition document a *fideicommissum* was intended and not a usufruct, direct substitution or a *modus*. There was an effective 'gift over' in favour of the fideicommissary. From the testamentary disposition document of Heti it is clear

¹¹⁰ Section 6 of the Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965 (De Waal & Schoeman-Malan 2005:154).

¹¹¹ 1955 (2) SA 437 (A)447.

that the fiduciary and the fideicommissary are both identifiable. Regarding the question of the fideicommissary condition being a valid one, it is submitted that it was to the ancient Egyptians. The purpose of the condition was in essence to provide for the mortuary endowment and obviously, by implication, making provision for sustenance of the dead by means of offerings, rituals etc. This is an excellent example of the interaction between the belief in the afterlife and the concepts (in this case *fideicommissum*) of succession law (particularly testate succession law).

7.5.3.8 Mortuary provisions

It can be presumed that the purpose of Heti's testamentary disposition was to make provision for the mortuary endowment and to prescribe certain conditions as already referred to in the discussion above. The purpose was to make sure that the deceased (Heti) would be sustained in the afterlife by means of *inter alia* the offerings as referred to in the testamentary disposition. The property in this case is specifically transferred to the children, but this is still done in order to make provision for sustenance.

7.6 THE INSCRIPTION OF NIANKHKA

7.6.1 BACKGROUND

According to Breasted (2001:97) the *Inscription of Niankhka*¹¹² dates from the Fifth Dynasty. Logan (2000:52) dates it to the beginning of the Fifth Dynasty, while Allam (2007: 15) dates it towards the end of the Fifth Dynasty.

The text is from Niankhka's tomb in Tehneh,¹¹³ excavated and copied by Fraser in 1890 and published by him in 1902 in *Annales* (III, 122-30) and *Plsa.* (II-V); restoration and corrections added by Sethe (1903, *Urkunden* I, 24-32; Breasted 2001:99).

It is Breasted's (2001:99) view that the *Inscription of Niankhka* represents the most elaborate documents of their kind preserved to us and there are important facts contained in them. According to Allam (2007:15), Niankhka left a wealth of inscriptions on the walls of his tomb, eternalising the deeds by which he raised a pious foundation (for purposes of this study regarded as testamentary dispositions).

¹¹² Breasted (2001:99 ff.) uses the spelling 'Nekonekh'. Allam (2007:15) spells the name 'Ni-ankh-ka'. I agree with Allam, looking at the hieroglyph given by Sethe, that the name is Niankhka and I am using this transliteration.

¹¹³ Tehneh is about 25 km north of the present town el-Minia (Allam 2007:15). The tomb site, according to Allam (2007:15), is a sepulchre, comprising of two rock-cut structures, with several statues in addition to many engraved records.

Allam (2007:16) observes that it is important to note that many characteristics of the foundation or testamentary disposition under discussion find parallels, two millennia later, in Greek foundations which appeared not earlier than the fourth century BCE. This is an indication of how ancient Egyptian concepts pertaining to testamentary dispositions found their way to the modern world.

7.6.2 TEXT

The English translation used is that of Breasted (2001:105-106):¹¹⁴

Introduction

The steward of the Palace, king's-confidant, Nekonekh,¹¹⁵ revered; the king's-confidante, Hezethekenu; – said - - - [to] his children, while he was upon his two feet, alive before the king ----.

By two statues of Henhathor

– the scribe of the king's records, Henhathor () is my heir (*Hn-Hthr*) upon my seat, and lord of all my possessions.

– her eldest son, honored of his father, scribe of the king's records, Henhathor.

– property; they shall deliver to this my heir, as they did [rtw] myself.

– [given] to her [for] the ration of bread and beer as property, [while] upon my seat, - - as property. May they deliver the [ration of] bread and beer to this my heir, as they did [rtw] myself.

Mortuary priesthood

The decree

[These mortuary priests] are under the authority of these my children. I have not empowered [any] person to take them for any forced labor, save to make mortuary offerings which are divided in this house - - - these mortuary priests. As for these my children, who shall do any work with these mortuary priests, and as for any man who shall violate (this will), I will enter into judgment with him.

7.6.3 CONCEPTS AND ELEMENTS IDENTIFIED

7.6.3.1 Disposition

Among the inscriptions in the tomb is the testamentary disposition of Niankhka, although very fragmentary, in which he disposes of his own estate (Breasted 2001:105).

The *Inscription of Niankhka* mainly has to do with the disposal of two pieces of land of sixty stat each, given by king Menkure. Both these endowments were administered by

¹¹⁴ Sethe (1903:24-32, 161-163) provides the hieroglyph text.

¹¹⁵ This spelling is used by Breasted.

one priesthood who served simultaneously as priests of Hathor and as mortuary priests of Khenuka (Breasted 2001:99). Scholars like Breasted use the word 'endowment' quite often in their translations. One can define an endowment as a 'donation, gift, bequest, fund' according to the *Trilingual legal dictionary* (Hiemstra & Gonin 2013:45).

Early in the Fifth Dynasty, the king honoured one of his favourites, a steward of the palace, Niankhka, by conveying to him in person the offices of priest of Hathor at Tehneh and of mortuary priest of Khenuka (Breasted 2001:99). Niankhka, now having the right to bequeath the two land endowments to whom he chooses, at this time makes a testamentary disposition (Breasted 2001:99).

For purposes of this study all the *Inscriptions of Niankhka* as found in his tomb are examined, since they contain many references to testamentary dispositions in my opinion. . These are for instance references to the foundation as well as to *imyt-pr* and *wdt-mdw*. As indicated earlier I am considering all these documents as testamentary dispositions as they all contain elements pertaining to succession law and specifically concepts and elements pertaining to testamentary dispositions. It is also clear that there is a very close relationship between the belief in the afterlife, through all the mortuary rituals, on the one hand and testamentary dispositions on the other in the *Inscriptions of Niankhka*.

7.6.3.2 Date the testamentary disposition comes into effect

It is important to note that the text stresses that the whole organisation shall come into effect only after Niankhka's death, and thus we effectively are dealing with Niankhka's will (Allam 2007:16). It is still the norm today that last wills and testaments come into effect upon the death of the testator.

7.6.3.3 Testator

We know with certainty from the text that the testator is Niankhka who is a male and, deducing from the contents of the inscriptions, an adult. The testator is clearly identifiable.

7.6.3.4 Testamentary capacity

Allam (2007:16) points out that it must be noted that all the deeds concerning the testamentary disposition on creating a foundation were uttered by Niankhka in person: ‘... from his mouth, when he was still alive and on his feet’.¹¹⁶

7.6.3.5 Beneficiaries

The beneficiaries are the wife and children in my opinion. They were also awarded property in order to sustain the deceased, as the text refers to them acting as *wab*-priests and bringing offerings. Niankhka decrees that these bequests shall be distributed among his children, acting jointly as his successor in both offices (Breasted 2001:99-100).

7.6.3.6 Specific assets

Apart of these above-mentioned priestly duties, Niankhka provided primarily two fields which were two aruras in size and which had been previously donated as a foundation, and later accrued to Niankhka (Allam 2007:16). It would thus appear that specific immovable property is being awarded by Niankhka.

7.6.3.7 Origin of assets

Niankhka made the testamentary disposition and it is important to note that he also mentions the origin of both endowments in Menkure’s time as well as his own title to them by appointment from Userkaf (Breasted 2001:99). This emphasises the fact that Niankhka was the owner. It would appear it was necessary for the ancient Egyptians to state the origin of their assets in order to ‘prove’ ownership thereof.

7.6.3.8 Eldest son

Niankhka put all the members of his family association under the guardianship of his eldest son (Allam 2007:16). Here the importance of the ‘eldest son’ playing the role of administrator is once again highlighted. It would be this eldest son who would ultimately be responsible for the execution of his father’s testamentary disposition, in other words the eldest son was put in a position of authority over the whole

¹¹⁶ In the Inscription of Wepemnofret we find a similar statement that the speaker was ‘alive and on his two feet’ which appears, *prima facie*, to be the equivalent of the English ‘of sound mind and body’ (Muhs 2016:34).

arrangement (Allam 2007:16). This is very similar to the later notion of ‘executor’ who is responsible for the administration of the deceased’s estate.

7.6.3.9 Usufruct/*Fideicommissum*

Making use of the above-mentioned provisions, an individual could set aside immovable property belonging to him for the fulfilment of a certain objective upon his death, just as he personally desired (Allam 2007:16-17). It is also important to keep in mind that Niankhka’s foundation was attached to, and dependent on the local temple (Allam 2007:17). This would then ensure, according to Allam (2007:17), that the foundation, at least theoretically, would have perpetual existence without suffering decay.

According to Allam (2007:16) it is in this context that Niankhka stipulated that each member of the association should have an equal part of the usufruct on condition that no harm or waste is done to the property which should be kept intact; the usufruct being the right to enjoy the use and advantages of the property, in this case the revenues of the fields (Allam 2007:16).

Regarding the durability of the association, Niankhka prescribes that every member of the association can be succeeded by only one person from among his descendants, preventing in this way any future fragmentation of the property (Allam 2007:16).

We thus have elements of the concepts of usufruct, *fideicommissum* and trusts in the *Inscription of Niankhka*. In legal terms it would appear that a foundation is created (for ‘religious’ reasons) which could be regarded as similar to a *mortis causa* trust in these circumstances, but it also reminds one of elements of a usufruct and *fideicommissum*. I would argue, however, as indicated in paragraph 7.3 above in my discussion of the *Inscription of Metjen*, that it remains difficult to reconcile these ancient Egyptian concepts with modern-day legal terminology. I would suggest that the assets go to *fiduciarius* heirs, and that in the case of the *Inscription of Niankhka* mention is then made of further heirs (in the next generation), which appears to be similar to *fideicommissarius* heirs. It would therefore appear that we have a *fideicommissum* construction in the *Inscriptions of Niankhka*.

7.6.3.10 Mortuary provisions

Niankhka prescribes that each of his children annually should serve one month as priest of Hathor, and another month as mortuary priest of Khenuka (Breasted 2001:100). This

would require twelve children but Niankhka had thirteen children. The problem was solved by Niankhka by giving a month each to eleven children and divide the remaining month between the two remaining children (Breasted 2001:100).

The income of the land was also provided for in a similar way by Niankhka, by giving each of the eleven children the income from five stat for the Hathor temple and five stat for Khenuka, while the remaining two children each received half of this (Breasted 2001:100). By doing this the twelve months of the year were all provided for, the sixty stat belonging to each endowment were disposed of, and the children were all made legatees (Breasted 2001:100). According to Breasted (2001:100) it is important to take note of the fact that the mortuary endowment established in the latter half of the Fourth Dynasty was still respected and continued in the Fifth Dynasty.

In another document Niankhka's own mortuary priesthood is established and in conclusion he and his wife, probably after their respective deaths, would receive mortuary statues from two of their children (Breasted 2001:100). According to Allam (2007:16) Niankhka set up an 'association' of thirteen persons, all of which are provided for on the one hand, and on the other hand obligated to serve regularly in respect of the cult of the goddess. Everyone was required to supply an annual service of one month (with reference to specific services) for all the dead of the family to which Niankhka belonged (Allam 2007:16). Allam (2007:16) makes an important and valid observation when he mentions that the fact that comprehensive services (*pṛt hrw*) were required for all the members of the family deserves special attention. In periods to follow, there were particular services to be performed by foundations, destined only for individual persons (Allam 2007:16). According to Allam (2007:16) it would therefore appear that such an evolution was due to the emergence of individualism replacing family solidarity.

It is, however, clear from the *Inscription of Niankhka* that the purpose of the testamentary disposition was to provide in essence for the sustenance of the deceased. The purpose of the immovable property being awarded was to provide the necessary offerings. The provisions in the *Inscription of Niankhka* are another reminder of the close relationship and almost interdependence between the belief in the afterlife) and provisions made prior to death by means of the testamentary disposition document.

7.7 PAPYRUS BERLIN 9010

7.7.1 BACKGROUND

The text known as *Papyrus Berlin 9010*¹¹⁷ dates from the Sixth Dynasty according to Jasnow (2003c:125). Muhs (2016:28) indicates it comes from Elephantine Island and that it records the legal decision of an anonymous judicial institution, most likely a *dda.t*-court. *Papyrus Berlin 9010* gives us the official report of the tribunal's sitting, during which the clerk of the tribunal started out by summarising the arguments of the plaintiff followed by those of the defendant, ending with the note of the magistrate's decision (Theodorides 1971:298).

This document appears to be a record of a dispute between the eldest son and an administrator appointed through a testamentary disposition document (Jasnow 2003c:125). In the text, this testamentary disposition document is referred to as 'document' (*sh*) (Sethe 1926:72). The deceased's eldest son, Tjau, acted in terms of customary intestate succession law as 'eldest son' (administrator) of his father Woser's estate after the father's death. The dispute arose when someone else (Sobekhotep) claimed to be the administrator of the estate in terms of a testamentary disposition document, as will be discussed in paragraph 7.8.3.

7.7.2 TEXT

Theodorides (1971:295-296) gives the following translation:

Title (missing);

[On such and such a date ... opening of legal proceedings on behalf of Sebekhotpe against Tjau by ...]

Arguments of the parties involved:

This Sebekhotpe [has produced a document]t [which the royal noble], the overseer of caravans, User [is alleged to have had] made, [by which] his wife, his children and all his property [were placed (?)] in his power (?) in order to satisfy by (this) means [all] the children of this User, treating the old and the young according to their age.

But this Tjau has replied that his father never made it (this document) in any place whatever.

¹¹⁷ Muhs (2016:36) indicates there are two fragmentary transcripts preserved on clay tablets from Balat in the Dakhla Oasis. Clay tablets were used in the Balat region during the Old Kingdom instead of papyrus, presumably because papyrus plants did not grow there and papyrus was not regularly imported from the Nile Valley at that time (Muhs 2016:36-37). Muhs (2016:37) suggests this may indicate that similar documents may have been written on papyrus in the Nile Valley but have not survived. *Papyrus Berlin P.9010* may have been just such a papyrus.

Interlocutory judgement:

If this Sebekhotpe produces unimpeachable and trustworthy witnesses who will take oath (in these terms): ‘Let your might be against him (Tjau), O god, in so far as this document was truly made in accordance with the declaration of this User’, these things shall be in the power of this Sebekhotpe, when he shall have produced these witnesses in whose presence this utterance (of User) was voiced, while this Sebekhotpe shall be the usufructuary.

But if he does not produce the witnesses (irw) in whose presence this utterance was voiced, none of the said User’s property shall be kept in his possession; it shall be kept in the possession of his son (i.e. the eldest son of User), the royal noble, the overseer of caravans, Tjau.

7.7.3 CONCEPTS AND ELEMENTS IDENTIFIED

7.7.3.1 Date

In this case, we do not have the date of the testamentary disposition made as it is only referred to in *Papyrus Berlin 9010*. For the present discussion, this is not of particular importance, as this papyrus deals actually with the dispute of the validity of a testamentary disposition and the importance for now is on the dispute recorded in this text.

7.7.3.2 Dispute

Lippert (2013:2) observes that the defendant in this text alludes to the ‘legal order of succession’ (I prefer the term ‘customary intestate succession’ as explained earlier in this thesis) when he claims, without referring to any documents, that his father’s property should remain with him because the testamentary disposition brought forth by the other party was not authentic. The eldest son thus initially relied on the customary intestate succession law, but there are indications that the deceased made a testamentary disposition prior to death (Seidl 1957:57). This testamentary disposition made prior to death is similar to the Roman law ‘testament’ (Seidl 1957:57)

According to Muhs (2016:28) a man, Sobekhotep, brought a document purportedly made by Woser regarding his wife, his children and all his property in his residence. This might, according to Muhs (2016:28), be a reference to a testament (*wḏt-mdw*) or a transfer (*imyt-pr*) document serving as a testamentary disposition. Woser’s son Tjau denies the authenticity of this document and submits his father never made this document (Muhs 2016:28).

Tjau disputed the testamentary disposition of his father, Woser, and what had to be established was whether Woser indeed drafted the testamentary disposition (Theodorides 1971:298). It must be noted, however, that reference is made only to 'writing' and not to an *imyt-pr* document (Theodorides (1971:298). On this point Theodorides (1971:298-299) makes an interesting observation that evidence of Egyptian texts suggests the author of a deed of this kind 'makes' his *imyt-pr*, whereas in Woser's case it seems he had his 'writing' made, and this latter document might have been a special kind which would not have been registered. It would still, however, appear to be *prima facie* a testamentary disposition document.

In support of this view, Theodorides (1971:299) argues that this would explain why the magistrate required the production not of an abstract of this 'writing', but of the testimony of persons who were alleged to have been present when it was drafted; in other words, the witnesses to the drafting of the testamentary disposition. Theodorides (1971:299) observes that the use of the term *irw*, which has been translated as 'witness', is unusual and unique. Etymologically it could refer to 'those who made' the writing, or the 'co-authors' of the document who assisted in drawing it up as Woser had 'his writing made' (Theodorides 1971:299). It might be possible that Woser dictated it, perhaps because his health did not allow him to do otherwise (Theodorides 1971:299).

It is, however, evident that the method employed is recognised as valid and that the onus rested on Sobekhoteo to prove the authenticity of the 'writing' he had produced (Theodorides 1971:299). The tribunal states the terms of the oath the witnesses will have to swear in that they will have to testify that the 'writing' was really made 'in conformity with the declaration of Woser' (Theodorides 1971:299).

According to Muhs (2016:28) the legal decision is that if Sobekhotep can produce three witnesses who will take an oath swearing that the document (in other words the testamentary disposition) contains the words of Woser, then the property will remain with Sobekhotep (as administrator). However, if he does not produce three such witnesses, then the property will remain with Tjau (as administrator) (Muhs 2016:28).

The essence here is the existence and validity of a testamentary disposition. In order to prove the validity the witnesses present at the drafting of the testamentary disposition need to take an oath confirming the existence and contents of the testamentary disposition and indeed that it was made at all. Should this be successful, the estate will

then be dealt with in terms of the testamentary disposition (according to testate succession law principles) and Sobekhotep will be declared the administrator. However, if the existence and validity of the testamentary disposition cannot be proved then the estate will be administered in terms of customary intestate succession (intestate succession law principles) and Tjau would be the administrator. The mere fact that it was possible to contest the validity and existence of a testamentary disposition so far back in ancient Egyptian history is remarkable, as this is still a feature of our modern-day law of succession today.

7.7.3.3 Disposition

As indicated in paragraph 7.8.3.2, mention is made only of a 'writing' that was made by Woser, the *de cuius*. There was *prima facie* a previous testamentary deposition made by Woser since the whole purpose of the present dispute attested to in *Papyrus Berlin 9010* was about the existence and validity of this prior testamentary disposition of Woser.

7.7.3.4 Eldest son/administrator

It is submitted that we have in *Papyrus Berlin 9010* once again confirmation of the role of the eldest son who is playing an important role as the administrator of a customary intestate succession matter. It is apparent that the eldest son automatically became the administrator in the case of customary intestate succession principles being applied. Tjau, the son of the *de cuius*, Woser, had inherited his father's title, his function as 'overseer of caravans', and his father's property, which he had to preserve undivided, with the duty of administering it for the whole family (Theodorides 1971:297). According to Theodorides (1971:297) the succession to Woser's estate was legally vested in Tjau, which meant that if Tjau's father died intestate, Tjau would, by virtue of his status as eldest son, have administered the property and exercised control over his siblings (thus as administrator in my view) (Theodorides 1971:297).

It would appear from the way *Papyrus Berlin 9010* has been constructed that Tjau had already begun to act in this way as administrator and guardian, because he is the defendant in the case which Sebekhotpe has brought against him (Theodorides 1971:297).

We also have evidence in *Papyrus Berlin 9010* that the administrator need not be the eldest son without exception. This customary intestate succession rule could be changed by means of a testamentary disposition. In *Papyrus Berlin 9010* we have evidence that

someone else, Sobekhotep, is appointed administrator in terms of a testamentary disposition. Sebekhotep opposes Tjau's administration on the basis of a testamentary disposition which Woser is said to have made, apparently without his son's knowledge and to his disadvantage (Theodorides 1971:298).

7.7.3.5 Testator

From the evidence in *Papyrus Berlin 9010* we know that there is a testator of the alleged testamentary disposition, namely Woser. Although we do not have any real information on Woser, what is important that we have an identified testator who left his property by way of a testamentary disposition.

7.7.3.6 Beneficiaries

We know from *Papyrus Berlin 9010* where it refers to the prior testamentary disposition that the beneficiaries were the wife and children of the testator. It is also interesting that reference is made to age in the testamentary disposition and the beneficiaries, as can be noted from in the stipulation '... treating the old and the young according to their age ...'. This again refers to the way awards are to be made in terms of the testamentary disposition, but confirming the customary intestate succession rule about older siblings inheriting a bigger portion.

7.7.3.7 Specific assets

It is not clear from *Papyrus Berlin 9010* which specific assets are to be awarded, but I am convinced that it refers to all Woser's property. It would however appear that it refers to movable assets as Muhs (2016:28) translates the reference to property as '... all his property in his residence...'.

7.7.3.8 Witnesses

As mentioned earlier the surviving evidence for documentation of property transfers and exchanges in the Old Kingdom consists of written transcripts of verbal statements, with these transcripts sometimes providing the names of witnesses who could be called to authenticate the agreements. As Muhs (2016:32) observes, many of the surviving transcripts do not give the names of the witnesses, but this was because the manuscripts were intended as memoranda or reminders for the witnesses themselves.

According to Muhs (2016:32), witnesses were privileged over the scribes in a court decision involving a disputed document, as in *Papyrus Berlin 9010*. The witnesses were called to court in order to verify that the document contained the words of a verbal statement (Muhs 2016:32). As discussed in Chapter 6, documentation could be either oral or written. *Papyrus Berlin 9010* is, in my view, a good example of exactly this. The implication, according to Muhs (2016:32), is that verbal statements were the primary means of documenting agreements and that the memories of witnesses were the primary means of authenticating them. Muhs (2016:32) goes on to say that written transcripts would seem to have had no authority independent from the verbal statement, as there was no way to authenticate them independently from the witnesses to the verbal statement. This primacy of verbal statements over written transcripts may be an indication that many or even most agreements were never transcribed (Muhs 2016:32). Written transcripts were, however, sometimes made apparently to function as public memoranda in order to remind the contracting parties and witnesses of what was said in the verbal statements (Muhs 2016:32).

The testimony of the witnesses called upon in *Papyrus Berlin 9010* form an example where verbal statements were the primary means of documentation and where the testimony of witnesses was the primary means of authenticating prior alleged testamentary dispositions.

7.7.3.9 Usufruct/*Fideicommissum*

It can furthermore be presumed that the role of both Tjau, the eldest son (in terms of customary intestate succession) and Sobekhotep, appointed in terms of the testamentary disposition, is that of an administrator, as they are to act on behalf of the heirs. Jasnow (2003c:125) affirms that this text designates the ‘trustee’ as ‘one who eats, but does not diminish’. Jasnow (2003c:125) also postulates the possibility that ‘trustee’ might be equal to ‘usufructuary’ in the case of *Papyrus Berlin 9010*. Lippert (2013:8) suggests that the reference to ‘testamentary disposition’ in the papyrus) appoints Sobekhotep as ‘trustee’ (administrator) for the estate, with the task of satisfying the children of the deceased according to their order of birth regarding the profits of the property without touching the resources. This ‘trustee’ is ‘one who eats without being able to damage’ (*whm n sbn.f*) (Lippert 2013:8). A will (‘testamentary disposition’) like this one would have ensured that the children and the wife benefited from the

inheritance, something the *de cuius* seems to have deemed unlikely if the eldest son had inherited in terms of ‘customary intestate succession’ (Lippert 2013:8-9).

One should be careful to use the word ‘trustee’ in the translation since technically the word can only be used in relation to a trust. A trust can be an *inter vivos* or *mortis causa* trust. Looking at our present-day law, the trust is a more ‘modern’ legal institution developed mainly in English law; it is not a familiar institution in Roman Dutch law nor in Roman law. I would argue that in Roman law the comparable relevant institution was that of *fideicommissum* and that the *fideicommissum* effectively served the same purpose of our modern-day trust.

Fideicommissum as a legal institution has already been discussed in paragraph 7.7.3.7. Following my argument, it is clear that the earlier ancient Egyptians effectively used *fideicommissum*. As indicated in Chapter 6, it remains very difficult to apply modern-day legal terminology to ancient Egyptian legal concepts.

Following on what I have suggested earlier in this discussion, it is Theodorides’ (1971:298) view that Sebekhotep would not have been a guardian, but a ‘usufructuary’ (as Jasnow (2003c:125) suggests as well) who would have had to divide the estate among Woser’s children. Theodorides (1971:298) continues to say that it must be noted that this is not stipulated in the document, and the right to a life interest in a property does not imply a state of transition towards the division of such property. According to Theodorides (1971:298) this may be verified from the extract from the contracts of Djefa-Hapi (discussed in Chapter 8), in which the latter expressly provides that the usufructuary shall be forbidden to ‘share’ the property entrusted to him.

Returning to the word ‘usufructuary’ contained in the first part of the judgement, it appears that Sebekhotep will become the ‘usufructuary’, but the fact must not be overlooked that legally as well as grammatically, the phrase containing this term is secondary to the essential element stating the following: ‘these things shall be in [his] power’ (‘these things’ being the siblings and property of Woser) (Theodorides 1971:299-300). Muhs (2016:28) translates the word to mean ‘beneficiary’. It is the view of Theodorides (1971:300) that in practical terms, ‘usufructuary’ specifies the method of administration, if not of remuneration, envisaged. Sebekhotep ‘shall consume’ the fruits of the assets ‘to which he may not cause any loss’; he is to handle it like a good father of the family. It may be deduced from the text, according to Theodorides (1971:300), that

this would continue so until his death, after which the rights of administration and tutelage, conferred on him by the disputed will, would return to Tjau, or to his legal heir.

According to Theodorides (1971:300), the last line of *Papyrus Berlin 9010* appears to emphasise once again the right of 'possession' which Sebekhotpe would exercise over the property, but as administrator of the property, which has become a joint family asset, he cannot dispose of, since he does not own it entirely.

According to De Waal and Schoeman-Malan (2015:163) a usufruct (*ususfructus*) is a legal institution which can be granted between living persons (*inter vivos*) or in a will (*mortis causa*). It is normally dealt with fully in books on the law of property as one of the limited real rights, since it is a personal servitude (De Waal & Schoeman-Malan 2015:163).

De Waal and Schoeman-Malan (2015:163) observe that in general the problem lies with problems of interpretation in distinguishing between a *fideicommissum* and a usufruct. Looking at the legal nature of a usufruct, a usufruct is defined as a personal servitude giving the usufructuary a limited real right to the use of another person's property and to take its fruits with the obligation to return the property eventually to the owner retaining its essential quality (*salva rei substantia*) (De Waal & Schoeman-Malan 2015:164).

According to De Waal and Schoeman-Malan (2015:164) the purpose of the usufruct is thus to ensure the usufructuary has an income from the property for a particular length of time, usually for the duration of his or her natural lifespan, without giving him or her ownership of the property. For the duration of the usufruct, the owner of the property can therefore not use, enjoy or take the fruits of the property and the owner is sometimes referred to as a 'nude owner' (De Waal & Schoeman-Malan 2015:164). It is only when the usufruct comes to an end at the appointed time, which is usually at the death of the usufructuary, that the owner's 'nude ownership' is restored in full (De Waal & Schoeman-Malan 2015:164).

A usufruct can be created in a will expressly or tacitly (De Waal & Schoeman-Malan 2015:164). It is important to determine the intention of the testator from his or her last will, as this could determine if the testator intended a *fideicommissum* or a usufruct (De Waal & Schoeman-Malan 2015:165). If, therefore, the testator's intention is clear in the will, it must be given effect to (De Waal & Schoeman-Malan 2015:165). Certain

indicators can be used to determine the testator's intention, for instance when it is clear that the first beneficiary must become the owner of the assets, then it is an indication that the testator had a *fideicommissum* in mind (De Waal & Schoeman-Malan 2015:165). If, on the other hand, it is clear that the ultimate beneficiary must become owner of the assets subject to their use and enjoyment by an intermediate beneficiary, it would be an indication that the testator intended a usufruct (De Waal & Schoeman-Malan 2015:165). If the first beneficiary received the right of alienation it would naturally be an indication that he or she cannot be merely a usufructuary (De Waal & Schoeman-Malan 2015:165). It would only be in a case of real doubt about whether the testator intended to create a usufruct or a *fideicommissum* that the provision would be interpreted as creating a *fideicommissum* (De Waal & Schoeman-Malan 2015:165).

A problem arises where the testator bequeaths a usufructuary interest to a beneficiary, but does not stipulate at the time what must happen to the assets at the termination of the usufruct (De Waal & Schoeman-Malan 2015:165). Under these circumstances there is a presumption, unless the contrary appears from the will, that the testator intended that the beneficiary who received the usufruct as a benefit must also inherit the assets (De Waal & Schoeman-Malan 2015:165).

Usus (use) is a personal servitude, like *habitatio* (dwelling), in terms of which beneficiaries are granted the right to use a property under certain restrictions or to live on a property (De Waal & Schoeman-Malan 2015:166). These personal servitudes may be granted in a will and the question whether the testator intended to grant a beneficiary a usufruct or one of the lesser rights of *usus* or *habitatio* will be a question of interpretation (De Waal & Schoeman-Malan 2015:166).

From the above it is therefore clear that it is difficult, given the information contained in *Papyrus Berlin 9010*, to give a proper legal (modern) term for the 'administrator'. It would at first glance appear to be more correct to either refer to Sobekhotep (in this case) as a usufructuary or even a *fiduciarius*.

7.8 TABULAR OVERVIEW OF CONCEPTS AND ELEMENTS OF SUCCESSION LAW IDENTIFIED IN TEXTS FROM THE OLD KINGDOM

This tabular overview reflects the concepts and elements identified and discussed in this chapter in a summarised version.

| TEXT | METJEN | NKAURE | HETI | PAPYRUS BERLIN 9010 | NIANKHKA |
|-----------------------------|--------|--------|------|------------------------|----------|
| 1. DATE | | • | | | • |
| 2. DISPOSITION | • | • | • | • | • |
| 3. TESTATOR/ TESTATRIX | • | • | • | • | • |
| 3.1 Known | • | • | | • | • |
| 3.2 Male | • | • | • | • | • |
| 3.3 Female | • | | | | |
| 4. TESTAMENTARY CAPACITY | • | • | • | | • |
| 5. BENEFICIARY | • | • | • | • | • |
| 5.1 Heir(s) | • | | • | • | • |
| 5.2 Legatee(s) | | • | | | |
| 5.3 Husband/Wife | | • | | • | • |
| 5.4 Children | • | • | • | • | • |
| 6. PROPERTY | • | • | • | • | • |
| 6.1 Immovable | • | • | • | • | • |
| 6.2 Movable | • | | | • | |
| 6.3 Reference to origin | • | • | • | • | • |
| 7. BEQUEST ('GIVE') | • | • | • | • | • |
| 8. EXECUTOR/ ELDEST SON | | | • | • | |
| 9. SEPARATE CLAUSES | | • | | | |
| 10. WITNESSES | | | | • | |
| 11. RECORD OFFICE | • | | | | |
| 12. CONDITIONS | | | • | • | |
| 13. USUFRUCT | | | | | |
| 14. <i>FIDEICOMMISSUM</i> | | | • | | |
| 15. TRUST | | | | • | • |
| 16. REVOCATION | | • | | | |
| 17. DISPUTE OF | | | | • | |

| DISPOSITION | | | | | |
|-------------------------|---|---|---|---|---|
| 18. MORTUARY PROVISIONS | • | • | • | • | • |

Table 7.1 Concepts and elements of succession law identified from Old Kingdom texts

7.9 CONCLUSION

During the Old Kingdom monumental architecture and the pictorial arts developed parallel to writing, encompassing a corpus of knowledge. Most of the royal pyramid complexes and private *mastaba* tombs were built during this period. Mortuary provisions were extremely important and it is the scenes and texts in the pyramid and tombs which provide valuable insights into many aspects of the ancient Egyptian culture. The inscriptions and texts in these pyramids and tombs give us important information relating to succession law in general and testamentary dispositions in particular. These inscriptions and texts might refer only to the royal or higher class of society, but the essential elements of testamentary dispositions are clearly identifiable and universal, irrespective of social status.

The testamentary dispositions discussed in this chapter reflect important concepts and elements which today, in our modern legal systems, would form part of testate succession law. These are the first signs of the 'birth' of testate succession law – a significant achievement for an ancient civilisation, already developing these concepts and elements of testamentary dispositions at this very early stage of history at a time when Rome and Roman law were not yet established. Some of the concepts and elements identified and discussed above will be summarised in the following paragraphs.

7.9.1 DATE

It is possible to establish the date of the testamentary disposition in the *Inscription of Metjen* as it can be taken that it was done at his death. We do not have the date of his mother's earlier testamentary disposition. The *Inscription of Nikaure* is dated, and this may be an indication of a prerequisite for a legal document. Dating of testamentary dispositions is still very important today, for instance there is more than one will and it needs to be determined which one was the deceased's last will, or in cases where an earlier will needs to be revoked. Although the date is not clear from Heti's testamentary

disposition, it is clear from the contents that it was drafted prior to death. The date from Niankhka's testamentary disposition is also clear.

7.9.2 DISPOSITIONS

We have more than one testamentary disposition document in the *Inscription of Metjen*. We have Metjen's testamentary disposition itself (pious foundation), but also the reference to a prior *imyt-pr* made by his mother. It appears that the *imyt-pr* was used as testamentary disposition document especially in cases where the beneficiaries were siblings of the testator, as was the case in the *Inscription of Metjen*. The *Inscription of Metjen* appears to consist mostly of legal contracts and decrees which guaranteed the continued maintenance of Metjen's various estates and funerary cults, referring to the pious foundation as the origin of the testamentary disposition.

A feature of a testamentary disposition is that there must be a declaration of intent by a testator to dispose of his property by means of a testamentary disposition document. The testamentary disposition is a declaration in a document, by the testator, regarding the devolution of his property after death. In the case of the *Inscription of Nikaure* we have a *wdt-mdt* document serving as a testamentary disposition document. In the case of Heti he made a testamentary disposition which is an indication of the transition of the pious foundation to a more traditional will, creating in the process a *fideicommissum*.

From the *Inscription of Niankhka* in his tomb it would appear that there are several testamentary dispositions documents within the text (like the foundation, the reference to *imyt-pr* and *wdt-mdw*), all of which contain concepts and elements of succession law.

7.9.3 THE TESTAMENTARY DISPOSITION COMES INTO EFFECT AT THE TESTATOR'S DEATH

It is not clear from the *Inscription of Metjen* or the texts of Nikaure or Heti when the testamentary disposition comes into effect, but it can be deducted this would be at the death of each of these testators given the contents and context of the testamentary dispositions. We know from the *Inscription of Niankhka* that the testamentary disposition comes into effect after the deceased's death.

7.9.4 TESTATOR/TESTATRIX

In the *Inscription of Metjen* we have Metjen as the testator of the pious foundation. In the case of the *Inscription of Metjen* reference is made to the *imyt-pr* of Metjen's mother as

being the testatrix of the will. It is therefore clear that we have a very early example of women being able to make testamentary dispositions in ancient Egypt. In the *Inscription of Nikaure* it is clearly stated that Nikaure is the testator of the testamentary disposition; also from Heti's testamentary disposition we have clarity that he is indeed the author and testator.

7.9.5 TESTAMENTARY CAPACITY

From the *Inscription of Metjen* it is important to note, regarding the reference to the mother's prior testamentary disposition, that women in ancient Egypt had the right to own property and to dispose freely thereof. Testamentary capacity requires the testator to have the mental capacity to dispose of his property, in other words he should be of sound mind. One can deduct from Metjen's inscription that he indeed had testamentary capacity. In the *Inscription of Nikaure* this capacity is confirmed by the words '... (while) living upon his two feet without ailing in any respect'.

In the case of Heti, the reference to 'living mouth' has an effect similar to Nikaure's phrase 'while he was alive upon his two feet'. This clearly indicates that it was important to confirm that the testator had the mental capacity to draw up a testamentary disposition. As previously indicated, we have from the *Inscription of Niankhka* an example that the testator of a testamentary disposition had to have the testamentary capacity to do so as we read that the testator made the testamentary disposition 'from his mouth, when he was still alive and on his feet'.

The reference to someone 'being of sound mind' in the testamentary disposition is significant as this appears to be an essential principle in ancient Egyptian testamentary dispositions. This gives us a very early example of the importance of establishing that the testator is of 'sound mind' when drafting his testamentary disposition and to ensure the mental capacity of the testator is intact.

7.9.6 BENEFICIARIES

From the *Inscription of Metjen* we know that the beneficiaries were the children, but the foundations as well in order to provide for the mortuary cult. From the *Inscription of Nikaure* we know that there were eight columns and the eight heirs were named separately. Each column started with the name of the beneficiary followed by the award. In the process it is clear from the *Inscription of Nikaure* that specific assets were awarded to specific beneficiaries. This would make them legatees in terms of present-

day law of succession, which is a significant feature of this very early ancient Egyptian testamentary disposition. The beneficiaries in the testamentary disposition of Heti are the children, but the children are in actual fact *fiduciarius* heirs. The beneficiaries in the *Inscription of Niankhka* appear to be his wife and children.

7.9.7 TRANSLATION OF THE WORD *rdi*

The translation of the word for the bequest being made in the *Inscription of Metjen* is 'given'. In the *Inscription of Nikaure* the words 'I have given' are again used. The transliteration of the hieroglyph word used in the *Inscription of Nikaure* is *rdi*, which has also been translated as 'give' and again in Heti the word 'give' is used.

Considering the context of the word ('give') where it is used in testamentary disposition documents, it is suggested that the word should rather be translated as 'transferred', 'awarded' or 'bequeathed'.

7.9.8 SPECIFIC ASSETS

In the *Inscription of Metjen* we have evidence that it was possible to bequeath immovable property very early in ancient Egypt's history. We also know from Metjen's inscription that also movables could be bequeathed in order to make provision for sustenance after death. In the case of the *Inscription of Nikaure* we are dealing with immovable property. In this case specific property is awarded to specific legatees. In Nikaure's inscription it was important to specify the different assets as the assets were effectively legacies, a very early example of the concept of creating legacies. In the case of Heti we again have the award of property effectively creating a *fideicommissum*. In the case of the *Inscription of Niankhka* specific assets, in this case immovable property, are identified and awarded. The purpose of the awarded property in the case of the *Inscription of Niankhka* was to make provisions for sustenance after death, indicating the close relationship between the belief in the afterlife and provisions being made in a testamentary disposition document.

It would appear that the focus, at least initially, of testamentary disposition documents was on immovable property, which supports the idea that testamentary dispositions were initially drawn up to make provision for supplying of sustenance and the rituals for the deceased, but it is clear that movable property could also be awarded.

7.9.9 ORIGIN OF ASSETS

It is important to note from the *Inscription of Metjen* that an effort is made to explain the origin of the deceased's assets, and that this is being done at a very early stage of ancient Egyptian history. In the *Inscription of Metjen* we have the two testamentary dispositions referred to above, each mentioning the origin of the property which now forms the 'deceased estate'. This also includes also mentioning the property Metjen inherited from his father. The *Inscription of Niankhka* confirms the origin of the assets to be awarded. This was necessary and customary for the ancient Egyptians to do in testamentary disposition documents as this emphasised or 'proved' their ownership of the assets to be bequeathed.

7.9.10 SEPARATE CLAUSES

In the *Inscription of Nikaure*, Nikaure nominates the different legatees with each legacy in a separate column in the testamentary disposition, effectively creating different 'clauses'. This is a significant precedent for future testamentary clauses as are still being used today. Although the use of columns were known in ancient Egypt, it is significant that in Nikaure's case a column was used for only a specific legacy and legatee.

7.9.11 RECORD OFFICE

In the *Inscription of Metjen* reference is made to a document stating what belonged to the beneficiaries in terms of the *imyt-pr* and which document was placed in a record office. It would appear that there was from very early on a need to keep record of the distribution of assets in terms of a testamentary disposition, similar to the role and function of the present-day Master of the High Court and the Deeds Office for transfers of immovable property in South Africa. It would appear that the inscription in the tomb served as sufficient written evidence of the testamentary disposition.

7.9.12 ELDEST SON

In Heti's testamentary disposition the eldest son is appointed as 'administrator' in the testamentary disposition, effectively fulfilling the role of the modern executor of a deceased estate. In the *Inscription of Niankhka* we find that the eldest son has been appointed as 'administrator' in the testamentary disposition document, emphasising again the important role the eldest son played in succession law matters. It is an indication of the importance of this position that someone is tasked with the responsibility of the administration of the estate similar to the later executor of a

deceased estate. It is important that someone takes control of the deceased's estate and is responsible for the administration of the estate. In *Papyrus Berlin 9010* we have yet again confirmation of the eldest son playing an important role as the administrator of a customary intestate succession matter. The eldest son automatically became the administrator in the case of customary intestate succession. It would appear that it was also the eldest son in the case of *Papyrus Berlin 9010* who acted as executor or 'administrator' of the estate in disputing the existence and validity of a possible testamentary disposition.

7.9.13 USUFRUCT/*FIDEICOMMISSUM*

It remains difficult to assign modern-day legal terminology to ancient Egyptian concepts. The testamentary disposition document of Heti provides an example of a 'family *fideicommissum*'. It is clear that a *fideicommissum* was effectively accomplished by Heti. There was an effective 'gift over' in favour of the fideicommissary, with the fiduciary and the fideicommissary being identified. The purpose was to make provision for the mortuary endowment. A *fideicommissum* was created in the *Inscription of Niankhka* as reference is made to *fiduciarius* heirs, but importantly also to *fideicommissarius* heirs.

7.9.14 WITNESSES

In inscriptions in tombs, such as the *Inscription of Metjen*, there was no need for witnesses, as the priests responsible for the mortuary sustenance and rituals were effectively the witnesses ensuring the fulfilment of the wishes of the deceased. The testamentary disposition in the inscription omits the names of witnesses as the various mortuary priests who performed the mortuary cults in the tomb chapels served to authenticate the documents. The lasting inscription onto tomb walls would ensure the protection of property rights and oblige the mortuary priests (as implied witnesses to these 'contracts') to comply with the provisions contained in the testamentary disposition documents.

In *Papyrus Berlin 9010* the existence and validity of an alleged testamentary disposition was disputed. In order to resolve the issue, the court required the testimony of persons who were alleged to have been present when it was drafted; in other words, the witnesses to the drafting of the testamentary disposition. The witnesses had to take an oath confirming the existence and contents of the testamentary disposition and that it was indeed made at all.

7.9.15 REVOCATION

A testamentary disposition represents no more than a declaration of intent and can therefore be altered or revoked by the testator at any time prior to death. In the *Inscription of Nikaure* his one daughter predeceased him and he made a later note that her portion should go to his wife, giving us a first indication that it was possible to amend or revoke a testamentary disposition in ancient Egypt.

7.9.16 DISPUTE

Although *Papyrus Berlin 9010* is about a dispute between the eldest son and the executor/administrator of the estate, the relevance for this study is the fact that the existence and validity of a testamentary disposition could be disputed in ancient Egypt. The eldest son, as customary intestate succession administrator and heir, contested the existence and validity of his father's testamentary disposition. Disputing a last will and testament is still an important element of our law today.

7.9.17 MORTUARY PROVISIONS

The inscriptions usually establish rules for the mortuary cult of the deceased buried in the tomb chapels by means of the testamentary disposition document (pious foundation). In the *Inscription of Metjen* we have bequests of immovable and movable property in order to make provision for sustenance after death. There was a close relationship with religion in respect of the process relating to assets and their transfer at death. The *Inscription of Metjen* on the tomb walls was done to emphasise and confirm the testamentary disposition (namely the pious foundation) and the implied duties of the priests (and family) for sustenance and required offering rituals after death. It was the duty of the priests and surviving family to provide sustenance for the deceased and it became necessary to make arrangements for this prior to death by the deceased. It would appear that the *Inscription of Nikaure* awarded immovable property in order to enable the siblings to sustain the deceased. The purpose of the awards appears to have been making provision for the sustenance of the deceased, but in the process the first building blocks of important elements of testamentary succession law were created.

In the case of Heti a *fideicommissum* was effectively created in the testamentary disposition in order to make provision for the mortuary cult by ensuring that the property stay within the family. The *Inscription of Niankhka* provides us with excellent examples of the 'interplay' between the belief in the afterlife) and provisions made prior

to death by means of the testamentary disposition document. The purpose with the testamentary disposition document might well have been to provide for sustenance of the deceased after death, but in the process several concepts and elements of succession law were 'born' and developed.

CHAPTER 8

TESTAMENTARY DISPOSITION DOCUMENTS FROM THE MIDDLE KINGDOM

8.1 INTRODUCTION

This chapter places focus on some important texts from the Middle Kingdom (ca. 2025–1650 BCE), particularly from the Faiyum village el-Lahun (Kahun), in order to identify and discuss concepts and elements pertaining to succession law in general, but in particular to testamentary dispositions.

8.2 CONTEXT OF TESTAMENTARY DISPOSITIONS OF THIS ERA

During the Middle Kingdom there were less of the monumental building projects typical of the Old Kingdom, but this was nevertheless a period of high culture in art and literature¹¹⁸ contributing to a bloom in ‘documentation’. According to Muhs (2016:55) there was further diversification in the uses of writing.¹¹⁹ The Middle Kingdom is the earliest period from which we have evidence of a full range of written language (Parkinson 1991:8). These written documents¹²⁰ speak to us more intensely than objective archaeological artefacts (Parkinson 1991:8). During the Middle Kingdom art, architecture and religion reached new heights, but because of a growing middle class, it also saw an increasing confidence in writing (Callender 2000:183). Different literary forms flourished and the period under discussion is regarded as the ‘classical era’ of literature (Callender 2000:183). The increased use of writing as well as witnesses to these documents means more records have survived from the Middle Kingdom than from the Old Kingdom (Muhs 2016:84). Assmann (2002:121) confirms that there is an

¹¹⁸ The Middle Kingdom would become famous for its literature. Famous narratives, religious and philosophical works from this period include the *Tale of Sinuhe*, *The Shipwrecked Sailor*, the *Hymn to Hapy* and the *Dialogue between a man, tired of life and his ‘Ba’* (Callender 2000:183). The *Instruction of Ammenemes I* was modelled on the earlier *Instruction for Merikare* (Grimal 2000:161-163).

¹¹⁹ Narrative texts in the form of religious texts were inscribed in tombs and on coffins (the so-called ‘Coffin Texts’), biographies were inscribed in the tombs and on commemorative *stelae* of officials, letters, agreements and court proceedings, but these were now joined by the first literary texts, many of which were copied by scribes as part of their training (Muhs 2016:55).

¹²⁰ The documents consist mainly of literary texts, which were produced in schools (Assmann 2002:123).

abundance of surviving textual sources¹²¹. Notably, there was a sudden wealth of literature which took the struggle against chaos as a major theme (Parkinson 1991:10).

The Middle Kingdom formed a political unity and comprised essentially two phases (Callender 2000:148). The first phase was the Eleventh Dynasty ruled from Thebes in Upper Egypt, and the second phase was the Twelfth Dynasty from the region of Lisht¹²² in the Faiyum (Callender 2000:148).

According to Jasnow (2003a:255) the principal sources of law in the Middle Kingdom are royal inscriptions, administrative documents, private documents and literary compositions. We do know that royal and temple holdings and property must have made up the greater part, but there was private property as well, at least to some extent (Jasnow 2003a:276).

During the Middle Kingdom the king, the vizier and their local agents were responsible for adjudicating disputes involving private property transactions, and the king was the head of the judicial administration (Muhs 2016:55). Muhs (2016:55) observes that in the late Middle Kingdom, petitions could be and were indeed sent to the king. However, from surviving examples it appears that the king in turn referred the petitions to the vizier (Muhs 2016:55). From the 'Duties of the Vizier', a New Kingdom text which was probably composed in the Middle Kingdom, it becomes clear that the vizier was generally responsible for hearing petitions (Muhs 2016:58), but it was probably also possible that the king could hear and decide cases himself, if he so chose (Muhs 2016:58). Petitions could also be brought to officials, who served as agents for the vizier and the king (Muhs 2016:59).

It is important to take cognisance of the fact that there was an increase in the number of private funerary chapels in the necropolis of Abydos, suggesting a possible change in social structure with the rise of a limited 'sub-elite' just below the 'high-elite' (Parkinson 1991:11). Parkinson (1991:11) makes an important observation that the gradual

¹²¹ The participation of state agents in writing down and enforcing these documents made them more secure and attractive and consequently more numerous than in the Old Kingdom (Muhs 2016:84).

¹²² Under Amenemhat I the capital was moved from Thebes to Itjtawy in the Faiyum region, probably near the Lisht necropolis (Callender 2000:158). The precise date of this move is still a source of debate (Callender 2000:159). His successor, Senusret I, was the first to order the construction of monuments in each of the main cult sites throughout Egypt which had the effect of undermining the power bases of local temples and priests (Callender 2000:162). The funerary complex of Senusret II was built at Lahun (Callender 2000:165). The layout of the rooms and corridors is unique and may be a reflection of beliefs concerning Osiris and the afterlife (Callender 2000:165),

adoption of some royal texts for private funerary ends from the end of the Old Kingdom may indicate a comparable 'democratisation' in religion. In my view, this applied to the 'prior to death' arrangements for sustenance and rituals as set out in the testamentary disposition documents as well. The testamentary disposition and the concepts and elements pertaining to succession law also became more democratised in the Middle Kingdom. Muhs (2016:68) affirms that the surviving evidence for the documentation of property transfers in the Middle Kingdom consists of written transcripts of the verbal statements, as was the case in the Old Kingdom.

The pyramid town at el-Lahun¹²³ in the Faiyum region gives us valuable information of ordinary people (Callender 2000:177). According to Kemp (2007:211), el-Lahun stands close to the entrance to the Faiyum depression. Flinders Petrie,¹²⁴ who excavated there in 1889-1890, incorrectly named it 'Kahun' (Callender 2000:177). It was Senwosret II who established the community of workers¹²⁵ engaged in the building projects of his funerary complex at el-Lahun (Grimal 2000:166).¹²⁶ The village lies on the rising edge of the desert, and the nature and purpose of the village is evident from its context (Kemp 2007:211). Next to El-Lahun is the ruin of a temple, and judging from its position, this was the Valley Temple to the pyramid of King Senusret II which stands just over a kilometre to the west (Kemp 2007:211).

The surviving material from this village is extremely important as it derives from the living world rather than the necropolis (Callender 2000:177). The valuable discovery of

¹²³ At Thebes each royal cult temple housed a cult to Amun, but the valley temple of Senusret II at Lahun was called in its own archive a temple of Anubis (Quirke 1992:85).

¹²⁴ Petrie excavated the settlement from April to May 1889, and again from October 1889 to January 1890 (Gallorini 1998:42). Flinders returned in 1911, 1914 and 1920 to complete his investigation (Gallorini 1998:42). The name 'Kahun' was given to this settlement close to el-Lahun by Petrie in 1889 (Kemp 2007:211). The site is near the large modern village of Lahun near the mouth of the Fayum (Gallorini 1998:42). El-Lahun is located at the eastern edge of the Fayum region, about 100 km southeast of Cairo (Shaw & Nicholson 2008:175).

¹²⁵ The village not only included the workers and their families, but also many inhabitants not connected to the funerary cult (Callender 2000:177). It is believed the town could accommodate 5000 inhabitants (Callender 2000:177). The village followed the same orientation as the pyramid (Kemp 2007:211). Kahun (the ancient site) was a rectangular, planned settlement, measuring about 384 m × 335 m (Shaw & Nicholson 2008:175), and is an unusually large example, according to Kemp (2007:211), of a 'pyramid town'. This might indicate that Kahun was more than just a village for the workmen who built the pyramid and the priests and others who kept up the cult of the dead King Senusret II (Kemp 2007:211).

¹²⁶ The town is called Hetep-Senusret. It is situated next to the pyramid complex of Senusret II, and was closely associated with his funerary cult (Callender 2000:177). The meaning of the ancient name of the town 'Hetep-Senusret' is 'King Senusret is at peace' or also 'Sekhem-Senusret' ('King Senusret is strong') (Kemp 2007:211). The town is laid out in single architecture similar to the New Kingdom villages at Amarna and Deir el-Medina (Callender 2000:177). Both these villages were relatively isolated from the main areas of settlement and surrounded by a mud-brick enclosure wall with two gateways (Grimal 2000:166).

papyrus, made by Petrie in 1889-1890 near the mouth of the Faiyum, was an area where conditions appear to have been exceptionally favourable to the preservation of papyri (Griffith 1898:1). A large collection of fragmentary household archives representing almost every class of record usually committed to writing (Griffith 1898:1) survived. These include literature, deeds, inventories, private and official letters, accounts etc. (Griffith 1898:1). In my opinion the valuable so-called *Kahun Papyri* are of specific importance for this thesis as they refer to testamentary dispositions as well.

Among the important legal documents from el-Lahun are examples of the *imyt-pr*, which was a title deed to, or disposition document of property; according to Griffith (1898:2) apparently a kind of will. Griffith (1898:4) argues that these documents do not *prima facie* appear to be wills as they do neither describe the testator as being about to die, nor name executors for carrying out the disposition of the property. It is a huge advantage that the Kahun documents dealing with dispositions are in a practically perfect state (Griffith 1898:4). The arguments by Griffith support my approach, for purposes of this study, to rather look at these ancient documents as testamentary disposition documents.

8.3 PAPYRUS UC 32058

8.3.1 BACKGROUND

The document known as *Papyrus UC 32058*¹²⁷ was drawn up in the second year of the reign of one of Amenemhat III's successors (Parkinson 1991:108) and is according to Callender (2000:158-171) from the Twelfth Dynasty. The document was probably placed in an archive at el-Lahun (Parkinson 1991:108). According to Muhs (2016:70) it was part of a private family archive that also included *Papyrus UC 32167* (*Papyrus Kahun I 2*) and perhaps also the household documents *Papyri UC 32163-32165* (*Papyrus Kahun I 3-5*). The papyrus is presently kept at the Petrie Museum at the University College London.

In my view this papyrus refers probably to a testamentary disposition made by Wah in which mention is made of the origin of the property which he received from his brother, Ankhren, who appeared to have bequeathed it to Wah in his (Ankhren's) testamentary disposition. It actually consists of two documents effectively combined into one: the

¹²⁷ This papyrus is also known as *Papyrus Kahun I 1*. The document's size is 57 × 32 cm (Parkinson 1991:108). When the document was found, it was still folded and sealed (Parkinson 1991:109). See Addendum C.2 for a copy of the original, included as an example of a testamentary disposition from the Middle Kingdom.

prior testamentary disposition by Ankhren is included in the testamentary disposition of Wah merely as a confirmation of the ownership of Wah (see discussion in par. 8.3.3.10 below).

8.3.2 THE TEXT

Parkinson (1991:109-110) gives the following translation:¹²⁸

(Label written on verso, after the document was folded)

The transfer deed made by the priest in charge of the phyle, Wah.

COPY OF THE TRANSFER DEED MADE BY THE TRUSTED SEAL-BEARER OF THE DIRECTOR OF WORKS, ANKHRENI.

Year 44, MONTH 2 OF SHEMU, DAY 13:

Transfer deed made by the Trusted Seal-bearer of the Director of Works, Shepset's son Ihisoneb, named Ankhreni,¹²⁹ of the northern district:

All my possessions in country and town to my brother, the priest in charge of the phyle of Sopdu, Lord of the East, Shepset's son Ihisoneb, named Wah. All my household to this brother of mine. This was placed as a copy in the office of the second Reporter of the South in year 44, month 2 of Shemu, day 13.

Year 2, MONTH 2 OF AKHET, DAY 18:

Transfer deed made by the priest in charge of the phyle¹³⁰ of Sopdu, Lord of the East, Wah: I am making a transfer deed for my wife, a woman of the Left Side, Sopdu's daughter Sheftu, named Teti – of everything that my brother, the Trusted Seal-bearer of the Director of Works, Ankhreni, gave to me, with all the goods as they should be – of all that he gave me. She herself shall give (it) to any of her children that she shall bear me, that she wishes.

I am giving her the 3 Asiatics which my brother, the Trusted Seal-bearer of the Director of Works, Ankhreni, gave to me. She herself shall give them to any of her children that she wishes.

As for my tomb, I shall be buried in it, and my wife also, without letting anyone interfere with it.

Now, as for the rooms that my brother, the Trusted Seal-bearer Ankhreni, built for me, my wife shall live there, without letting her be cast out of it by any person.

It is the deputy Gebu who shall act as guardian to my son.

Name list of the people in whose presence this was done:

¹²⁸ The transliteration of the text can be found in Collier & Quirke (2004:104).

¹²⁹ The name is transliterated as Ankhren by Jasnow, Der Manuelian, Logan and Muhs (as is apparent from the discussion of the text). I am using their transliteration.

¹³⁰ There was a system to organise the rotation of priests as they worked part-time and returned to their other profession(s) when not on duty. The priests were divided into groups and these groups were called *phyles* (Teeter 2011:35).

The Scribe of the Pillars, Kemnu.

The Temple Doorkeeper, Ankhtifi's son Ipu.

The Temple Door-keeper, Soneb's son Soneb.

8.3.3 CONCEPTS AND ELEMENTS IDENTIFIED

8.3.3.1 Date

In this papyrus the dates are explicitly mentioned. This reconfirms the necessity and importance of dating testamentary dispositions for the ancient Egyptians for reasons already dealt with (see Chapter 7). It is an indication that the testamentary disposition could still be amended or revoked before the death of the testator. It could also serve the purpose of proof, as a confirmation of an earlier bequest like the present 'copy' of Ankhren's testamentary disposition. This would make dating of testamentary dispositions an essential requirement.

In *Papyrus Kahun I 1*, line 6, the date appearing in the testamentary disposition of Wah ('Year 2, 2nd month of Inundation, day 18), probably of Amenemhat IV, is the date of the testamentary disposition of this single document (*Papyrus Kahun I 1*). The second date of the 'copy', the prior testamentary disposition of Ankhren ('Year 44, second month of summer, day 13') given in line 2, is added merely to confirm that it was effectively a prior testamentary disposition confirming Wah's ownership of Ankhren's awarded property.

8.3.3.2 Label

The document begins with the 'label' of Wah's testamentary disposition: '*imyt-pr* which the *wab*-priest and overseer of the phyle Wah made'. This is important as it is in effect the 'heading' of the document, very similar to what we still do today in headings of wills and testaments, for example: 'The last will and testament of X'. It is furthermore important as it gives us an indication that we are dealing here with just one document, being the testamentary disposition of Wah.

The above label ('heading') is then followed by the 'secondary label' of the 'copy' of the prior testamentary disposition of Ankhren ('copy (*mity*) of the *imyt-pr* which the trusted Seal-bearer and Controller of construction Ankhren made'). Apparently this secondary label is added merely to indicate the record of the previously made testamentary disposition.

8.3.3.3 Disposition

According to Muhs (2016:84), this papyrus contains two transfer documents (*imyt-pr*). The first is a copy of a transfer (*imyt-pr*) in which Ankhren gives all of his property to his brother Wah, and the second is a transfer (*imyt-pr*) in which Wah gives this property (including the house his brother built) to his wife. The term ‘testamentary disposition’ is used instead of *imyt-pr* for purposes of this study. It is apparent that the intention here of both Wah and Ankhren was *prima facie* to make a testamentary disposition in order to alter the customary intestate succession. In both cases they bequeathed to a person or persons other than the customary intestate heirs.

Ankhren was a wealthy official, able to afford a funerary chapel at el-Lahun (or Abydos), which is known from one surviving offering table (Parkinson 1991:109). We also have a deed of sale from year 29 of Amenemhat III, from which it is evident that Ankhren received the services of several Asiatic slaves (Parkinson 1991:109). It is possible that these are the same slaves bequeathed by Wah to his wife (Parkinson 1991:109). The ‘house of Wah’ is mentioned in a letter from el-Lahun, indicating that the matter needed attention, implying that the transfer of the property did not go smoothly (Parkinson 1991:109).

In my view, *Papyrus Kahun I 1* is one document only, one testamentary disposition document. The document is in essence the testamentary disposition of Wah. The first five lines of the document merely refer to the record or confirmation of an earlier testamentary disposition made by the testator. The sole purpose of this is to confirm that Ankhren awarded the property to Wah. In the translation mentioned above Parkinson uses the word ‘copy’, as does Muhs (2016:71). However, as Logan (2000:58) observes, the word *snn* is usually translated as ‘copy’, but in *Papyrus Kahun I 1* the word being used for ‘copy’ is *mity*. Logan (2000:58) suggests *snn* refers also to ‘report’ or ‘record’. I would suggest, given the context of the present text, that *mity* rather should be translated as the ‘record’ or ‘proof’ or ‘confirmation’ of the earlier testamentary disposition of Ankhren.

Papyrus Kahun I 1 then proceeds to transcribe the speech of the donator (in my opinion the testator), Wah, in the first person in lines 7-14 (Muhs 2016:70). It is quite likely, given the bequests made by Wah, dealt with later in this discussion, that Wah intended

to make a testamentary disposition. It is also clear that Wah is the testator of the current testamentary disposition as reflected in *Papyrus Kahun I 1*, it being one single document.

Furthermore, although Ankhren's testamentary disposition of which a 'record' or 'confirmation' is now (in Wah's testamentary disposition) serving the sole purpose of proving Wah's ownership of property, it is still an example of a testamentary disposition (although made earlier). The papyrus transcribes the speech of the donator (in my view the previous testator) Ankhren in the first person (lines 4-5) (Muhs 2016:70). It is submitted that the testamentary disposition of Ankhren is therefore still an example of a testamentary disposition altering the customary intestate succession principles, although in Wah's testamentary disposition it serves merely as proof of Wah's ownership.

8.3.3.4 Testator

As explained in paragraphs 8.2.3.2 and 8.2.3.3 above, Wah is quite clearly the testator of this single testamentary disposition. The previous testamentary disposition of Ankhren was merely 'copied' in order to authenticate Wah's ownership of the property. Looking at this earlier testamentary disposition of Ankhren it is also accepted that Ankhren was the testator of this earlier testamentary disposition. It is thus certain from the evidence that the testators of both these documents are identifiable; both are male adults.

8.3.3.5 Testamentary capacity

It also becomes clear that both testators appear to have had the capacity to make a testamentary disposition as it would appear *prima facie* from the contents of the document that they were both adults and property owners. It is implied that Wah is an old man. Both Wah's and Ankhren's positions in society are mentioned, which is an indication that it was necessary to do this in order to prove the testator's standing and his testamentary capacity to make a testamentary disposition. Apparently we do not have any indication as to their mental capacity since clauses like 'living mouth' or 'while alive' or 'upon my feet' do not appear to form part of this specific testamentary disposition.

8.3.3.6 Beneficiaries

In both testamentary dispositions it is also clear who the beneficiaries are. In the first testamentary disposition the beneficiary is the testator's (Ankhren's) brother, Wah. In

the second testamentary disposition the beneficiary is Wah's wife. Lippert (2013:9) submits that in cases where a non-blood relative was established as an heir, it was usually the wife, as in the case of *Papyrus Kahun I 1*. It is important to note that the wife appears to be a fiduciary heir as will be discussed later on; the reason for this deduction being that Wah stipulates as follows: 'She herself shall give them to any of her children that she wishes', which implies a condition. The children are to be the ultimate heirs.

In both cases (the current testamentary disposition document of Wah and the earlier testamentary disposition document of Ankhren) the testamentary disposition was used to change the customary intestate succession procedure; we know from the documents who the beneficiaries were. In Ankhren's case the beneficiary was his brother. In Wah's case it is his wife (as fiduciary heir) with the children being the ultimate beneficiaries. We are not sure from the evidence which children will ultimately inherit as Wah leaves that choice to his wife ('to any of her children that she wishes').

8.3.3.7 Bequests and translation of the word *rdi*

When discussing the inability of spouses to inherit from each other in terms of customary intestate succession principles, Pestman (1969:73) suggests there are exceptions and refers to *Papyrus Kahun I 1* as being an example of such an exception to the rule. Pestman (1969:73) observes that Wah makes a bequest by *imyt-pr* (a testamentary disposition) to his wife. This might be an exception to customary intestate succession' principles, but it is indeed a testamentary disposition which forms part of testate succession law. One needs to distinguish clearly between customary intestate succession and testamentary dispositions. The purpose of testamentary dispositions was to alter customary intestate succession principles.

According to Jasnow (2003a:278) the transfer deed (a testamentary disposition for purposes of this study) of Ankhren confirms that his possessions in 'country and in town' go to Wah, his brother. Wah then drafts a testamentary disposition giving the property to his own wife (Jasnow 2003a:278). In his testamentary disposition Wah makes the following provision: 'I am making an *imyt-pr* for my wife, a woman of the town of The Left Side, the daughter of Sat-Sopedu, Shefet, called Teti, consisting of everything which my brother ... Ankhren gave to me together with all the belongings (*hnw*) wherever they are [lit. 'at its place'] consisting of everything which he gave to me.' He also gives slaves to his wife: 'I am giving to her the three Asiatics [slaves] that my

brother Ankhren gave to me.’ The wife may then give them to any of their children (Muhs 2016:84). In this document, Wah (who was a priest), makes provision for his wife to inherit his property (Parkinson 1991:109). It might be that it was done on occasion of their marriage (Parkinson 1991:109).

The word used again in these testamentary dispositions is the word *rdi* (‘to give’) which, given the context of the documents as being testamentary dispositions, should rather be translated as ‘to bequeath’. It is evident that the purpose of both testamentary dispositions was to bequeath property, both movable and immovable, first to Wah (in the first testamentary disposition) and then to Wah’s wife (in the second testamentary disposition). We are therefore certain that something has been ‘given’, or then rather ‘bequeathed’, within the context of a testamentary disposition.

8.3.3.8 Eldest son

These two testamentary dispositions do not make mention of the eldest son. There are no provisions dealing with this matter in these documents. A later inscription on the document does however mention that a son was born to the couple. It is not clear if this was done to make provision for the eldest son acting as administrator (the son was still a minor, for a guardian was appointed). The reason might rather have been to include the son as ultimate *fideicommissum* heir. This will be discussed below in paragraph 8.2.3.16.

8.3.3.9 Specific property

Apparently we have both movable and immovable property as the subject of inheritance in *Papyrus Kahun I 1*. In his testamentary disposition Wah refers to the property to be awarded as being possessions in country and town, all his household goods, three slaves, his tomb and the rooms that his brother built for him.

8.3.3.10 Origin of property

In this document we again find a reference by the testator to the origin of the property he is about to bequeath. Wah conveys his property to his wife, but before doing this, he states the origin of and his title to the property (Der Manuelian 1986:15). Wah quotes from the earlier document of his brother Ankhren from whom he obtained the property in the first place (Der Manuelian 1986:15). Der Manuelian (1986:15) indicates that this above-mentioned quote from Ankhren’s document is separated on the papyrus from the

body of Wah's document proper and reads as follows: 'Copy of the house-document (*mity n imyt-pr*) which the trustworthy seal-bearer of the Controller of construction projects, Ankhren, made ...'.

The important point here is the presence of the word *mity* ('copy'), which clearly indicates that the clause to follow is an excerpt recording Ankhren's conveyance to his brother Wah, which was an earlier document (Der Manuelian 1986:15). The testamentary disposition is preceded by an earlier document, drawn up six years before (Parkinson 1991:109). This earlier document bears witness to Wah's legal ownership of property which was previously owned by his brother, Ankhren (Parkinson 1991:109). We know from Roman law that the disposal of someone's property after his death, in accordance with his expressed will is regarded not as a natural right, but as a privilege given to him by law (Burdick 1989:578). The original meaning of 'property', according to Burdick (1989:579), is someone's exclusive right to, in and over a thing.

It is important to note the emphasis the ancient Egyptians placed on stating the origin of the property time and time again when disposing of property by way of a testamentary disposition. In my opinion the reason is that it proves the testator's legal ownership of the property he is about to dispose of by means of a testamentary disposition.

8.3.3.11 Guardian for minor

An important concept which can be observed in this document is the provision made for the appointment for a guardian for the minor son: 'It is the Deputy Geb who will act as guardian for my son.' This is once again a fundamental principle still in use in present-day law of succession. The guardian will act on behalf of the minor son until he comes of age. It is important to note that the testator added this provision later. This is dealt with in paragraph 8.3.3.20 where the codicil is discussed.

8.3.3.12 Wishes

It is noteworthy that we have here also a very early example of a wish being expressed in a testamentary disposition when Wah requests that he be buried in the tomb with his wife, without interference: 'As for my tomb, I shall be buried in it, and my wife also, without letting anyone interfere with it.'

This stipulation in Wah's testamentary disposition is similar in nature to wishes still found today in wills and testaments. Today we regard these wishes or requests merely

as wishes which are not legally enforceable. It is not clear that we can deduct the same of these ancient stipulations, but it seems *prima facie* that only a 'wish' is being expressed here.

8.3.3.13 Conditions

The testamentary disposition of Wah contains an implied condition as part of the bequest made to his wife: 'She herself shall give them to any of her children that she wishes.' The wife receives the inheritance 'on condition' that she shall give it again to any of her children of her choice. In my view the intention of Wah was for the children to be the ultimate heirs. This thus appears to create a *fideicommissum*; this matter will be discussed in more detail below in paragraph 8.3.3.16.

8.3.3.14 Trust

It can, however, also be argued *prima facie* that a *mortis causa* trust was intended by Wah. It remains difficult, as earlier indicated, to apply modern legal terminology to ancient Egyptian concepts and ideas. I would argue that in this testamentary disposition of Wah under discussion the intention was for the children to be the ultimate heirs and the wife only a fiduciary heir, and therefore it is submitted that the notion of *fideicommissum* is better suited to describe the inheritance. In support of this argument it is also stated in Wah's testamentary disposition that the wife will be allowed to stay in the rooms Ankhren had built for Wah. This is clear evidence that the wife did not inherit the rooms, but was merely awarded *habitatio*, which shall be dealt with in paragraph 8.3.3.17.

8.3.3.15 Usufruct

As far as I could derive, no mention is made of usufruct in Wah's testamentary disposition although we might have the related legal notion of *usus* here, in the sense of the wife being allowed to stay in the rooms without interference, which in my opinion means the wife had the right of *habitatio*. This will be discussed in paragraph 8.3.3.17.

8.3.3.16 *Fideicommissum*

Johnston (1988:1) is of the view that the word 'trust' is the ideal word in English, even in legal English, to translate the Latin *fideicommissum*, but in my opinion we are dealing here with two separate legal institutions. Both the trust and the *fideicommissum* have a common fiduciary nature in the sense that property is entrusted to one person for the

benefit of another (Johnston 1988:1). It is Johnston's (1988:1) view that even though trust and *fideicommissum* are diverse in origin, they are nonetheless related in function. According to Johnston (1988:1) *fideicommissa* are among the most versatile institutions of Roman law and they were originally conceived as a kind of informal bequest.

From a Roman law historic perspective, trusts are associated with the emperor Augustus. Although trusts existed before his time, their legal sanction was Augustus' innovation (Johnston 1988:9). Trusts were, according to Johnston (1988:9) essentially instruments for making over property. The trust would allow the benefit to be vested in another, and subsequently passed on (Johnston 1988:9). From these modest beginnings, new possibilities developed (Johnston 1988:9). The trust could for instance be set up not for handing over property, but for performing some act (Johnston 1988:9). The Latin term *fideicommissum* is a relic of the times during which there was no legal sanction, because an object was entrusted (*commissum*) to the good faith (*fides*) of the recipient for the benefit of another person (Johnston 1988:9).

Jasnow (2003a:278) mentions the fact that Wah specifies that his wife will then give the property to any of her children. It is noteworthy, in my opinion, that a later inscription on the text mentions that a son was born to the couple. This was clearly done for clarity's sake in view of the stipulation that the wife can give the property to any of her children. In other words, it would include the son as a possible ultimate heir. It would appear that Wah effectively created a *fideicommissum* when he bequeathed his assets to his wife, because he adds to this bequest that she will give the property to whomever she wishes of her children. Wah is extending this *fideicommissum* also to the three Asiatic slaves when he says: 'She will give [these Asiatics] to whomever she wishes of her children.' The wife is therefore the *fiduciarius* (fiduciary heir) and the children the *fideicommissarii* (the ultimate heirs).

8.3.3.17 *Habitatio*

Related to usufruct and also falling into the general category of personal servitudes is *habitatio* (dwelling) (Corbett et al 2001:385). *Habitatio* is the legal term for the right of free residence in the house of another (Hiemstra & Gonin 2005:196). Corbett et al (2001:232) define *habitatio* as the right to dwell in another's house without detriment to the substance of it.

A bequest of a right to occupy a property entitles the relevant party to an exclusive right for the benefit of him- or herself and his or her family, expiring at the relevant party's death (Corbett et al 2001:232). The holder of the right is entitled to reside in the house and to let the right of *habitatio* to others (Corbett et al 2001:385). Personal servitudes, and specifically *habitatio* in this case, can be granted in a will and the question whether a testator intended to grant to the beneficiary a usufruct, *usus*, or *habitatio* is a question of interpretation (De Waal & Schoeman-Malan 2015:166).

Wah declares in his testamentary disposition that his wife shall be able to dwell unmolested in the rooms built for him by his brother (Jasnow 2003a:278). Wah gives this property to his wife, who may then dwell there without fear of being cast out (Muhs 2016:84). We thus find here an example of provision being made for the surviving spouse's right to *habitatio*, which is significant in that the ancient Egyptians in the distant past of history already had the concept, or at least elements of the notion which we would later call *habitatio*.

8.3.3.18 Record office

The first testamentary disposition (that of Ankhren) was followed by a statement that it was placed as a record (*snn*) in the office of the second reporter of the south (Muhs 2016:70). According to Logan (2000:58) *snn* could mean a 'report' or 'record'. It would appear to have been customary to place the testamentary disposition also in a record office; similar again, as has been mentioned before, to our present-day Master of the High Court. However, in the South Africa legal system today a will or testament is only sent to the Master of the High Court once the testator dies.

8.3.3.19 Witnesses

Relying on witnesses remained the primary way of authenticating the written transcripts: written documents were still dependent on local witnesses for enforcement (Muhs 2016:84). It is important to note, according to Muhs (2016:68), that many transcripts provide the names of witnesses who could be requested to confirm that the writing was indeed a true reflection of the verbal statement, but some did not.

The testamentary disposition of Wah ends with a list of witnesses (three witnesses in lines 1-4 of the second column) (Muhs 2016:70). The testamentary disposition was written in the presence of the witnesses as can be seen from the following:

List of the people in whose presence this was written (*iri*); 1) The decorator of pillars Kemni, 2) The Gatekeeper of the Temple Ankh-tifi's son Ipu, 3) The Gatekeeper of the Temple Seneb's son Seneb.

It should be noted that the witnesses are named and identified, as it might be necessary to call upon the witnesses to authenticate the testamentary disposition in case of a possible dispute over its existence, validity or contents in future. Witnesses played an important role in ancient Egypt to authenticate a testamentary disposition should a dispute arise over its validity or existence. This is still the case in our current law of testate succession where witnesses also play a crucial role in authenticating wills and testaments.

8.3.3.20 Codicil

According to Parkinson (1991:109) an extra line was added to the testamentary disposition at a later stage, showing that a son was born from this relationship. It is probable, in Parkinson's (1991:109) opinion, that Wah was elderly because he appoints a guardian for this very young son. This addition to the initial testamentary disposition is important as it implicitly indicates that a testator could 'amend' or 'add' to an existing testamentary disposition prior to the death of the testator. It means that the initial testamentary disposition remains intact, as it is not necessarily revoked; there is only an amendment or an addition made. This is similar to elements of a codicil. Corbett et al (2001:34) explain a codicil as being a species of will and as

... a testamentary document executed in the manner required by law, constituting an addendum or supplement to a will previously made, for the purpose of adding to or varying the provisions of that will.

It is quite remarkable that we are able to identify elements of a codicil in ancient Egyptian documents as far back as the Middle Kingdom.

8.3.3.21 Mortuary provisions

Wah makes the following provision: 'As for my tomb, let me buried in it with my wife, without anyone interfering herewith.' Although there no specific provisions are made for offerings etc., it can be deduced that there is still a very close relationship between the belief in the afterlife and the provisions made by way of these testamentary dispositions. Wah was also a *wab* priest and obviously connected to the temple and by implication to religion and everything surrounding the belief in the afterlife. In the case of Ankhren, we also have an indication of the importance of and link with religion and

specifically the belief in the afterlife from the offering table scene referred to above in paragraph 8.3.1.

It is thus submitted that also in this testamentary disposition of Wah a close relationship remains between the belief in the afterlife and the ‘birth’ of concepts and elements of testamentary dispositions which we would regard as elements of testate succession law today.

8.4 PAPYRUS UC 32055

8.4.1 BACKGROUND

According to Theodorides (1971:304) the document known as *Papyrus UC 32055*¹³¹ dates from the end of the Twelfth Dynasty. As discussed in paragraph 8.3.1 above, it was found at el-Lahun. It is presently kept at the Petrie Museum at the University College London with the reference number *Papyrus UC 32055*. Lippert (2013:9) observes that the only *imyt-pr* document not drawn up for a blood relative appears to have been *Papyrus Kahun II 1* which relates to a priestly office as security for a loan. From the fragmented text there is no indication which, if any, kinship relation there existed between the parties (Lippert 2013:9). *Papyrus Kahun I 1* is thus also an example of a testamentary disposition to a non-blood relation, as is Wah’s bequest to his wife.

This papyrus is not a testamentary disposition document, but rather a document about legal action taken by the eldest son, indicating the role of the eldest son as administrator similar to our present day executor. It indicates that the eldest son as administrator stepped into the shoes of the deceased in order to effectively enforce the completion of an outstanding legal action on behalf of the deceased and on behalf of the deceased’s estate; acting therefore legally as executor on behalf of the estate in a matter of an ‘incomplete transaction’ to recover the owing obligation.

Logan (2000:59) suggests that this text actually refers to a legal dispute, and is the record of the dispute, between the son of someone (Senbebu?) and a certain Iyemiatib. Iyemiatib received a priestly office, according to Logan (2000:59), by means of an *imyt-pr*, but never paid the son’s father the agreed price. It is quite clear that this is an ‘incomplete transaction’ and an obligation owing to the deceased estate. It is the duty of

¹³¹ This papyrus is also known as *Papyrus Kahun II 1*.

the 'executor', the 'eldest son', to act on behalf of the deceased's estate and recover this outstanding obligation (which is an 'asset' of the deceased estate). The dispute ultimately goes to court and ends up with an extract from the *imyt-pr* in which the office was transferred (Logan 2000:59).

8.4.2 THE TEXT

Parkinson (1991:110-111) gives the following translation:¹³²

[The ...] of the Left Side, Sonebebu['s son(?) ... of] Peace-of-Senwosret-[true-of-voice] office (?). This is what his son says: 'My father made a transfer deed concerning the office of priest in charge of the phyle of Sopdu, Land of the East, which was his, for the scribe in charge of the seal, of the Left Side, Iyemiatibi. He said to my father: "I am giving you the principal and bearing all the obligations, which are yours," so he said. Then my father was questioned by the Overseer of Fields Mersu, as deputy for the member of the officiate, saying: "Are you content with the giving of the aforementioned principal to you, an[d the bearing] of all the obligations, which have been assessed for you, [in] payment for your office of priest in charge of the [phyle]?" Then my father said: "I am content". The statement of the member of the officiate: "The two men shall be caused to take an oath, saying "[We] are content." [Then] the two men were called to swear by the lord l.p.h. in the presence of the Count [...], by] the Overseer of Fields Mersu, as deputy for the member of the officiate.

Name list of the witnesses in whose presence this was made:

The scribe Iyem[iatibi(?)]

Ditto Py[...]

Ditto [...]au

Now, my [father arrived at the point of de[ath, and the obstacles concerning the principal had not been removed for him. M[y] father said to me when he was il[l: 'If] you aren't given the principal that the scribe and Seal-bear[er Iy]emiatibi swore to me, you [sha]ll petition the official, who shall adjudicate, about it. So the principal shall be given to you' – so he said. I have made petition to him who acts [as...] here about[t giving me] that which fell to the scribe in charge of the seal Iyemiatibi, [immediately (?)].

8.4.3 CONCEPTS AND ELEMENTS IDENTIFIED

8.4.3.1 Date

The document makes reference to a date '/// of Gestab, Senbebw /// [Year x?] Sesostriis ///', but this is in my opinion not relevant to the present study and discussion about testamentary dispositions. *Papyrus Kahun II 1*'s relevance is the legal action brought by the eldest son.

¹³² The hieroglyph text and transliteration can be found in Collier & Quirke 2004:103.

8.4.3.2 Disposition

Mention is made of an *imyt-pr* when the sons says: 'My father made an *imyt-pr* consisting of the Office of Wab-priest and Master of Phyle of Sopedu ... belonging to him, to the Scribe and Master of Contracts of the town of Gesiah, Iyemiaub'. Mention is thus made of a 'transfer document' in terms of which the eldest son is acting as executor. This will be discussed below in paragraph 8.4.3.4.

8.4.3.3 Testator

The testator of the testamentary disposition' is identified as the father (Sonebebu) of the eldest son now acting as reflected in *Papyrus Kahun II 1*. The identity of the testator is therefore clear.

8.4.3.4 Eldest son

It is implied that the son acts here as the eldest son, the 'executor' of the estate in the sense that he claims something (a financial obligation) from Iyemiaub, after his father's death. Theodorides (1971:304) confirms that the plaintiff wishes to recover an outstanding debt inherited from his father relating to a credit sale which had been concluded by an *imyt-pr*. The son, as 'eldest son' (executor), had the duty to recover the assets of the estate as part of his duties administering the estate and therefore attempted to recover the obligation owing to the deceased estate due to an 'incomplete transaction'. I shall revert to this point below in paragraph 8.4.3.5.

8.4.3.5 Dispute

Muhs (2016:68) calls this dispute – a petition in which the petitioner first explains that his father drew up a transfer document (*imyt-pr*) for an exchange of property. Instead of providing a copy of the transfer, the petitioner describes the procedure for making the transfer in lines 2-14 (Muhs 2016:68). In lines 15-20 the petitioner makes his 'petition proper' (Muhs 2016:69). Here the petitioner explains that the other party to the transaction never fulfilled his obligation and that his father, on his deathbed, told his son to make this petition (Muhs 2016:69). One might say the deceased's son, instructed by his father before his death, proceeds with the dispute after his father's death. According to Jasnow (2003a:279) the father obviously desired that his affairs should be in order before his death. According to Muhs (2016:72) the petition in this text suggests that it was necessary in 'exchanges' for both parties to swear that they were satisfied with the exchanges, as was the case in the Old Kingdom.

This matter is in essence about an incomplete transaction where one party did not fulfil his obligation in terms of a 'contract'. The obligation is still due, irrespective of one party's death. The deceased estate is still owed the obligation as it is an asset of the estate. It is therefore up to the eldest son in his capacity as administrator to act on behalf of the estate and claim and recover the outstanding obligation.

8.4.3.6 Witnesses

The document again concludes with a list of the witnesses present:

List of witnesses in whose presence this was made: 1) The scribe ///, 2) /// (the determinative and line are there), 3) /// (the determinative and line are present there).

However, this list of witnesses refers to the record of the dispute and not to the testamentary disposition.

8.5 PAPYRUS UC 32037

8.5.1 BACKGROUND

According to Logan (2000:57) *Papyrus UC 32037*¹³³ dates from the Twelfth Dynasty. This document is a transfer document (*imyt-pr*) dated to Year 39, probably of Amenemhat III, according to Muhs (2016:69). As mentioned in the introduction to this chapter the papyrus was found at el-Lahun. Today the papyrus is kept at the Petrie Museum at the University College London, with number *Papyrus UC 32037*.

This papyrus refers to a testamentary disposition made by Mery (also called Kebi). He awards his office to his son Iuseneb and his assets to his children (of a second marriage). We have, among others, also the revocation of an earlier testamentary disposition within the present testamentary disposition of Mery. Lippert (2013:9) affirms that *Papyrus Kahun VII 1* is an example where an *imyt-pr* document for the mother of the eldest son was cancelled and replaced by one favouring the children of another wife. This aspect will be discussed in paragraph 8.5.3.11.

8.5.2 THE TEXT

Logan's (2000:57-58) translation is as follows:¹³⁴

¹³³ This papyrus is also known as *Papyrus Kahun VII 1*.

¹³⁴ The hieroglyph text and the transliteration can be found in Collier & Quirke 2004:101.

Year 39 (Amenemhat III), 4th month of Akhet, day 19

imyt-pr which the phylarque [= priest in charge of the priests' duty shifts

Intef's son Mery called Kebi made

to his son Mery's son Intef called Iuseneb.

I am giving (transferring) my office of Phylarque to my son [PN]

for my staff of old age,

in view of the fact that I am growing old.

Appoint him immediately!

As for the *imyt-pr* which I previously made for his mother,

revoke it!

As for my house which is in the district (*spAt* or *dAtt*) or *hwt-mdt*

It belongs to my children who will be born to me by Satnebetneniesu the daughter of [PN],

together with everything that is in it (the contents).

List of the witnesses in whose presence this *imyt-pr* was made

1. The [title and PN]
2. The [title and PN]
3. ///// (the line is here)

8.5.3 CONCEPTS AND ELEMENTS IDENTIFIED

8.5.3.1 Date

It is clear from the text that the document is dated 'Year 39 (Amenemhat III), 4th month of Akhet, day 19'. Again, this is an important indication of a legal document in general, but also more specifically for purposes of this study of a testamentary disposition document. It is especially important when a testator wants to revoke a previous testamentary disposition. *Papyrus Kahun VII 1* deals indeed *inter alia* with the revocation of a testamentary disposition. This will be discussed in more detail in paragraph 8.5.3.11.

8.5.3.2 Label

Griffith (1898:4) translates the label as 'title to property'. It obviously is the heading of the document.¹³⁵

8.5.3.3 Disposition

Lines 3-9 of the papyrus transcribe the speech of the donator Mery (the testator in my opinion, as this is a testamentary disposition) in the first person (Muhs 2016:70). In *Papyrus Kahun VII 1* Mery gives his office of 'Controller of the phyle' to his son Iuseneb and his house to his children by his wife Nebetneninisu (Muhs 2016:85). It is furthermore apparent that the document is identified as an *imyt-pr* which the phylarque (priest in charge of the priests' duty shifts), Intef's son Mery called Kebi, made to his son Mery's son Intef called Iuseneb'. According to Theodorides (1971:304) the taking of an oath was not required for the drawing up of an *imyt-pr* valid as a will, because it could be revoked. Theodorides (1971:304) says an example of this can be found in *Papyrus Kahun VII 1*.

It is clear that Mery had the intention to dispose of his property in terms of a testamentary disposition in order to make arrangements prior to his death for his property.

8.5.3.4 Testator

The document starts by mentioning who is making the testamentary disposition. The testator is a male and is clearly identified in the document as Mery.

8.5.3.5 Testamentary capacity

Mery has the testamentary capacity to make a testamentary disposition as he appears to be an adult who owns property. It is Griffith's (1898:46) opinion that this document is a disposition of property in old age and in view of death. No mention is made of the testator's mental capacity.

8.5.3.6 Beneficiaries

Right at the beginning the testamentary disposition clearly mentions that the testamentary disposition is made in favour of the son Iuseneb. Iuseneb was apparently

¹³⁵ I intend to look into the original hieroglyphs and translations for these 'labels' or 'headings' in a future study.

Mery's primary heir according to Eyre (2007:232). Mery awarded his office to Iuseneb to act as his 'staff of old age' with immediate effect (Eyre 2007:232).

The beneficiaries are the children, although they are not individually named in the testamentary disposition. Mery refers to his children he had with Satnebetneniesu. Mery declared that his house and all that was in it was to be the property of his children (Eyre 2007:232). According to Eyre (2007:232), it is unclear whether Satnebetneniesu was Iuseneb's mother, or a second wife with whom Mery had more children. I disagree with Eyre, because in my view the testamentary disposition revokes the previous testamentary disposition to Iuseneb's mother; thus Satnebetneniesu appears to be a second wife.

It is interesting that the heirs, or rather legatees in this case, are not named in person. The only reference is made to children to be born by Satnebetneniesu. The observation one can make here is that the names are not mentioned here since doing so might exclude children born after the drafting of the testamentary disposition. It might thus imply that Satnebetneniesu in particular was still young enough to bear future children. Whether this would include a potential *nasciturus* (conceived but unborn child) is not possible to say as we do not have clear evidence. However, should it include the *nasciturus*, this would be a remarkable clause in that provision is effectively made for future, unborn children at the time of drafting of the testamentary disposition, to be included as beneficiaries in terms of the testamentary disposition. The beneficiaries are effectively legatees, as specific assets are awarded to them.

8.5.3.7 Bequests and the translation of 'to give'

Again we find the word 'give' used to indicate transferring something to a beneficiary: 'I am giving (transferring) my office of Phylarque to my son [PN], for my staff of old age, in view of the fact that I am growing old. Appoint him immediately.' I am of the opinion that one should rather, given the context of the testamentary disposition, use the word 'bequeath'. The fact is that we have clear evidence that the testator intended awarding assets to beneficiaries in his testamentary disposition.

8.5.3.8 Specific assets

Again we have an example of a specific asset, namely the house and its contents, which must go to certain people. In my view this could even be regarded as an example of a legacy. 'As for my house which is in the district ... it belongs to my children who will be

born to me by Satnebetnienesu, the daughter of [PN], together with everything that is in it' (the contents). The assets consist therefore of movable and immovable property.

8.5.3.9 Origin of assets

No reference to the origin of property in this testamentary disposition was found.

8.5.3.10 Witnesses

Papyrus Kahun VII 1 ends with the list of names of three witnesses (lines 10-13) (Muhs 2016:70). It is important to note that the testamentary disposition ends once again with the list of witnesses who are identified. In this document the witnesses were present at the drafting of the document and they are again named and their titles mentioned:

List of the witnesses in whose presence this *imyt-pr* was made 1) The [title and PN],
2) The [title and PN], 3)//// (the line is here).

The identification of the witnesses by name and their occupation is important as it makes it easy to recall them in future if necessary to authenticate the testamentary disposition in cases where the validity or existence of the testamentary disposition is in question.

8.5.3.11 Revocation

Papyrus Kahun VII 1 is *inter alia* an example of the possibility in ancient Egypt to revoke a testamentary disposition. It is Logan's (2000:58) view that Mery has remarried a certain Satnebetnienesu. In *Papyrus Kahun VII 1* Mery revokes an earlier *imyt-pr* or testamentary disposition which was written in favour of his first wife, the mother of his son Iuseneb: 'As for the *imyt-pr* which I previously made for his mother, revoke it' (Logan 2000:58). Mery revokes the *imyt-pr* he made earlier for Iuseneb's (unnamed) mother (Eyre 2007:232).

Eyre (2007:232) is convinced that the first *imyt-pr* can best be understood as a standard settlement associated with marriage and the production of an heir, and is not in the modern sense a will. On the other hand Theodorides (1971:305) confirms that this *imyt-pr* annuls a previous deed with the same title which was indeed a will, but that it does not itself constitute a will. According to Theodorides (1971:305) this is the case because it is expressly laid down by the wish of the testator that it shall take effect immediately. The revocation applies only to the second part of the text, and therefore the first clause has nothing to do with it (Theodorides 1971:305). Theodorides (1971:305) asks why

then was it brought into the present *imyt-pr* of which the son is made beneficiary when it does not concern him? If the father would have died intestate, the estate would pass to his son, but he must have made a legacy to his wife and it is this disposition which would have necessitated the drawing up of the first *imyt-pr* (Theodorides 1971:305). It is with the present deed that he annuls his previous will (Theodorides 1971:305). Theodorides (1971:305) suggests the revocation might conceal repudiation. The father speaks about the ‘mother’ of his son and not of his own wife, but neither does he give the title of wife to the second woman (Theodorides 1971:305). Theodorides (1971:305) makes a valid assumption, namely that the document was drawn up at the time of a remarriage. The word *msy(w)* could be taken as a prospective participle (‘the children who may be borne to me ...’), which would be consistent with the fact that the children of the second relationship are neither named nor even enumerated (Theodorides 1971:305). In terms of the first *imyt-pr* the legacy had evidently been entailed, according to Theodorides (1971:305-306), and the son named the beneficiary of his mother, and it is in this regard that he was affected by the revocation of the will.

Theodorides (1971:306) argues that it was therefore not because of the first wife that the previous *imyt-pr* was annulled (it would in fact have remained effective even after her death and the hypothesis of a possible repudiation would be pointless), but it was rather because the father, at the time of the apportionment which he now makes, is also concerned about the children he may have by the other woman.

We have therefore in this papyrus text a document that fundamentally modified the terms of the first *imyt-pr* and where a codicil, as Theodorides (1971:306) suggests, would be quite sufficient, as was done in *Papyrus Kahun I 1* (see discussion above in paragraph 8.3).

This argument of Theodorides about exactly what the nature of the present document is, is precisely my point in this study. It is difficult, if not impossible, to assign modern legal terminology to ancient Egyptian concepts or documents in this instance. In my view, the present document (*Papyrus Kahun VII 1*) clearly deals with aspects of testamentary dispositions, as do many other ancient Egyptian documents. They may not, from a modern perspective, be classified as pure wills or testaments as we understand them today, but they clearly deal with matters pertaining to testamentary dispositions. It is for this reason that I am including this present document as a testamentary disposition.

8.5.3.12 When does the testamentary disposition come into effect?

As indicated earlier, Theodorides (1971:305) suggests that *Papyrus Kahun VII 1* does not in itself constitute a will because it is expressly stated as a wish of the author (still the testator in my view) that it shall take effect immediately. Theodorides therefore implies that it can only be a will or testament if it comes into effect at the testator's death. As a rule the testamentary disposition appears to become effective upon the death of the testator. Pestman (1969:63) also affirms this. An example, however, of an explicit provision to be executed immediately, in other words before the testator's death, comes from *Papyrus Kahun VII 1* where the son is instituted as 'staff of old age' (which was an assistant to an official going into partial retirement) (Lippert 2013:5). According to Griffith (1898:47) 'old man's staff' refers probably to the appointment of a son in association with the father in office. The purpose apparently was to lift the burden of the work of the older man, an arrangement which apparently had to take place during the testator's lifetime (Griffith 1898:47). Pestman (1969:63) refers to a case where the father, after stating that he has given an office to his son, goes on to say 'grant that he may immediately be promoted (to this office)'.

The general rule, however, was for the testamentary disposition to become effective only upon the testator's death. It is also *Papyrus Kahun VII 1* which supports this assumption. It was possible to revoke an earlier made testamentary disposition as has been discussed above in paragraph 8.5.3.10. It would therefore appear that it was possible to revoke a testamentary disposition at any time before death, implying therefore that the testamentary disposition would only come into effect upon the testator's death. It is apparent that in some exceptional cases (like *Papyrus Kahun VII 1*) it was possible in ancient Egypt to include a clause in a testamentary disposition that would become effective immediately. It is a reflection of the fact that the ancient Egyptians used different documents for testamentary disposition purposes. What is of more importance for this study, is to identify the concepts and elements that are clearly present in these ancient testamentary disposition documents.

8.6 INSCRIPTIONS OF DJEFA-HAPI

8.6.1 BACKGROUND

Djefa-Hapi was a nomarch and high priest of Asyut¹³⁶ in the Twelfth Dynasty (Theodorides 1971:303). According to Taylor (2001:176) Djefa-Hapi was the provincial governor and high priest of the god Wepwawet at Asyut. Djefa-Hapi bore the title ‘overseer of priests’, but not of the official cults at Asyut (Warburton 2007:188). Djefa-Hapi, therefore, appears to be the overseer of his own priests, those who benefited from his endowment (Warburton 2007:188).

The name *Inscriptions of Djefa-Hapi* actually refers to ten contracts or agreements between priests and officials of Asyut and Djefa-Hapi, to endow his funerary cult (Muhs 2016:68). Djefa-Hapi then had these contracts inscribed on the walls of his tomb as a reminder for his *ka*-priests, who were supposed to enforce them (Muhs 2016:68).

8.6.2 THE TEXT

Breasted¹³⁷ (2001:260-271) translates the text as follows:

The hereditary prince and count, the superior prophet, Hepzefi; he says to his mortuary priest: “Behold, all these things, which I have secured by contract from these priests, are under thy charge. For, behold, it is the mortuary priest of a man, who should maintain his possessions and maintain his offerings.

Behold, I have informed thee; (as for) these things, which I have given to these (wab)-priests, as compensation for these things, which they have given to me, take heed lest anything among them be lacking. (As for) every word of my lists, which I have given to them, let thy son hear it, thy heir, who shall act as my mortuary priest. Behold, I have endowed thee with fields, with people, with cattle, with gardens (and) with everything, as every count of Siut (does), in order that thou mayest make offerings to me with contented heart. Thou standest over all my possessions, which I have put under thy hand. Behold, they are before thee in writing. These things shall belong to thy particular son, whom thou lovest, who shall act as my mortuary priest, before (thy) other children, as food which I have [bequeathed (?)] to him; not permitting that he divide them to his children, (but) according to this word which I have commanded thee.”

First contract

Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the lay (wab) priests of the temple of Upwawet, lord of Siut, to wit:

¹³⁶ Asyut was the capital of the thirteenth Upper Egyptian nome and situated on the west bank of the Nile. It is important because of the tomb of Djefa-Hapi I, nomarch during the reign of Senusret I (Wilkinson 2005:36).

¹³⁷ Breasted uses the spelling Hepzefi for Djefa-Hapi.

There shall be given to him: A white loaf per individual wab priest, for his statue, which is in the temple of Anubis, lord of Rekreret, on the first of the five intercalary days, when Upwawet, lord of Siut, proceeds to his temple.

He hath given to them (i.e. the wab priests) for it his share in the bull offered to Upwawet, lord of Siut, in his temple, when he proceeds to it, consisting of his quarter, due to the count.

Lo, he spake to them, saying: "Behold ye, I have given to you this quarter due to me from this temple, in order that this white bread may be endowed, which ye give to me."

Lo, they had given to him the inherited portion of the bull, for his statue, (which is) in charge of his mortuary priest, before he gave to them of his quarter.

Lo, they were satisfied with it.

Second contract

Contract with the count, the superior prophet, Hepzefi, triumphant, made, with the lay (wab) priests of the temple of Upwa-wet, lord of Siut, to wit:

There shall be given to him:

(a) White bread by each one among them, for his statue, (which is) in charge of his mortuary priest, in the first month of the first season on the first day, New Year's Day, when the house makes gifts to its lord, when the fire is kindled in the temple.

(b) And they shall go forth following his mortuary priest, at his glorification, until they reach the northern corner of the temple, as they do, when they glorify their own noble ones, on the day of kindling the fire.

He hath given to them for it a heket of grain front every field of the estate, from the first of the harvest of the count's estate; as every citizen of Siut does, from the first of his harvest. Now, behold, he begins with having his every peasant give it into this temple, from the first of his field.

Lo, he said: Behold, ye know that, as for anything which any official or any citizen gives into the temple, from the first of his harvest, it is not agreeable to him, that there should be lack therein. Therefore shall no future count diminish to future priests, that which is secured by contract of another count. This grain shall belong to the lay priests, each by himself; no priest, who shall give to me this white bread, shall divide (it) to his colleagues; because they give this white bread, each by himself.

Lo, they were satisfied with it.

Third contract

Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the official body of the temple, to-wit:

There shall be given to him bread and beer in the first month of the first season, on the eighteenth day, the day of the Wag-feast. List of that which shall be given:

| Register of Names | Qbj-jars of beer | Flat loaves | White loaves |
|------------------------------------|---------------------|----------------|-----------------|
| Superior prophet | 4 | 400 | 10 |
| Announcer | 2 | 200 | 5 |
| Matter of secret things | 2 | 200 | 5 |
| [Keeper of the wardrobe (?)] | 2 | 200 | 5 |
| Overseer of the storehouse | 2 | 200 | 5 |
| Keeper of the wide hall | 2 | 200 | 5 |
| Overseer of the house of the ka | 2 | 200 | 5 |
| Scribe of the temple | 2 | 200 | 5 |
| Scribe of the altar | 2 | 200 | 5 |
| Ritual priest | 2 | 200 | 5 |

He hath given to them for it, 22 temple-days, from his property of his paternal estate, but not from the property of the count's estate: 4 days to the superior prophet, and 2 days to each one among them.

Lo, he hath said to them: "Behold, as for a temple-day, it is $1/360$ of a year. When ye therefore divide everything that comes into this temple, consisting of bread, of beer, and of meat for each day, that which makes $1/360$ of the bread, of the beer, and of everything which comes into this temple, is the unit in these temple-days which I have given to you.

Behold, it is my property of my paternal estate, but it is not the property of the count's estate; for I am a priest's (wab) son, like each one of you. Behold, these days shall belong to every future official staff of the temple, since they deliver to me this bread and beer, which they give to me."

Lo, they were satisfied with it.

Fourth contract

Contract which the count, the superior prophet, Hepzefi, triumphant, made with the lay priests of Upwawet, lord of Siut, to wit:

There shall be given to him:

(a) A white loaf per each individual among them, for his statue, which is in the temple, in the first month of the first season, on the eighteenth day, the day of the Wag-feast.

(b) And they shall go forth, following his mortuary priest, at his glorification, when the fire is kindled for him, as they do when they glorify their own noble ones, on the day of kindling the fire in the temple. Now, this white bread shall be under the charge of my mortuary priest.

He hath given to them for it:

(a) A khar of fuel for every bull, and an uhet of fuel for every goat, which they give into the storehouse of the count, when each bull and each goat is offered to the temple, as ancient (dues) which they give into the storehouse of the count. Lo, he hath remitted it to them, not collecting it from them.

(b) And hath given to them 23 jars of beer and 3,200 flat loaves which the official body of the temple give to him in the first month of the first season, on the eighteenth day, as compensation, for their giving white bread per each individual among them, from that which is due to them from the temple, and (as compensation for) his glorification.

Lo, he spake to them, saying: "If this fuel be reckoned against you by a future count; behold, this bread and beer shall not be diminished, which the official body of the temple deliver to me, which I have given to you. Behold, I have secured it by contract from them."

Lo, they were satisfied with it.

Fifth contract

Contract, which the count, the superior prophet, Hepzefi, triumphant, made with the [keeper of the wardrobe (?)] of the temple, concerning:

Three [wicks (?)] with which the fire is kindled for the god. While he (the count) has given to him (the keeper) for it: 3 temple-days. Now, these 3 temple-days shall be due to every future [keeper of the wardrobe (?)], because these 3 [wicks (?)] are due to him (the count).

1. Lo, he spake to him, saying: "One of them shall be given to my mortuary priest, when he goes forth, kindling the fire with it for the god, on the fifth of the 5 intercalary days, New Year's night, by the [keeper of the wardrobe (?)]. He shall [deliver (?)] it to my mortuary priest after he does that which he does with it in the temple."

2. "He shall give another on New Year's Day, in the morning, when the house makes gifts to its lord, when the lay priests of the temple give to me this white bread, which they give to me per individual priest, on New Year's Day. It shall be due from my mortuary priest at my glorification."

3. "He shall give another in the first month of the first season on the eighteenth day, the day of the Wag-feast, at the same time with the white bread, which they give to me per individual priest. This [wick (?)] shall be due from my mortuary priest when glorifying me, together with the lay priests."

Lo, he said to him:

"Behold, as for a temple-day, it is $1/360$ of a year. When ye therefore divide everything that comes into the temple, consisting of bread, beer, and everything for each day, that which makes $1/360$ of the bread, of the beer, and of everything which

comes into this temple, is the unit in these temple-days which I have given to thee. Behold, it is my property, of my paternal estate, but not of the count's estate."

"Now, these 3 temple-days shall belong to every future [keeper of the wardrobe (?)], because these 3 [wicks (?)] are due to him, which thou hast given to me for these 3 temple-days, which I have given to thee."

Lo, he was satisfied with it.

Sixth contract

Contract which the count, the superior prophet, Hepzefi, triumphant, made with the superior prophet of Upwawet, concerning: The roast of meat which is due upon the altar, which is placed upon the oblation-table, for every bull which is slaughtered in the temple.

And one (sTA)-jar for (every) (ds)-jar of beer every day of a procession; which shall be due to every future superior prophet. He (the count) hath given him (the superior prophet) for it, 2 temple-days from his property, of his paternal estate, but not from the property of the count's estate.

Lo, the count Hepzefi spake, saying: "When this roast of meat and this (sTA)-jar of beer come for every day of a procession, they are due to my statue, (which is) in charge of my mortuary priest."

Lo, he was satisfied therewith, in the presence of the official body of the temple.

Seventh contract

Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the great (wab)-priest of Anubis, concerning:

Three [wicks (?)] due to him, with which the fire is kindled in the temple of Anubis:

One on the fifth of the 5 intercalary days, the New Year's night.

Another on New Year's Day.

Another in the first month of the first season, on the seven-teenth day, the night of the Wag-feast.

He hath given to him for it: 1,000 (HA . t)-measures of land in [/// ///] from the fields of his father, as compensation for these 3 [wicks (?)], which he gives to my mortuary priest, in order to kindle the light for me therewith.

Lo, he was satisfied therewith.

Eighth contract

Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the lay priests of the temple of Anubis; to wit:

There shall be given to him:

(a) A white loaf per each individual among them, for his statue, in the first month of the first season, on the seventeenth day, the night of the Wag-feast.

(b) And that they shall go forth, following his mortuary priest, and kindle for him (the count), the fire at his glorification, until they reach the lower steps of his tomb, Just as they glorify their noble ones, on the day of kindling the fire.

(c) And that the priest belonging in each month shall give [///] of bread (paq) and a jar of beer for his statue, which is on the lower steps of his tomb, when he comes forth from offering in the temple every day.

He hath given to them for it: grain from the first of the harvest of every field of the count's estate, as every citizen of Siut does from the first of his harvest. Now, behold, he begins with having his every peasant give it from the first of his field into the temple of Anubis.

Lo, the count, Hepzefi, said: "Behold, ye know, that, as for every official and every citizen, who gives the first of his harvest into the temple, it is not agreeable to him, that there should be lack therein. Therefore shall no future count diminish to future priests that which is secured by contract of another count."

This grain shall belong to the lay priests, per each individual priest who shall give me this white bread, each by himself.

Lo, they were satisfied therewith.

Ninth contract

Contract which the count, the superior prophet, Hepzefi, triumphant, made with the overseer of the necropolis, and with the mountaineers, to-wit:

There shall be given:

(a) That they go to the house of Anubis, on the fifth of the 5 intercalary days, (being) New Year's night, and on New Year's Day, to receive 2 [wicks (?)] which the great priest (wab) of Anubis gives to the count, Hepzefi.

(b) And that they go, at his glorification, until they reach his tomb.

(c) And that they give this one [wick (?)] to his mortuary priest, after they glorify him, just as they glorify their noble ones.

He hath given to them for it:

(a) 2,200 (HAt-) measures of land in the [///] from his property of the paternal estate, but not of the count's estate:

| Register of Names | HAt-measures |
|----------------------------|--------------|
| Overseer of the Necropolis | 400 |
| Chief of the Highland | 200 |
| Eight mountaineers | 1600 |

(b) Besides giving to them the foot of the leg of every bull, that shall be slaughtered upon this highland, in every temple.

They have given to him:

The Overseer of the Necropolis, 2 {ds-) jars of beer; 100 flat loaves, 10 white loaves.

The Chief of the Highland, 1 (ds-) jar of beer; 50 flat loaves; 5 white loaves.

Eight mountaineers, 8 (ds-) jars of beer; 400 flat loaves; 40 white loaves.

For his statue, (which is) in charge of his mortuary priest, in the first month of the first season, on the first day, (being) New Year's Day, when they glorify him.

Lo, he said to them: "Behold, these (HAt-) measures of land, which I have given to [you (?)], shall belong to every overseer of the necropolis, to every chief of the highland, and to every mountaineer who shall come (hereafter), because they shall deliver to me this bread and beer."

And ye shall be behind [my] statue which is in my garden, following it when //////////////, at every feast of the beginning of a season, which is celebrated in this temple."

Lo, they were satisfied therewith.

Tenth contract

Contract which the count, the superior prophet, Hepzefi, made, with the overseer of the highland, to-wit:

There shall be given to him 1 (hbn. t-) jar of beer, 1 large (///rrt-) loaf, 500 flat loaves, and 10 white loaves, for his statue, (which is) in charge of his mortuary priest, in the first month of the first season, on the seventeenth day, the night of the Wag-feast.

He hath given to him for it:

(a) 1,000 (HAt-) measures of land in [///] from his property of his paternal estate, but not from the property of the count's estate.

(b) And a quarter of every bull that is slaughtered on this high-land in every temple.

Lo, he said to the overseer of the highland: "Behold, these (HAt-) measures of land shall belong to every future overseer of the highland, because he delivers to me this bread and beer."

Lo, he was satisfied therewith.

8.6.3 CONCEPTS AND ELEMENTS IDENTIFIED

8.6.3.1 Date

Looking at the translation of the text it appears that it is not dated. It is submitted that a reason for this is that this inscription was found in the tomb of Djefa-Hapi and that it was most probably 'written' on or 'copied' to his tomb after his death. It might be that it was copied from a papyrus document or that it was merely the written version of the oral testamentary dispositions with the agreements. The possibility exists that it was

obvious to the ancient Egyptians that the inscriptions related to Djefa-Hapi's final wishes and the related agreements.

8.6.3.2 Label

According to Griffith (1898:6) the 'heading' of this text is transcribed as the 'Decree of the hereditary prince the nomarch, the chief priest Djefa-Hapi'. The label, or in this case 'heading', serves the purpose of immediately identifying the document.

8.6.3.3 Disposition

The very first sentence of the above translation given by Griffith (1898: 6) begins with '... Djefa-Hapi: he says ...'. This is in accordance with the declarations made by the ancient Egyptians. The documents studied relating to testamentary dispositions generally have the word 'says; or 'declare' etc.

This *Inscriptions of Djefa-Hapi* form in effect a testamentary disposition as it would appear that he initially refers to an agreement similar to an *inter vivos* trust, but ultimately also effectively creating something similar to a *mortis causa* trust. This will be discussed in greater detail in paragraph 8.6.3.9.

The testamentary disposition is supported by contracts. The contracts relate among others to the sustenance, services and offerings for the benefit of the deceased Djefa-Hapi. The contracts mention Djefa-Hapi and indicate he is deceased. The inscriptions found in his tomb are a record of the contracts he made with the priests of Wepwawet (Taylor 2001:176). As mentioned above Djefa-Hapi was the high priest of the god Wepwawet.

The intention of Djefa-Hapi was to ensure sustenance etc. after his death. It is this intention by a *de cuius* that implies that we have to do here with a testamentary disposition document, as Djefa-Hapi effectively made a declaration in a document regarding the devolution of his property after his death for a specific purpose (namely provision of sustenance).

8.6.3.4 Testator

The author is mentioned in the text as being Djefa-Hapi and he is identified as has been indicated in paragraph 8.6.3.2.

8.6.3.5 Beneficiary

Djefa-Hapi then continues to address his *ka*-priest. It is clear, in my opinion, that the beneficiary is identified and the purpose of the text is to address the beneficiary regarding certain matters (essentially in making provision for sustenance) which will be discussed below in paragraph 8.6.3.12.

8.6.3.6 Eldest son

The notion of primogeniture refers to the first-born child and the system by which the eldest child (especially the eldest son) inherits all his parents' property (Pollard 1995:633). The Latin term is *primogenitura* and the notion is applicable to the law of succession (Hiemstra & Gonin 2005:259).

As the right to primogeniture fell into disuse, Djefa-Hapi attempted to maintain the indivisibility of an estate set up as an endowment (Theodorides 1971:303). Texts like Djefa-Hapi's suggest that the eldest son was not necessarily guaranteed to gain control of the property (Jasnow 2003a:278). The testamentary disposition of Djefa-Hapi is indicative of this development (Jasnow 2003a:278).

8.6.3.7 Property

The property awarded is explicitly mentioned by Djefa-Hapi. He mentions the property as follows: 'I have endowed thee with lands, people, cattle, gardens (?) ...' (Griffith 1898:6). The property clearly includes movable as well as immovable property. No mention is made of the origin of the property.

8.6.3.8 Conditions

Djefa-Hapi drew up several contracts with the priesthood, which were all for the benefit of his personal cult (Theodorides 1971:303). In these contracts, agreement was reached relating to certain offerings, which were to be made to his statue in the temple, and in return, Djefa-Hapi makes over properties which, as he affirms, are part of his patrimony (Theodorides 1971:303). According to Theodorides (1971:303) the text adds that he agreed to this in the presence of the temple council which was therefore answerable for the honouring of the agreement by future priests.

According to Griffith (1898:48) these texts as testamentary dispositions are an example of 'tomb endowment'. In these testamentary dispositions a command is made to the *ka*-

priest and then contracts were made by the deceased and the priesthood for funerary supplies and ceremonial visitations.

It is clear, when Djefa-Hapi address his *ka*-priest, that a condition is implied regarding this testamentary disposition document. Djefa-Hapi says the following:

Behold! All these (undermentioned) things which I have contracted for with these (undermentioned) priests are under thy care: behold! It is indeed the *Ka*-priest of a man who establishes his services, who establishes his food-offerings.

From the above it follows that the word 'behold' is a reminder of the condition that certain 'things' (regarding which Djefa-Hapi contracted with priests) are under his (Djefa-Hapi's) *ka*-priest's care. It would therefore appear that Djefa-Hapi's *ka*-priest is entrusted here with the position of caretaker or trustee. This can also be seen as an indication of an *inter vivos* trust.

Djefa-Hapi also refers to establishing services and food offerings which is a clear indication of the provision of sustenance after death, with what would appear to be an *inter vivos* trust, but also, it appears to me, by creating a *mortis causa* trust; the purpose of which was to provide for him in the afterlife. The mortuary provisions will be discussed below in paragraph 8.6.3.12.

8.6.3.9 Trust

Djefa-Hapi had created an *inter vivos* trust earlier which he confirmed in the first part of the text. Djefa-Hapi then continued to also create a *mortis causa* trust in my opinion.

Furthermore, the *ka*-priest is the trustee of the trust(s) and must take care of the property in order to effectively perform certain duties relating to the sustenance after death. According to Theodorides (1971:303), Djefa-Hapi says to his funerary priest:

May you watch over all my assets which I have placed in your charge and of which this is the document. The one you shall favour among your children, and who shall act as funerary priest for me (after you), shall enjoy the usufruct of it, and he alone, under prohibition of sharing it out among his children, in accordance with this will which I have expressed to you.

The above translation of Theodorides confirms the creation of the *mortis causa* trust of which the purpose is clear. The obligations are also quite unequivocal. It is also evident that Djefa-Hapi makes provision for a (trustee) successor, since he mentions the *Ka*-priest's son who must succeed the *ka*-priest in performing these duties. In his

translation Theodorides (1971:303) uses the word 'usufruct'. I shall discuss this in the following paragraph (par. 8.6.3.10).

8.6.3.10 Usufruct

As mentioned above, the word 'usufruct' is used by Theodorides. I agree that one can use the word here as it is also clear from the contents of the text that a usufruct is implied. After the *ka*-priest's death, the son of the *ka*-priest will enjoy the usufruct. Griffith (1898:6) translates (*inter alia*) this as follows: '... even as food which he swallows himself, without allowing him to divide them among his children...'.

The above would appear, *prima facie*, to be a reference to usufruct which is an astonishing feature for an ancient text so remote in time. The beneficiary is allowed to 'eat' from the 'fruits', in essence the *fructus* of the legal concept of *usus fructus* (usufruct). This concept was developed by the Romans and carried into Roman law and into our modern law, but it is quite clear, in my opinion, that some of the first signs of this legal concept can be found in an ancient testamentary disposition document such as the *Inscription of Djefa-Hapi*.

Having a second look at the text and especially the contents, context and intention of Djefa-Hapi, I would submit that we might even have some early signs of a *fideicommissum*. This will be discussed in paragraph 8.6.3.11.

8.6.3.11 Fideicommissum

As mentioned above, from the contents, context, and more specifically the intention of Djefa-Hapi, it is submitted that we might here also have, *prima facie*, some signs of *fideicommissum*.

I submit that it was Djefa-Hapi's intention for his property to be transferred to his *ka*-priest, with the obvious purpose of the mortuary endowment as discussed above and below. It is then clear, in my view, that after the present *ka*-priest's death the property must go to one of his children. In the translation given by Griffith (1898:6) mention is made of the 'swallowing of the food ...' of the present *ka*-priest's son, to which reference is made above. Djefa-Hapi then continues this sentence about the swallowing of the food by the present *ka*-priest's son in the document with the following statement: '... without allowing him to divide them among his children ...' (Griffith 1898:6).

There are some elements present here that indicate a form of *fideicommissum*. The property is handed to the *ka*-priest, who must hand it to one of his children (who would after him act as *ka*-priest). The latter may not divide it among his children. This by implication means that the property keeps its fiduciary character. Djefa-Hapi does not say what needs to happen with the property after the second *ka*-priest's death, apart from saying it may not be divided among this *ka*-priest's children. This implies then that the fiduciary property will then be carried forward to yet another *ka*-priest in the family line, apparently *ad infinitum*.

It would be Djefa-Hapi's endowments which would provide the funds for the cult of the god, and in return the god's priests would maintain and sustain the deceased's mortuary cult (Taylor 2001:176). This duty to maintain would be passed from generation to generation in order to ensure perpetual service of the dead (Taylor 2001:176).

8.6.3.12 Witnesses

Some transcripts omitted the names of witnesses, probably because they were intended as memoranda or reminders for the witnesses themselves (Muhs 2016:68). An example of the latter, according to Muhs (2016:68), are the contracts of Djefa-Hapi. Although the contracts omit the names of witnesses, the *ka*-priests may have been witness to these contracts and their 'monumentality' might have served as a kind of authentication as well (Muhs 2016:68). It would thus appear when it comes to tomb inscriptions that it was not necessary for the witnesses to be named in the testamentary disposition. The fact that they were most probably present when the document was inscribed and that they were also parties to the fulfilment of its conditions apparently made it unnecessary for them to be named. An important reason, alluded to earlier, which might be the main reason for the witnesses not being named in tomb inscriptions, is the possibility that the main reason for the involvement of witnesses was to authenticate the testamentary disposition should the need arise. The permanency of the inscription and the fact that it was visible to everyone was sufficient authentication of a testamentary disposition, rendering witnesses unnecessary.

8.6.3.13 Mortuary provisions

Taylor (2001:176) is of the view that Djefa-Hapi is a good example where the continuation of a private mortuary cult is ensured. This was accomplished by arranging to have it performed by the priests of the local temple (Taylor 2001:176). The reason

was that it was hoped the cult of the local god would survive indefinitely, improving the chance of one's cult being maintained over many generations (Taylor 2001:176). The cult of a deceased official might obviously not survive as long (Taylor 2001:176).

As mentioned above, it would appear that there was an *inter vivos* trust, but that Djefa-Hapi also created a *mortis causa* trust with this testamentary disposition document. The sole purpose of the trusts was to provide for the services and offerings after Djefa-Hapi's death. The sustenance in the afterlife was the purpose and intent of the trusts. The goal therefore was to provide for Djefa-Hapi's mortuary endowment.

The contracts which form part of the document indicate that Djefa-Hapi is deceased. The contracts deal with matters pertaining to the services and offerings to the deceased Djefa-Hapi. This clearly indicates the sustenance of the deceased. It serves as confirmation of the succession law provisions made by Djefa-Hapi whilst he was still alive.

The private funerary establishment of Djefa-Hapi is the one we have the most information on from the Middle Kingdom (Muhs 2016:83). The sources for its income, according to Muhs (2016:83) were the temples of Wepwawet and Anubis in Assiut (and some officials associated with the necropolis).

Furthermore it is important to note that the preference for institutional revenues thus continued during the Middle Kingdom, but temples rather than the state were now the preferred institutions (Muhs 2016:83).

Each of Djefa-Hapi's ten contracts exchanged specific revenue sources belonging to him as a private individual for other revenues from the temples of Wepwawet and Anubis in Asyut or from the necropolis officials in perpetuity (Muhs 2016:84).

The revenues from the temples were to be offered to his statue in the temples of Wepwawet and Anubis in Asyut (Muhs 2016:84). It would then revert to his *ka*-priest and his heirs who managed his funerary cult (Muhs 2016:84). This means that the *ka*-priest and Djefa-Hapi's heirs had a personal interest in ensuring the contracts were fulfilled in perpetuity (Muhs 2016:84).

8.7 TABULAR OVERVIEW OF CONCEPTS AND ELEMENTS OF SUCCESSION LAW IDENTIFIED IN TEXTS OF THE MIDDLE KINGDOM

This tabular overview reflects the concepts and elements identified and discussed in this chapter in a summarised version as follows:

| TEXT | DJEFA-HAFI | KAHUN VII 1 | KAHUN I 1 | KAHUN II 1 |
|-----------------------------|------------|-------------|-----------|------------|
| 1. DATE | • | • | • | • |
| 2. LABEL | | | • | |
| 3. DISPOSITION | • | • | • | • |
| 4. TESTATOR/ TESTATRIX | | | | |
| 4.1 Known | • | • | • | • |
| 4.2 Male | • | • | • | • |
| 4.3.3 Female | | | | |
| 5. TESTAMENTARY CAPACITY | | • | • | |
| 6. BENEFICIARY | | | | |
| 6.1 Heir(s) | • | • | • | |
| 6.2 Legatee(s) | • | | • | |
| 6.3 Husband/Wife | | • | • | |
| 6.4 Children | | • | • | |
| 6.5 Other | | | • | |
| 7. PROPERTY | | | | |
| 7.1 Immovable | • | • | • | |
| 7.2 Movable | | • | • | |
| 7.3 Reference to origin | | • | • | |
| 8. BEQUEST ('GIVE') | • | • | • | • |
| 9. EXECUTOR/ ELDEST SON | | | | • |
| 9.1 Legal action | | | | • |
| 10. SEPARATE CLAUSES | | | | |
| 11. WITNESSES | | • | • | • |
| 12. RECORD OFFICE | | | • | |

| | | | | | |
|-----|-----------------------------------|---|---|---|--|
| 13. | CONDITIONS | • | | • | |
| 14. | USUFRUCT | • | | | |
| 15. | FIDEICOMMISSUM | | | • | |
| 16. | TRUST | • | | | |
| 17. | REVOCATION | | • | | |
| 18. | HABITATIO | | | • | |
| 19. | GUARDIAN | | | • | |
| 20. | DISPUTE OF DISPOSITION | | | | |
| 21. | MORTUARY PROVISIONS | • | • | • | |

Table 8.1 Concepts and elements of succession law identified from texts of the Middle Kingdom

8.8 CONCLUSION

The Middle Kingdom was a period of high culture in art accompanied by a sudden wealth in literature. From the Middle Kingdom we have an abundance of surviving textual sources and it is the earliest period in ancient Egypt's history from which we have evidence of a full range of written language. Several elements identified from texts of the Middle Kingdom are related to testamentary dispositions. As indicated examples of tomb inscriptions, such as the *Inscriptions of Djefa-Hapi* and the very valuable *Kahun Papyri* consist of a large collection of fragmentary household archives representing almost every class of record usually committed to writing. It is clear that the ancient Egyptians were familiar with certain aspects and concepts relating to succession law' in general, and more specifically to testamentary dispositions.

The discovery of the *Kahun Papyri* at present day el-Lahun is of huge importance in general, but specifically for evidence of testamentary dispositions. It assists us in examining whether certain concepts and elements relating to testamentary dispositions were evident and in general use in the Middle Kingdom.

It is apparent that the link to the ancient initial pious foundation and the importance of the belief in the afterlife did develop to form new concepts and elements used in testamentary dispositions, as becomes clear in the analysis of texts from the Middle Kingdom. It is these provisions made for the afterlife, like the *Inscriptions of Djefa-Hapi*, that show a very valuable contribution in the emergence and development of concepts and elements relating to testamentary dispositions. These provisions would be copied in

testamentary dispositions where the focus was not necessarily any longer on the mortuary endowment with reference to sustenance and rituals after death.

The testamentary disposition documents from the Middle Kingdom assist us in establishing that certain concepts and elements relating to testamentary dispositions were widespread and in general use. I have identified and analysed concepts and elements pertaining to succession law in general, but more specifically to testamentary dispositions. From my perspective it is clear that these concepts and elements were used from very early on in ancient Egyptian history and continued to be used frequently in the Middle Kingdom with some adaptations. It remains difficult, from our modern perspective, to classify legal categories in the ancient Middle Kingdom texts in terms of modern legal concepts, for instance as being an example of usufruct, a trust, or a *fideicommissum*. It is my submission that the ancient Egyptian texts contain elements of all of these modern legal concepts. The study of such elements remains important, since they clearly seem to be the foundations of the later development of these concepts by the Romans and Roman law, which we still use today in most modern civilisations. These concepts and elements pertaining to testamentary dispositions are indeed a relevant and meaningful source for understanding the emergence and development of succession law. Some of these concepts and elements pertaining to testamentary dispositions identified from the discussion of testamentary disposition texts from the Middle Kingdom in this chapter are summarised in the next paragraphs

8.8.1 DATE

In *Papyrus Kahun I 1* the dates are again specifically mentioned. In both Wah's testamentary disposition and the copy of his brother's (Ankhren) testamentary disposition, the date is given. This is important as the different dates indicate to us that one document was drafted earlier and we have the date of the present testamentary disposition of Wah. *Papyrus Kahun II 1* is dated, but this refers actually to the dispute attended to by the son as 'executor' and not to the testamentary disposition itself. The importance of the date is clear from *Papyrus Kahun VII 1* which deals *inter alia* with the revocation of an earlier testamentary disposition. For instance, when a testator dies leaving more than one testamentary disposition, the date assists us in determining which is the latest testamentary disposition of a testator. However, it would appear that in the case of the *Inscription of Djefa-Hapi* adding the date was not deemed necessary as

it was obvious (being inscribed onto his tomb) that it related to Djefa-Hapi's death and the mortuary provisions.

The dating of testamentary dispositions was an essential requirement. It would allow parties to establish the sequence of testamentary dispositions and would assist *inter alia* with subsequent revocations or additions (codicils).

8.8.2 LABEL

The 'label' or 'docket' appears to have been used quite regularly. *Papyrus Kahun I 1* begins with the label of Wah's testamentary disposition. In Wah's testamentary disposition mention is made of an earlier testamentary disposition by his brother, Ankhren. This earlier made testamentary disposition also has a heading.

In the case of Mery, the label is brief, but clearly identifies the document and its purpose. It serves the purpose of a heading as indicated in Chapter 7, with the purpose to identify the document at first glance. In the case of a tomb inscription it also had a heading, as we saw in the case of the *Inscription of Djefa-Hapi*. This heading in the tomb inscription immediately identifies the content of the text and the author.

The use of a label or heading is important since it is similar to what we still do today in headings of wills and testaments, for example: 'The last will and testament of X'. Its purpose is to immediately identify the document.

8.8.3 DISPOSITION

Words like 'says', 'declare' etc. are used in the testamentary disposition documents from the Middle Kingdom. From this and the contents and context of the document it is clear that a testamentary disposition was intended.

Papyrus Kahun I 1 is one document (one single testamentary disposition) and is in essence the testamentary disposition of Wah. An earlier testamentary disposition made by his brother (Ankhren) is merely quoted with the sole purpose to confirm Wah's ownership of the property. It is, however, clear that both Wah and Ankhren intended to draw up testamentary dispositions. The purpose of both Wah's and Ankhren's testamentary deposition was clearly to dispose of property by way of a testamentary disposition, and specifically of changing the customary intestate succession law principles by nominating beneficiaries other than the customary intestate beneficiaries.

Although *Papyrus Kahun II 1* is about a dispute being resolved by the eldest son, we know that the son is actually acting on the grounds of his father's testamentary disposition. *Papyrus Kahun VII 1* is identified as an *imyt-pr* (testamentary disposition). It is clear that Mery had the intention to dispose of his property in terms of a testamentary disposition prior to death. A disposition of assets by means of a testamentary disposition can therefore be deduced from the contents and especially the intention of the testator.

8.8.4 TESTATOR

The testator is identified in all the documents discussed in this chapter. This is important as there is no confusion in respect of who the author of these testamentary dispositions were and whose last will and testament was intended.

From *Papyrus Kahun I 1* it is clear that Wah is the testator of the testamentary disposition and Ankhren the testator of the earlier made testamentary disposition. It is therefore evident that the testator of both these documents are identifiable and both are men. We know from *Papyrus Kahun II 1* that the father was the testator. From *Papyrus Kahun VII 1* it is evident that the testator is a male who is clearly identified in the document as Mery. From the *Inscription of Djefa-Hapi* it is also clear that the testator of the testamentary disposition is identifiable.

8.8.5 TESTAMENTARY CAPACITY

Both testators of the two testamentary dispositions in *Papyrus Kahun I 1* appear to have had the capacity to make a testamentary disposition as it would appear they were both adults who owned property. It is also implied that Wah was already old when he made his testamentary disposition. There is no reference in this papyrus to their mental capacity. Both Wah's and Ankhren's positions in society are mentioned, which in my view is an indication that it was necessary to do this in order to prove the testator's standing and his testamentary capacity to make a testamentary disposition.

Mention is made in *Papyrus Kahun VII 1* of the testator's 'old age'. It can therefore be assumed from the content and context of the testamentary disposition that Mery was an elderly man when this disposition was drafted. No mention is made of the testator's mental capacity in *Papyrus Kahun VII 1*. In the case of the *Inscription of Djefa-Hapi* we do not have a reference to these words.

8.8.6 BENEFICIARIES

It is clear that we have certainty in each case under discussion as to who the beneficiaries are. In the texts discussed in this chapter, the testator mentions and identifies the beneficiaries. It is also clear from the texts discussed above that the beneficiary could be male or female, and might even include a minor child.

It is evident from *Papyrus Kahun I 1* (from both testamentary dispositions) who the beneficiaries are. Wah (the brother of the testator) is the beneficiary of the earlier testamentary disposition and Wah's wife and children (including an apparently minor son) were the beneficiaries of Wah's testamentary disposition. It was common to use the testamentary disposition to entitle the wife to inherit from the husband in ancient Egypt. In both cases the testamentary disposition was used to change the customary intestate succession procedure and thus effectively the potential beneficiaries.

The beneficiaries in *Papyrus Kahun VII 1* are the children of the testator, although they are not individually named in the testamentary disposition. One can make the assumption that the names were omitted in order to prevent excluding children born after drafting the testamentary disposition. It might also be the case that the beneficiaries in *Papyrus Kahun VII 1* are in effect legatees as specific assets are awarded to them.

8.8.7 BEQUESTS AND THE TRANSLATION OF *rdi*

As is the case in other testamentary dispositions, *Papyrus Kahun I 1* also uses the word *rdi* (normally translated as 'to give'). The word 'give' is used in both the testamentary dispositions of *Papyrus Kahun I 1*. I believe, given the context of the documents as testamentary dispositions, that the word should rather be translated as 'bequeath'. The purpose of both testamentary dispositions of *Papyrus Kahun I 1* was to bequeath property.

In the translation of *Papyrus Kahun VII 1* the word 'give' to indicate transferring something to a beneficiary makes its appearance again, and I would suggest, given the context of the testamentary disposition that the word 'bequeath' should rather be used in the translation, since we have evidence that the testator intended to award assets to beneficiaries in his testamentary disposition.

8.8.8 ELDEST SON

Papyrus Kahun I 1 does not mention an eldest son. A later inscription on the document does however mentions that a son was born to the couple, but it is unclear whether this was done to make provision for the traditional role of the eldest son. I suggest this was rather done to include the son into the group of possible *fideicommissarii*.

Initially the duty of the eldest son was primarily, as we saw earlier, to attend to mortuary duties. However, it was also expected of him to take charge of the deceased's estate. In the case of *Papyrus Kahun II 1* the eldest son also had to step into the shoes of the deceased in order to see to the fulfilment of an incomplete agreement. *Papyrus Kahun II 1* is an example where the son acts as the eldest son, the administrator of the estate. This role is similar to that of our present-day 'executor' of the estate. In this capacity, the son recovers an outstanding obligation, or outstanding debt, which resulted from an incomplete transaction. It was the eldest son's duty to recover this obligation owing to the deceased estate, since one party to an agreement did not fulfil his obligation towards the deceased. The eldest son now had to act on behalf of the deceased estate.

8.8.9 SPECIFIC ASSETS

The property awarded in the testamentary dispositions is mentioned in each case studied in this chapter. It is very clear that the property to be awarded had to be identifiable so as to avoid any confusion after the testator's death.

Furthermore, it is apparent that in the case of *Papyrus Kahun I 1* we have both movable and immovable property as part of the inheritance. In this papyrus, the property referred to include 'possessions in country and town', 'all his household', three slaves, a tomb and rooms (a house). It was therefore possible to award both immovable and movable property. In *Papyrus Kahun VII 1* reference to specific assets is found, namely to the house and its contents, which must go to certain people, which might in effect be an example of a legacy.

It is evident from the discussion of the texts in this chapter that the property awarded could include both movable and immovable property.



8.8.10 ORIGIN OF PROPERTY

The origin of the property is also mentioned in the testamentary dispositions studied in this chapter. This is done to indicate or rather confirm the testator's legal claim of ownership to the property, his 'title to property'. In *Papyrus Kahun I 1* Wah bequeaths his property, but before doing this, he states the origin of and his title to the property by quoting from the earlier testamentary disposition of his brother Ankhren from whom he obtained the property in the first place. This confirms the origin as well as Wah's legal ownership of the property. We do not have any reference to the origin of property in *Papyrus Kahun VII 1*.

Of importance regarding these texts is the insistence by the ancient Egyptians to mention in their testamentary dispositions the origin of their property. It appears to be a necessity for the ancient Egyptians and even a requirement in drafting testamentary dispositions.

8.8.11 GUARDIAN

From *Papyrus Kahun I 1* we have an example of the appointment of a guardian for a minor child in the testamentary disposition. Provision was made in the testamentary disposition for the appointment of a guardian to act on behalf of the minor child until he would come of age. This is still common practice in modern wills and testaments.

8.8.12 WISHES

Papyrus Kahun I 1 provides us with an example of a wish in a testamentary disposition when Wah 'wishes' or 'requests' that he be buried in the tomb with his wife. This is similar to wishes found today in wills and testaments, which are not legally enforceable. It is not clear that we can deduct the same of these ancient stipulations, but I suspect they were also not legally enforceable.

8.8.13 CONDITIONS

From the discussion of the testamentary dispositions in this chapter it is apparent that the ancient Egyptians were familiar with condition clauses in testamentary dispositions. I would go so far as to submit that one of the main functions or purposes of the ancient Egyptian testamentary disposition was the creation of conditions in the testamentary disposition. This is evident from the earliest testamentary dispositions, namely the pious foundations. The reason for the conditional clause in the ancient Egyptian testamentary

disposition was obvious; its intention was for the property to be protected for a specific reason. This had to do with their socio-economic circumstances where the nuclear family as well as religion (sustenance in the afterlife) played a primary and overriding role.

It is clear that the testamentary disposition of Wah in *Papyrus Kahun I 1* contains an implied condition. The award is made to the wife on condition that she shall give it again to any of her children of her choice. Wah's intention was for the children to be the ultimate heirs, effectively establishing a *fideicommissum*. The wife inherited the property merely as a fiduciary heir.

8.8.14 TRUST

As mentioned before it remains difficult to apply modern legal terminology to ancient Egyptian concepts and ideas. From *Papyrus Kahun I 1* it might appear that a *mortis causa* trust was created, but my view is that the testamentary disposition of Wah intended the children to be the ultimate heirs, and the wife only a fiduciary heir, and therefore it should rather be regarded as a *fideicommissum*. The fact that the wife does not inherit the rooms, but is merely allowed to stay there, creating in effect a *habitatio* for her, supports my argument for a *fideicommissum*.

8.8.15 USUFRUCT

We do not have usufruct as we know it today in *Papyrus Kahun I 1*, although we might have the related legal notion of *usus* here; in the sense of the wife being allowed to stay in the rooms giving her the right of *habitatio*. From the *Inscription of Djefa-Hapi* it appears that we have evidence of usufruct in order to make provision for the mortuary endowment.

8.8.16 FIDEICOMMISSUM

As mentioned earlier, the concept of *fideicommissum* resulted from the early Egyptian 'pious foundation'. Of course, as already mentioned, the ancient Egyptians did not have these legal terms, as they were developed by Roman law and carried into our modern-day law. It is however clear that elements of these legal concepts are already present in these ancient Egyptian testamentary dispositions.

It must be kept in mind that both the trust and the *fideicommissum* have a common fiduciary nature and related in function since property is entrusted to one person for the

benefit of others. In my opinion, the term *fideicommissum* initially implied an object was entrusted (*commissum*) to the good faith (*fides*) of the recipient.

Papyrus Kahun I 1 effectively creates a *fideicommissum* when Wah bequeaths his assets to his wife, but adds that she will give the property to whomever she wishes of her children. It is also for this reason that it is important to take note of the necessity of making the later inscription of another child born, effectively including him into the group of possible 'ultimate heirs'. In *Papyrus Kahun I 1* the wife is the *fiduciarius* and the children the *fideicommissarii* heirs.

The *fideicommissum*, which developed from the foundation, was a clear way of protecting the family property and to ensure that it stayed within a family line. This is significant since it precedes Roman law and clearly must represent the very first signs of this concept in history, later to be developed by Roman law and subsequently by modern law.

The tomb inscription known as *Inscription of Djefa-Hapi* is a good example where a *fideicommissum* is confirmed to last from generation to generation, with the property keeping its fiduciary character. In the case of Djefa-Hapi the sole purpose of the *fideicommissum* is to provide for sustenance and services in the afterlife.

8.8.17 HABITATIO

Related to usufruct and *usus* is the notion of *habitatio*, the legal term for the right of free residence in the house of another without detriment to the substance of it. *Habitatio* entitles the relevant party therefore to an exclusive right of 'dwelling', expiring at the relevant party's death.

In *Papyrus Kahun I 1*, Wah declares in his testamentary disposition that his wife shall be able to dwell in the rooms built for him by his brother without fear of being cast out. This provision being made for the surviving spouse in *Papyrus Kahun I 1* is an example of *habitatio*. This is a significant example from the distant past of ancient Egypt where a concept still being used today, such as *habitatio*, is clearly present in essence.

8.8.18 DATE TESTAMENTARY DISPOSITION BECOMES EFFECTIVE

As a rule testamentary dispositions appear to have become effective upon the death of the testator, but there were exceptions. *Papyrus Kahun VII 1* is an example of an

exception where the son is immediately (implying at the time of drafting of the testamentary disposition) appointed as 'staff of old age'. The inclusion of an 'exception to the rule' type of clause was a reflection of the fact that the ancient Egyptians used various documents for testamentary disposition purposes.

8.8.19 RECORD OFFICE

Papyrus Kahun I 1 contains a statement after the copy of Ankhren's testamentary disposition that it was placed as a record (*snn*) in the office of the second reporter of the south. It would appear that it was customary to have the testamentary disposition also placed in a record office.

In modern times this would correspond to the Master of the High Court, with its interesting early Dutch law name of 'die Weesheer' (lit. 'Master of Orphans'); the difference being that nowadays last wills and testaments are only submitted to the Master of the High Court once the testator dies.

8.8.20 WITNESSES

From *Papyrus Kahun I 1* it is evident that the testamentary disposition of Wah again concludes with a list of witnesses in whose presence the testamentary disposition was written. The witnesses are named and identified, as it might be necessary in future to call upon them to authenticate the testamentary disposition in case of a possible dispute over the existence, validity or contents of the testamentary disposition. The testamentary disposition of Ankhren served the purpose of 'record' of the origin and title of property and is therefore not quoted in full. We do therefore not know who the witnesses were of Ankhren's original testamentary disposition.

Papyrus Kahun VII 1 also concludes with the list of witnesses, who are named and their titles are mentioned as well, which seems to be important as it makes it easy to recall them in future if necessary to authenticate the testamentary disposition in cases where the validity or existence of the testamentary disposition is placed in question.

In our modern-day law of testate succession the witnesses still play a crucial role in authenticating wills and testaments.

In the testamentary disposition of Mery (as in the case of Wah) there are three witnesses indicated, each named and identified. It would appear that it was important to name and

identify the witnesses in ancient Egypt. It was important since it was necessary to know who they were in case of a potential dispute later. It also is an indication that these witnesses were well known in the community.

In the *Inscriptions of Djefa-Hapi* there do not appear any witnesses. It is submitted that the requirement of witnesses being present was superfluous in this case as the disposition was written on the tomb walls, most probably in the presence of the priests. It is thus clear that witnesses remained the primary way of authenticating the written transcripts as written documents were still dependent on local witnesses for enforcement.

8.8.21 DISPUTE

Papyrus Kahun II 1 is not a dispute in the true sense, but rather the recovery of an outstanding obligation by the eldest son. It would appear that a transfer took place between the deceased and a third party. In *Papyrus Kahun II 1* the eldest son explains that his father drew up a transfer document (*imyt-pr*) for an exchange of property and explains that the other party to the transaction never fulfilled his obligation. In essence, *Papyrus Kahun II 1* is about an 'incomplete' transaction where one party did not fulfil his obligation in terms of a contract. The third party's obligation is still owing to the deceased, and by implication to the deceased estate. The eldest son is fulfilling his duty as 'executor' of the deceased estate in recovering this outstanding obligation which is an asset of the deceased estate. It was therefore possible for the executor to step into the shoes of the deceased and see to the fulfilment of a prior agreement.

8.8.22 CODICIL

From *Papyrus Kahun I 1* we know that an extra line was added to the testamentary disposition at a later stage, showing that a son was born from this relationship (which was necessary to mention because of the *fideicommissum* created earlier). This addition to the initial testamentary disposition implies that a testator could amend or add to a existing testamentary disposition prior to death, in a way similar to what today is known as a codicil. A codicil is in effect an addendum to a will or testament. It is significant that we are able to identify elements of a codicil in ancient Egyptian documents as far back as the Middle Kingdom.

8.8.23 REVOCATION

As has been indicated in Chapter 7 it was possible to revoke an earlier testamentary disposition in ancient Egypt. *Papyrus Kahun VII 1* is clearly an example from the Middle Kingdom of the possibility in ancient Egypt to revoke an earlier testamentary disposition. The testator (Mery) in this testamentary disposition revokes a previous testamentary disposition in favour of his son's mother (perhaps his first wife).

8.8.24 MORTUARY PROVISIONS

One of the main objectives, at least initially, of a testamentary disposition was to make provision for sustenance after death. There are no specific provisions for sustenance or offerings from *Papyrus Kahun I 1*. It is, however, quite clear that there is still a link with the belief in the afterlife as Wah (who was also a *wab*-priest) makes provision in his testamentary disposition to be buried in his tomb with his wife. It can also be implied that provision was effectively made for sustenance with mention made of the immovable property, household and slaves. From the offering table scene of Ankhren it is also clear that there remains a close link to and relationship with religion and in particular the belief in the afterlife on the one hand and the 'birth' of concepts and elements of testamentary dispositions on the other.

The case of Djefa-Hapi is a good example of a provision being made by means of a *fideicommissum* for sustenance or provisions after death and would provide the important building blocks of concepts and elements of testamentary dispositions (testate succession law).

Again, in the Middle Kingdom testamentary dispositions we see the importance of the mortuary endowments and provision for offerings, still reflecting the huge importance attached to providing for the deceased after death. This emphasises the relationship between testamentary dispositions and the strong belief in the afterlife.

CHAPTER 9

TESTAMENTARY DISPOSITION DOCUMENTS FROM THE NEW KINGDOM

9.1 INTRODUCTION

This chapter places focus on some important texts from the New Kingdom (ca. 1550–1069 BCE), particularly those from the village of Deir el-Medina near Thebes, in order to identify and discuss concepts and elements pertaining to succession law in general, but in particular to testamentary dispositions.

9.2 CONTEXT OF TESTAMENTARY DISPOSITIONS OF THIS ERA

The New Kingdom was a period of growth and expansion, bringing with it new influences. The Eighteenth Dynasty defeated the Hyksos, thereby reuniting the country (Muhs 2016:92). Ahmose¹³⁸ rapidly completed the territorial and administrative unification (Theodorides 1971:307). The Egyptian army, with the expulsion of the Hyksos, pushed beyond the traditional frontiers of Egypt into Syria-Palestine (Shaw & Nicholson 2008:225). This period in Egypt's history can be referred to as the era of the great imperialistic expansion (Theodorides 1971:317). The temples of Luxor¹³⁹ and the mortuary temples of the west bank of the Nile as well as the royal tombs in the Valley of the Kings are witness to the power and the prosperity of Egypt during the New Kingdom era (Oakes & Gahlin 2004:11). Egyptian culture flourished again during the New Kingdom (Allen 2004:10).

During the New Kingdom two viziers served at the same time (Muhs 2016:93). The viziers were at this time more regularly responsible for hearing serious cases (Muhs 2016:93). The two viziers served under the king and were responsible for Upper and Lower Egypt respectively, until the end of Ramesses III's reign, after which there was

¹³⁸ Based on the latest archaeological discoveries and older inscriptual evidence, reunification of Egypt took place only in the last decade of the 25-year reign of Ahmose (1550-1525 BCE), the first king of the Eighteenth Dynasty (Bryan 2000:218). Although this Dynasty therefore officially started around 1530 BCE, it was well under way during Ahmose's reign (Bryan 2000:218). There was increased contact with the Aegean (Bryan 2000:219). Ahmose's construction plan initially was within the capital of Avaris which he won from the Hyksos (Bryan 2000:219).

¹³⁹ The hometown of the New Kingdom, Thebes, benefited from all the 'foreign' and new developments, and its local deity, Amun, was raised to national importance (McDowell 1999:3). On the east bank, Thebes had the two massive temple complexes of Karnak and Luxor, on the west bank were the royal tombs, and along the desert edge a row of temples dedicated jointly to Amun and the funerary cults of the kings (McDowell 1999:3).

only one vizier based in Thebes (Muhs 2016:94). The viziers could hear petitions and investigate cases with the assistance of subordinate scribes of the vizier (Muhs 2016:94-95). Viziers could apparently also decide cases on their own as well (Muhs 2016:95). The viziers and their subordinate scribes could investigate and decide cases together with the great *knbt* courts¹⁴⁰ on which they sat and over which they presided (Muhs 2016:95).

High officials and high courts located at Thebes and Memphis seem to have applied a body of law established by royal decrees (Muhs 2016:92). Muhs (2016:92) observes that these same officials and courts also served as court of referral for property disputes heard by local officials and local courts. The head of the judicial administration in the New Kingdom was the king, who could hear and decide cases himself, and also did so regularly (Muhs 2016:92). However, the king could also appoint officials to hear special cases on his behalf, such as the case described in the Hieratic *Papyrus Turin 1875* (also known as *The Turin Judicial Papyrus*)¹⁴¹ from Thebes, dating from the end of the reign of Ramesses III (Muhs 2016:93).

The corpus of legal texts from the New Kingdom is more abundant¹⁴² and varied than those from the Old and Middle Kingdom (Jasnow 2003b:289). As with the Old and Middle Kingdom, we do not have any legal code from the New Kingdom (Jasnow 2003b:289). However, we do have references to systematic law collections like, for instance, in the *Decree of Horemheb* where the king declares as follows: 'I have given to them (the judges) oral instructions and law(s) in their books' (Jasnow 2003b:289).

Although there are numerous documents attesting to private ownership of land, the precise nature of the conditions of ownership is not clear (Jasnow 2003b:328). It is also not clear how statistically significant private ownership of land was in the New Kingdom (Jasnow 2003b:329). It may however have been possible to purchase land at Deir el-Medina, although we do not have many examples of this occurring (Jasnow 2003b:329).

¹⁴⁰ The *Decree of Horemheb* states that the king established two great *knbt* courts in Upper and Lower Egypt, with other sources indicating that they were associated with the two viziers, one at Thebes and one at Heliopolis or Memphis (Muhs 2016:96). The great *knbt* courts sometimes also served as witnesses to transactions, though local *knbt* courts more often performed this service (Muhs 2016:96).

¹⁴¹ In this matter Ramesses III appointed a tribunal of officials to investigate and pass judgment on those accused of plotting the Harem Conspiracy (Muhs 2016:93).

¹⁴² This large corpus of textual evidence provides a detailed picture of social and economic life during the New Kingdom (Wilkinson 2005:64). The large corpus of legal texts from Deir el-Medina is the most important single source of information about law in the New Kingdom (Jasnow 2003b:292).

Most of the surviving evidence for the documentation of property transfers in the New Kingdom consists of written transcripts of verbal statements (Muhs 2016:111).¹⁴³

With a few exceptions, the administrative papyri, family archives and private documents of the literate few have succumbed to the damp of the floodplain at Thebes (McDowell 1999:3). It was only on the far western edge of Thebes where the remains of a small community escaped the general destruction (McDowell 1999:3). The small village of Deir el-Medina,¹⁴⁴ named after a now long vanished monastery, is situated opposite Thebes on the west bank of the Nile. The French Institute for Oriental Archaeology in Cairo excavated the village between 1922 and 1951. Deir el-Medina lies over 50 meter above the destructive water table, which explains the survival of texts together with the fact that the village was abandoned as a settlement site at the end of the New Kingdom (McDowell 1999:4).

A very important feature of Deir el-Medina, according to McDowell (1999:4), is the high literacy rate among the inhabitants, which reached a peak in the Twentieth Dynasty. The high rate of literacy corresponds with the thousands of *ostraca* and papyri originating from Deir el-Medina (Haring 2003:250). Haring (2003:266) is of the opinion that the documents from Deir el-Medina reveal an oral village culture in which the skill of writing was increasingly present, with a rapid increase in the amount of writings in the private and judicial domains. This was followed by some standardisation at the end of the Nineteenth Dynasty and in the first half of the Twentieth Dynasty. The growing number and formalisation of texts show, according to Haring (2003:266) that people discovered that writing offered advantages to aid their memory. We have important documents relating to testamentary dispositions from the New Kingdom and in

¹⁴³ In many cases, especially on *ostraca* from Deir el-Medina, the transcripts provide neither the names of witnesses to the transaction, nor the names of scribes who wrote the transcripts (Muhs 2016:111). Manuscripts like these presumably served as private reminders for their authors, who was either one of the witnesses or one of the contracting parties (Muhs 2016:111). These transcripts could be used by their authors in a dispute, as they could authenticate the transcript themselves (Muhs 2016:111).

¹⁴⁴ The village was about half a mile beyond the cultivated land bordering the Nile, and between the Valley of the Kings and the Valley of the Queens (Lesko 1994:2). Deir el-Medina was no typical village, being under the direct control of the vizier, and later the high priest of Amun (Jasnow 2003b:289). It contained just under 70 houses, and a wall surrounded the main part of the village (Janssen & Pestman 1968:137). The village was originally called the 'Place of Truth' by the ancient Egyptians (Wilkinson 2005:63); according to Lesko (1994:7) it was called 'Set Maat' (Place of Truth), with the workmen being 'servants' in the Place of Truth. Deir el-Medina was the village of the workers responsible for the construction and decoration of the royal tombs in the Valley of the Kings and the Valley of the Queens (Haring 2003: 250). At the foot of the steep escarpment of the Libyan Desert the workmen also built their own tombs, which they endeavoured to decorate the same way they used to do for the kings, albeit with their modest means (Janssen & Pestman 1968:137). The workmen of Deir el-Medina and members of their families are frequently mentioned in documents, giving us the opportunity to obtain a glimpse into their lives (Černý 1945:29).

particular from Deir el-Medina. These documents assist us in better understanding the ancient Egyptians' idea of testamentary dispositions and the emergence of testate succession law, especially among ordinary people.

9.3 NAUNAKHT DOCUMENT I, TEXT 1: THE LAST WILL

9.3.1 BACKGROUND

The papyrus containing the Naunakht documents dates from the Twentieth Dynasty (ca. 1190-1075 BCE). All the texts that form part of the Naunakht documents date from the reign of Ramesses V (Pestman 1982:177). The papyrus is from Ramesside Deir el-Medina (Eyre 2007:240). The papyrus containing the will and the related documents of Naunakht is kept at the Ashmolean Museum at Oxford University today under the access description *Papyrus Ashmolean Museum 1945.97* (Sweeney 2002:145).¹⁴⁵

According to Černý (1945:29) there are relatively few examples from ancient Egypt where a specific matter is referred to in several documents, and the dealings in respect of Naunakht's property are probably unique in this respect. These documents to a certain extent all refer to matters of inheritance (Černý 1945:29). I agree that these different documents all relating to Naunakht's testamentary disposition are of huge assistance in identifying concepts and elements pertaining to testamentary dispositions in ancient Egypt.

When the papyrus was acquired it consisted of two rolls, and only after being unrolled, did it turn out to be a single papyrus that had been cut in approximately two equally-sized smaller rolls (Černý 1945:29-30). The complete document I is 43 cm in height and 192 cm in length, and is complete and undamaged except for a few holes, but these do not affect the written text (Černý 1945:30).¹⁴⁶ The papyrus was found rolled, with the inscribed face on the horizontal fibres lying inside (Černý 1945:31). It appears that the papyrus was rolled around the left-hand border, meaning that the right-hand edge was exposed (Černý 1945:31).¹⁴⁷

¹⁴⁵ The colour of the papyrus is a light tan. It is framed and on display at the Ashmolean Museum. A copy of the document is included in Addendum C.3 of this study.

¹⁴⁶ Černý (1945:30) indicates that the height of a 'new/fresh' papyrus roll in the New Kingdom, coming from the factory, was 42 to 44 cm. Papyri of this length were used, inter alia, for business and legal documents.

¹⁴⁷ There are eight joins, which show the place where the different sheets of papyrus have been glued together, with each right-hand sheet overlying that to its left (Černý 1945:30). The joins appear at fairly regular intervals of 25,5 cm, leaving short strips of about 4 cm at the beginning and about 11 cm

Document I is a welcome addition, according to Černý (1945:42), to our stock of documents relating to wills and testaments. The will is one of four documents from the Naunakht archive, which contains six separate texts (Jasnow 2003b:335). The will of Naunakht is of exceptional importance for understanding inheritance concepts (Jasnow 2003b:335). The first text is actually the last will and refers to columns i-v, 8 (Pestman 1982:173).

Where the first text of document I is effectively the will, text 2 of document I is an undertaking to comply with the will. Documents II and III refer to the division of Naunakht's estate, and document IV (which consists of two texts) refers to the promise to hand over as well as a confirmation of handing over the legacy. My discussion here is therefore *mutatis mutandis* applicable (serving as introduction) to my discussion below of documents II, III and IV. Unfortunately only three of these texts are dated and two of them are incomplete as they omit the name of the king (Pestman 1982:173). Only the first text was written by Naunakht and the rest was written after her death (Pestman 1982:177).

9.3.2 THE TEXT

Wilkinson's (2016:134-136) translation reads as follows:

Year 3, fourth month of the inundation season, day 5 under the Majesty of the Dual King, Lord of the Two Lands, Usermaatra-sekheperenra – life, prosperity, health; the son of Ra, lord of appearances like Atum, Ramesses-amun-her-khepeshef-meryamun (Ramesses V) – life, prosperity, health - given life for ever and ever.

On this day a declaration was made concerning her property by the citizeness Naunakht in the presence of this court:

the chief workman Nekhemmut
the chief workman Inherkhau
the scribe of the tomb Amennakht,
the scribe Ḥorsheri
the draughtsman Amenḥotep,
the workman Telmontu
the workman Taa
the draughtsman Pentaweret
the workman Userhat

at the end (Černý 1945:30). According to Černý the scribes showed 'lavish' disregard for space, a large portion of about 54 cm wide is left uninscribed before the first column of about 12 lines are written, placing the short lines 13 to 19 to the left of the equally short lines 6 to 12 (Černý 1945:30).

the workman Nebnefer
the workman Amenpahapi
the district officer Amennakht
the district officer Ramose
the workman Nebnefer, son of Khonsu

She said: 'As for me, I am a free woman of the land of Pharaoh. I brought up these eight servants of yours and gave them a household – everything as is customarily done for those of their standing. But, look, I am grown old and, look, they do not care for me in my turn. Whichever of them has given me a hand, to him will I give of my property, whichever has not, to him will I not give of my property.'

List of the workmen and women to whom she made gifts:

the workman Maanakhtef
the workman Qenherkhepeshef. She said: 'I have given him a bronze washing bowl as a bonus over and above his fellows and ten sacks of emmer.'
the workman Amennakht
the citizeness Wasetnakht
the citizeness Menatnakht

As for the citizeness Menatnakht, she said concerning her, 'She shall have her inheritance in the division of all my property except the (ration of an) *oipe* of emmer given to me by my three male children and the citizeness Wasetnakht and the (ration of a) *hin* of fat which they have given me in like manner.

List of her children of whom she said, 'They shall not share in the division of my one-third, but they shall share in the two-thirds of their father':

the workman Neferhotep
the citizeness Menatnakht
the citizeness Henutshenu
the citizeness Khatanub

'As for these four children of mine, they shall <not> share in the division of any of my property. And as for any property of the scribe Qenherkhepeshef, my (first) husband; and also his real estate; and also this store-room of my father's; and also (ration of an) *oipe* of emmer which I received with my husband: they shall not share them.

'And as for these eight children of mine, they shall share in the division of their father's property in a single division.

'And as for my cauldron which I gave him (Naunakht's son, Neferhotep) to buy bread for himself and the copper tool (weighing) 7 *deben* and the copper vase (weighing) 7 *deben* and the copper adze (weighing) 6 *deben* – (making) 40 *deben* in total - they shall comprise his share. He shall not share in any further copper; it shall go to his brothers and sisters'.

Made in writing by Amennakht, scribe of the Forbidden Tomb (the Pharaoh's tomb in the valley of the kings).

9.3.3 CONCEPTS AND ELEMENTS IDENTIFIED

9.3.3.1 Date

The testamentary disposition of Naunakht starts by giving the document a date. It can be dated with reasonable certainty to November 1147 BCE (Wilkinson 2016:133). It is evident that the date was also extremely important to the ancient Egyptians of the New Kingdom; a clear indicator of the value placed upon the dating of documents by the ancient Egyptians.

9.3.3.2 Label

On the outside vertical fibres, on the *verso* of the papyrus, and visible when the papyrus was still rolled, is a single-line 'docket' stating the nature of the document, being a 'declaratory deed of her (Naunakht's) property' (Černý 1945:31). Wilkinson (2016:136) translates this docket on the outside of the scroll as : 'Deed of declaration made by the citizeness Naunakht concerning their (*sic*) property.'

It is Černý's (1945:32) view, that this ('declaratory deed of her property') must be a technical term denoting the written record of a legal act performed on a certain day. The word might be a derivative of *hrw* ('day') (Černý 1945:32). According to Černý (1945:32) the use of 'day' (*hrw*) qualifies the word 'roll'.¹⁴⁸

The purpose of the 'label' or 'docket' was clearly to identify the document. In Naunakht's case it identifies it as a declaratory deed of her property transfer. Looking at the contents and purpose it is clear that it refers to a testamentary disposition and in my view the label is similar to our modern day heading of a last will or testament in order to immediately identify it, for example: 'This is the last will and testament of X.'

9.3.3.3 Disposition

It is clear that Naunakht intended to make a testamentary disposition as the text confirms 'a declaration ... was made'. The hieroglyphs appearing in the text also contain the same word which appears in the docket on the *verso* (Černý 1945:32). It is Černý's (1945:32) view that this must be a technical term denoting the written record of a legal act performed on a certain day (which referred to a declaration about her property); in my view, from the contents, it therefore constitutes her testamentary disposition.

¹⁴⁸ This is similar to the word 'statement' in *Papyrus British Museum 10053*, I,4 (Černý 1945:32).

In order for someone to identify a document upon one's death as being your last will and testament, it is important for the document to be identifiable as a last will and testament. In one's last will and testament one 'declares' certain wishes to be the last wishes to be fulfilled upon one's death. Today our last wills and testaments also start off by saying: 'I declare this to be my last will and testament ...'.

Not everyone agrees that Naunakht's document is indeed a last will and testament. Eyre (2007:240) suggests that Naunakht's document also is an example of the financial arrangements of a widow following remarriage, although she had no children from her first marriage and displays ancient attitudes. Naunakht's property assignment has the character of a genuine will and testament, although, according to Eyre (2007:240), the terms are to bar customary heirs for good reasons and the document does not represent a free disposal of property. This again emphasises my point in this study, that it is difficult to give assign modern legal terminology to ancient Egyptian documents, concepts and ideas. Naunakht's intention was to dispose of her property before her death and to alter the customary intestate succession principles. Her document clearly contains concepts and elements of testamentary disposition. It is for this reason that Naunakht's document should indeed be regarded as a testamentary disposition document containing important concepts and elements pertaining to testamentary dispositions.

The *Will of Naunakht* follows the pattern of all Egyptian legal documents (Černý 1945:42). Naunakht declares her last will by making an oral public statement, in the presence of the *knbt* (Pestman 1982:174). It consists of an oral disposition made by the testatrix before the court of witnesses and written down by a professional scribe (Černý 1945:42). It was therefore not the written word alone, but the spoken word, which was subsequently recorded as an actual event on papyrus or ostrakon, that conferred upon the document its legal validity (Černý 1945:42). Haring (2003:265) suggests the inhabitants of Deir el-Medina may finally have recognised the potential of texts as evidence, as becomes evident from the will of Naunakht. Documents like Naunakht's were labelled 'dated document' and they may represent the first actual examples of a type of record that became more and more popular in the village (Haring 2003:265).

As with modern wills and testaments, the Egyptian will was also written, or at least signed by the testator or testatrix (Černý 1945:42). This is an important observation, since it confirms the importance and the use (even in the New Kingdom) of 'oral

documentation'. Apparently it had now become necessary to do so in the presence of the court and to write it down. It would appear that it was the combination of the written and oral documentation that would give the testamentary disposition its validity.

9.3.3.4 Testatrix

From the text it is clear that Naunakht is the testatrix of this document. Pestman (1982:173) gives the transliteration of her name as *Niwt-nHti*. Naunakht was a woman and the testatrix of this will. It would appear that Naunakht's mother was a woman called Henutshenu, but her father's name is still unknown (Eyre 2007:240). The testamentary disposition was *prima facie* written down by two scribes. This was the written version of the testatrix's oral version.

Eyre (1992:213) is of the view that Naunakht was already of advanced age when drafting her will, and cannot have lived long after her will was written down. However, writing a will is not necessarily an indication that death is near (Eyre 1992:213). It does indeed appear as if she was an older woman, as she expected some support from her children (Černý 1945:44). According to Pestman (1982:174) Naunakht was at least 77 years old when her will was drafted. According to Wilkinson (2016:133) the will of Naunakht is a fascinating and remarkable surviving example of a will by a woman. Meskell (2000:432) observes that women in the New Kingdom had a certain amount of social freedom, but this did not imply real equality in terms of social standing or economic independence.

It appears that Naunakht was married twice and that the children mentioned in her last will were children from her second marriage (Černý 1945:44). Her first husband was the scribe Qenherkhepeshef (Wilkinson 2016:133). He must have been old and childless (Eyre 2007:240). Naunakht is envisaged as an unfortunate young girl married off to the rich old man Qenherkhepeshef (Eyre 2007:240). In truth, however, the young Naunakht needed a suitable marriage and difference in age was less significant in marriage where financial and social security were primary considerations (Eyre 2007:241). Naunakht's marriage to Qenherkhepeshef probably represented a family alliance where a daughter, when she reaches child-bearing age, is married to the most prestigious suitor (Eyre 2007:241). The age difference between them must have been at least forty years, and probably more (Eyre 2007:240). There is *prima facie* no evidence that Qenherkhepeshef had a previous wife, nor can other close relatives be identified (Eyre 2007:240).

Qenherkhepeshef appears to have succeeded to the office of scribe as a pupil and, in effect, the adopted son of his predecessor Ramose, which may imply that Qenherkhepeshef had no extended family (Eyre 2007:240). Qenherkhepeshef was the 'Royal scribe and Fan-bearer on the King's Right Hand' and the son of Pnakhte (Edwards 1968:155-156).

When Qenherkhepeshef died, Naunakht inherited immovable and movable property from him (Eyre 2007:240). It is possible that Naunakht inherited from Qenherkhepeshef for lack of other relatives or, alternatively, the property from her first marriage simply consists of the one-third share of a joint matrimonial property (Eyre 2007:240). It is doubtful that she would have inherited for lack of other relatives as the customary intestate succession principles did not provide for this. It is more likely that she inherited in terms of a testamentary disposition document from Qenherkhepeshef.

Her second husband was a tomb workman named Khaemnun, with whom she had eight children (Wilkinson 2016:133). Remarriage was structurally a source of conflict because of, *inter alia*, its implications for property rights and the social standing of individuals (Eyre 2007:225). Naunakht and Khaemnun appear to be fairly close contemporaries in age (Eyre 2007:240). Although Khaemnun was not one of Deir el-Medina's headmen, as Qenherkhepeshef had been, as workman of the Tomb he fell into the category of a socially and financially respectable marriage partner for any local woman (Eyre 2007:241).

9.3.3.5 Testamentary capacity

From the text it is noted that Naunakht bears the title 'citizeness', which was given to all free women. In her opening statement she states that she is a *htm*, a free woman (Černý 1945:44). This appears to be important, indicating that she was not in service and not a *hmt* (slave), giving her therefore the right to dispose of her property (Černý 1945:44). As indicated in paragraph 9.3.3.3, Eyre is of opinion that the document does not represent free disposal of property. Although Naunakht was merely a 'free woman of the land of Pharaoh', she clearly knew her mind and her will offers fascinating insights into ancient Egyptian family ties and ancient Egyptian law (Wilkinson 2016:134).

Naunakht must have made the testamentary disposition towards the end of her life according to Eyre (2007:240), and he is of the opinion she died within a year after drafting this document. It can therefore be accepted that Naunakht must have been an

adult who owned property when she made this testamentary disposition. It is important to note that a woman was able to make her own testamentary disposition and could decide what to do with her property by way of such a testamentary disposition. The text does not make mention of her mental capacity. It must be considered that it was possibly superfluous as the oral version was given at court and written down, thus implying she had the mental capacity without explicitly mentioning it.

9.3.3.6 Beneficiaries

Jasnow (2003b:335) suggests that Naunakht made a special disposition stating which of her children were to inherit. It is apparent who the beneficiaries from Naunakht's testamentary disposition were. The beneficiaries are some of the children of Naunakht and those who inherit are clearly identified by name. Interestingly, in addressing the court and referring to her children, she uses the word *bAk*, meaning 'these servants of yours'. It is not quite clear why a free woman would refer to her children as slaves, but this might merely be a phrase referring to the children as obedient servants of the authorities (Černý1945:45).

Regarding the children, there were four boys (Qenherkhepeshef, Amennakht, Maanakhtef and Neferhotep) and four girls (Wasetnakht, Menatnakht, Henutshenu and Khatanub) (Wilkinson 2016:133). It would appear that her son Qenherkhepeshef acted as the eldest son (Pestman 1982:174). Even though the children might have an equal claim to Naunakht's property, Naunakht alters this by means of the provisions in her testamentary disposition (Wilkinson 2016:133). She makes it very clear that she intends to leave her property to be divided only among those five of her eight children who have looked after her in her old age (Wilkinson 2016:133). Naunakht therefore effectively disinherited her other three children (Neferhotep, Henutshenu and Khatanub) (Wilkinson 2016:133). I shall return to the disinheritance of some of the children in the discussion below.

Some of the children are therefore heirs, but importantly Naunakht also bequeathed a specific object to one child, Qenherkhepeshef, which obviously means that she created a legacy and this child thus also was a legatee. Naunakht's beneficiaries in terms of her testamentary disposition include therefore both heirs and a legatee.

9.3.3.7 Legacy

From Naunakht's testamentary disposition we have the following statement: '... I have given him a special reward ...'. It is difficult to determine the exact meaning of *mtwn*, which has been translated as 'reward' (Černý 1945:33). The word also occurs in document IV (Černý 1945:33). According to Wilkinson (2016:134), Naunakht singles out her favourite son Qenherkhepeshef, to also receive (apart from his one-fifth share of the inheritance) her single most valuable asset, a bronze washing bowl. In the Twentieth Dynasty bronze and copper were the only metals available in Deir el-Medina, with silver and gold being almost unknown (Černý 1945:49). Payment in Deir el-Medina was effected by the transfer of particular objects valued in copper or grain, according to Černý (1945:49).

The washing bowl was intended as a *mtwn* or *twn* ('reward') according to document I, column iii, 4 and document IV, 8 (Pestman 1982:180). Unfortunately, according to Pestman (1982:180), the etymology of the word is not certain and it is not possible to ascertain if it has any specific legal meaning. Pestman (1982:176) suggest that where one heir receives more than the others do, it usually means that the heir has more duties as well. One can therefore assume, according to Pestman (1982:176) that Naunakht intended handing over the washing bowl only once certain conditions were met. The washing bowl was in Naunakht's house when she died and this is the reason why Khaemnun promised to give it to Qenherkhepeshef (document IV) (Pestman 1982:176-177). The washing bowl is only handed to Qenherkhepeshef after the conditions were agreed upon, being Qenherkhepeshef's obligation to give his old father an income in grain (Pestman 1982:177).

The reason why Naunakht would single out her one son Qenherkhepeshef for special favour is obscure. Černý (1945:49) suggests that it might be because he was her eldest son or had proved the most deserving among her children.

In the will (Document 1) between columns iii and iv, the words '10 khar of emmer' have been added, on a later occasion, at the end of the line dealing with the washing bowl (column iii, 4) (Pestman 1982:180). These words were crowded in at the end of the line after the next column had already been written (Černý 1945:34). It is unclear what the connection is between these words and the preceding reward made (Černý 1945:34). The 10 *khar* of the wheat, or 20 *deben* of bronze, may represent the value of the washing

bowl according to Pestman (1982:180). However, in document IV, 3, it is said that the washing bowl ‘makes 13 deben of bronze’ (or 6½ khar) (Pestman 1982:180). The son here also promises to pay as compensation 2¾ khar (line 7) which appears to be an income (line 8) for his father (second text of document IV) (Pestman 1982:180).

Pestman (1982:180) suggests that Naunakht agreed the compensation with her son after she made her will, stipulating an income in grain to the total amount of 10 khar. This would then be paid in instalments (Pestman 1982:180). At the time of her death, her son Qenherkhepeshef, has paid 3½ khar and Khauamun stated that the remainder due was 6½ khar (Pestman 1982:180). The matter is concluded when Qenherkhepeshef undertakes to pay his father 2¼ khar (Pestman 1982:180). It is unclear if this amount is meant as a first instalment or if it freed him of his debt (Pestman 1982:180).

9.3.3.8 Bequests and the translation of *rdi*

Naunakht intended to bequeath her property to some of her children and also a specific item, the bronze bowl, to a specific son. From the text it is clear that the word *rdi* is used and it is again translated as ‘given’. I submit that, looking at the contents and context of this document, it is clear that Naunakht intended a testamentary disposition and with that in mind it would be better, in this context, to rather translate *rdi* with ‘bequeath’. It is, however, certain that Naunakht intended to ‘give’ or ‘award’ or rather ‘bequeath’ her property by means of a testamentary disposition.

9.3.3.9 Eldest son

It would appear that her son Qenherkhepeshef acts as the eldest son (Pestman 1982:174). The reason is that he receives a legacy that is understood to be given as a ‘reward’. This reward might have been to compensate him for his duties as administrator (the present-day executor) of the deceased estate. It is unclear from the information to our disposal, but it appears to be a valid deduction that Qenherkhepeshef acted as Naunakht’s ‘executor’ after her death. In our modern-day law of succession the executor is entitled to an executor’s fee for fulfilling his duties as executor in the administration of the deceased estate. Therefore the deduction that the legacy refers to ‘compensation’ is probably valid.

9.3.3.10 Specific assets

In the second line of the text we find the important phrase ‘concerning her property’. It is evident from the words that the testatrix had her own property. It implies that women could own property.

Naunakht’s testamentary disposition refers to both movable (e.g. emmer and the bronze bowl) and immovable (e.g. store-room and lands) property. She refers to ‘all my property’. Naunakht’s intention was for all her property to be bequeathed and that her property included movable and immovable property.

9.3.3.11 Origin of property

Mention is made in the testamentary disposition what the origin of Naunakht’s property was. Naunakht’s property included the property she inherited from Qenherkhepeshef (her first husband, most probably by way of a testamentary disposition), the property she had received from her father and from her personal one-third share of the joint matrimonial property (Eyre 2007:240). Naunakht distinguishes her own property from that of her current husband (Jasnow 2003b:335).

In her testamentary disposition Naunakht specifically refers to the fact that each of her children had been provided with a *grgt-pr* (‘dowry’ or ‘trousseau’) (Eyre 2007:230-231). This was necessary in ancient Egyptian culture because each son needed the resources to set up the separate residence that marked the independence of his nuclear family from that of his father (Eyre 2007:231). Each daughter needed her dowry to take to her new home on marriage (Eyre 2007:231).

The reason for mentioning the origin of the property is not only to identify the property to be inherited, but more importantly to prove ownership. This appears to be a way for the ancient Egyptians in their testamentary dispositions to confirm ownership of property and thus in effect their ability to bequeath the property in terms of a testamentary disposition.

9.3.3.12 Witnesses

The testamentary disposition was drawn up in the presence of fourteen named witnesses in the third year of Ramesses V’s reign (Wilkinson 2016:133). The text proceeds by telling us who were present as witnesses. The witnesses are clearly identified and apparently were prominent citizens. They were chosen not to be mere

witnesses, but that at least some of them were also chosen because they could read and write, thereby making sure that the scribe wrote down the precise wishes of the testatrix, thereby making sure that the written version was indeed a true reflection of the oral version.

The purpose of the witnesses was still to authenticate the testamentary disposition of the testatrix. However, it would appear from Naunakht's testamentary disposition that a change took place in the New Kingdom. The change referred to was that the testamentary disposition was still made before witnesses, but also now took place in a court. It would appear that this procedure would give the process more value as well as giving perhaps more validity to the process of drawing up a testamentary disposition.

9.3.3.13 Court

The testamentary disposition is written by the scribe Amonnakhte and declares that Naunakht's instructions were made in front of a court which included the two foremen and another eleven leading members of Deir el-Medina (Eyre 2007:240). It was possible for women to appear in court in the Ramesside period, as becomes apparent from Naunakht's appeal to the local court of Deir el-Medina to ratify the disposition of her property after her death (Sweeney 2002:145). From the text we read the phrase 'before the following court'. The court before which the testatrix appeared to give her oral version of her last wishes was a small court because of the private nature of the matter (Černý 1945:42). The court consisted of 14 people, all of whom were workmen at Deir el-Medina (Černý 1945:42). Two of them were chief workmen, two of them scribes, two draughtsmen, two district officers and six ordinary workmen (Černý 1945:42). The purpose of supplying the witnesses' occupation is possibly in order to give us an understanding of the legitimacy of the court before which this will is being drafted. It is, however, important to note that even though Deir el-Medina was a 'literate' community, this testamentary disposition has as its basis an oral version which is now being validated in court by writing it down. This reflects the close relationship between oral and written documentation, even in the New Kingdom.

9.3.3.14 Disinheritance

We clearly have an example of a matter of disinheritance from the text: '... whoever of them has aided me, to him I will give (of) my property, (but) he who has not given to me, to him I will not give of my property'. It is apparent from this clause in the testamentary

disposition that the testatrix wants to disinherit some of her children. Eyre (2007:240) affirms that Naunakht barred some of her children from inheriting.

According to Černý (1945:34-35) the scribe made a mistake and in his opinion it is an example of the scribe's carelessness, who in a vital passage omitted the essential word 'not', thus expressing the exact opposite of what Naunakht intended (line 4.8). Lippert (2013:9) points out that complete disinheritance of close siblings is not attested to before the New Kingdom. It was however possible, earlier, to curtail the inheritance of the eldest son in favour of other children from at least the Sixth Dynasty onwards (see for example *Papyrus Berlin 9010* discussed in Chapter 7) (Lippert 2013:9).

Naunakht disinherited the four children who failed to support her with a monthly income, but she expressly mentioned that they were to inherit from their father (Jasnow 2003b:335). Naunakht specified in detail which of her children should be disinherited because they had neglected her (Lippert 2013:9). Lippert (2013:9) suggests the reference to the fact that she has been neglected was probably not due to legal requirements but rather to the feeling that some sort of justification was necessary towards the local community or the disinherited children themselves (Lippert 2013:9). Disinheritance was therefore, in my opinion, indeed a feature of this testamentary disposition and obviously a concept with which the ancient Egyptians of the New Kingdom were familiar. In Naunakht's testamentary disposition she clearly had the intention of disinheriting some of the children, which she identifies. She also provides a reason. This would imply almost an 'express' disinheritance (of effectively the heirs according to customary intestate succession) by Naunakht. The possible effect of any testamentary disposition is by implication a possible disinheritance of the customary intestate succession heirs.

9.3.3.15 Taking care of the elderly

From the text we read as follows: 'I brought up these eight servants of yours and gave them an outfit of everything (such) as is usually made for those in their station, but see, I am growing old, and see, they are not looking after me in my turn.' It was customary in ancient Egypt for children to look after their elderly parents (Meskell 2000:436). Naunakht punished those children of hers who failed to support her in life in her last will (Meskell 2000:436). It is therefore clear that children could be disinherited or given smaller shares of property (Meskell 1998:367).

Naunakht accepted that the four disinherited children would still share equally in her husband's (their father's) two-thirds share of the joint matrimonial property (Eyre 2007:240). Naunakht's disinheritance of her children was restricted by an explicit proviso of her will (I, 4, 1, ff) as she could only disinherit them in respect of that part of her property over which she had the right of free disposal (Černý 1945:49). This part Naunakht calls (I, 4, 2) 'my one-third' and the passage in question, taken into consideration *Papyrus Turin 2021*, suggests that in this period married couples were in the habit of creating a common property to which the husband contributed two-thirds and the wife one-third (Černý 1945:49). This then implied that each of the parties, having right of disposal, could on dissolution of the marriage by death or divorce, each dispose of the part they had contributed (Černý 1945:49).

Menatnakht, although included as an heir, is excluded from sharing in her ration of emmer and fat which Naunakht and her husband had received from her other four children (Qenherkhepeshef, Amennakht, Maanakhtef and Wasetnakht) (Wilkinson 2016:134). The *oipe* of emmer here refers to the emmer she 'collected' (*nwy*) with her husband (Černý 1945:48). Naunakht implies that this subsidy was intended to assist her in her old age and was given as a monthly ration (Černý 1945:49). An *oipe* is a small quantity, amounting to 40 *hin*, which is about 18 litres (Černý 1945:49).

This duty of care for one's elderly parents tells us something of the social nature of the people and the society of the ancient Egyptians of the New Kingdom. It seems to be an important feature, if not a requirement, of their society and perhaps of the nuclear family. Failing in this duty by a child seems, from Naunakht's testamentary disposition, to be sufficient reason for disinheritance.

9.3.3.16 Mortuary provisions

There is apparently no direct evidence of any stipulations in Naunakht's testamentary disposition about a mortuary endowment or provision for sustenance after death. It is, however, interesting to note that Qenherkhepeshef, the son, is referred to also as a *wab*-priest in the *Theban graffito* No. 803 (Černý 1945:47). This is not strange, since being a workman did not exclude a man from being a *wab*-priest at the same time (Černý 1945:45). This is an important observation, as this son is also the eldest son and thus administrator ('executor') of the deceased estate. This reference to the eldest son being a

wab-priest might be an indication or reference to the duties by an eldest son regarding provision of sustenance for the afterlife.

9.4 NAUNAKHT DOCUMENT I, TEXT 2: UNDERTAKING TO COMPLY WITH THE WILL

9.4.1 BACKGROUND

The background, as discussed in paragraph 9.3.1 above, is also applicable here *mutatis mutandis* as it still relates to Naunakht's testamentary disposition. The second text is found in column v, 9-VI and is written in a different hand (Pestman 1982:173). After finishing line 12 of column 5, the new scribe was at the end of the roll (Černý 1945:30). The remainder of his text was brief, and the scribe therefore crowded it into five short lines, forming column 6 at the top and end of the document (Černý 1945:30). The text is dated. The name of the king is omitted and this would suggest, according to Pestman (1982:175), that the king is still the same as in text 1 and that both texts can therefore be dated to the reign of Ramesses V.

Černý (1945:31) is of the view that the scribe of the second text is also one of the witnesses. In this second text of document 1, Khaemnun (the surviving spouse) and the children present themselves again in court and they undertake to execute Naunakht's will exactly according to her instructions (Jasnow 2003b:335). It is important to note that this second text forms part of document I, as both the main text and the undertaking to comply with the will were written on one document.

9.4.2 THE TEXT

Wilkinson (2016:136) translates the text as follows:

(In a different hand)

Year 4, third month of the inundation season, day 17: on this day there came again to the court the workman Khaemnun and his children, saying, 'As for the documents made by the citizeness Naunakht concerning her property, they shall be exactly as prescribed. The workman Neferhotep shall not share in it.' He made an oath by the lord, to wit, 'If I reverse my undertaking and contest it, he (*sic*) shall be liable to a hundred blows and shall be deprived of his (*sic*) property'.

In the presence of:

the chief workman Khau

the chief workman Nekhemmut

the scribe of the tomb Horsheri

the district officer Ramose
the district officer Pentaweret son of Nakhtmin

9.4.3 CONCEPTS AND ELEMENTS IDENTIFIED

9.4.3.1 Date

We know from the text that this second part, written in a different hand on the same papyrus as Naunakht's testamentary disposition is also dated. This assists us to determine that this second text was written later, on the same papyrus as the initial testamentary disposition of Naunakht. This is an indication of the importance the ancient Egyptians attached to the custom to date their documents. This would also assist to determine the purpose of the second text.

9.4.3.2 Dispute

From the second text of document 1 we observe that the surviving spouse (Khaemnun) and the children present themselves in court and undertake to execute Naunakht's testamentary disposition. According to Wilkinson (2016:134) the whole family had to appear before a second legal hearing about a year after the testamentary disposition of Naunakht was made, in order to confirm that they were content with, and would respect its terms. They were *prima facie* not willing to do so earlier (Jasnow 2003b:335). It would therefore appear that they have already been in court on an earlier occasion and they now promise to carry out Naunakht's will exactly according to her instructions (Pestman 1982:174). It would appear that they had not been willing to do so the first time they went to court (Pestman 1982:174).

In order to avoid later litigation among heirs, testators in some cases had their heirs (sometimes also those siblings who did not inherit) agree on a document (Lippert 2013:5).¹⁴⁹ However, this second text added to Naunakht's testamentary disposition is all about a dispute of Naunakht's testamentary disposition.

As discussed in paragraph 9.3 above we know that Naunakht disinherited some of her children. In particular one of the disinherited children, Neferhotep, was also cut out of the testamentary disposition because he had already received more than his fair share in the form of copper vessels (Wilkinson 2016:134). Apparently, Neferhotep contested the testamentary disposition (Pestman 1982:174).

¹⁴⁹ The example Lippert (2013:5) gives is *Papyrus Turin 2021* and *Papyrus Geneva D 409*.

Černý (1945:51) is however of the opinion that Naunakht was probably still alive at the time of the second court appearance (text 2). Pestman (1982:179) disagrees with Černý and adds that Černý does not give reasons for his opinion. The contents of the second text indicate that Naunakht had died in the meantime (Pestman 1982:175). This would explain her absence in court (Pestman 1982:175). That she died can also be deduced from Khaemnun's presence, who seems, according to Pestman (1982:175), to act as some kind of executor of her testamentary disposition. According to Eyre (2007:240) this court appearance took place after Naunakht's death (a year and twelve days after her death). I agree that this dispute about Naunakht's testamentary disposition indeed took place after her death.

The strange substitution in this text, and in other texts, of the third person for the first person in the second part of the oath could lead to confusion (Černý 1945:36). The reason, as Černý (1945:36) postulates, is because of the scribe's own superstition. The scribe was superstitious and therefore reluctant to write the terms of the sanction as though they referred to himself (Černý 1945:36).

The dispute seems to be resolved. Khaemnun and the children had sworn their acceptance of Naunakht's written declaration (testamentary disposition), and specifically to the stipulation that her son Neferhotep should not inherit (Eyre 2007:240). Neferhotep conformed to his mother's disposition (Allam 1994:25). He takes an oath and asserts 'If I contest that (matter) again (I) shall be liable to 100 strokes and lose (my) belongings' (Allam 1994:25). Allam (1994:25) argues that the oath was imposed by the court, terminating the dispute in question. The disinherited son had to abandon his claim and abstain from further litigation (Allam 1994:25). Neferhotep now swears an oath affirming not to contest the will again (Jasnow 2003b:335).

9.5 NAUNAKHT DOCUMENTS II AND III: THE DIVISION OF THE PROPERTY

9.5.1 BACKGROUND

The discussion above in paragraph 9.3.1 is also *mutatis mutandis* applicable here.

Documents II and III deal with the division of Naunakht's property (Jasnow 2003b:335). As Eyre (2007:240) correctly observes, documents II, III and IV deal with the distribution of movable property and the maintenance of the surviving spouse after her death and therefore refer to the implementation of Naunakht's testamentary disposition.

Documents II and III consist of two small sheets of papyrus¹⁵⁰ found in Deir el-Medina in 1928 (Černý 1945:36). They were found with a large number of fragmentary papyri, which included letters, and a substantial portion of the *Maxims of Ani* (Černý 1945:36).

The contents of the two papyri are almost the same and there are only a few differences (Černý 1945:37). The writing of document II is large, thick and clumsy, while the writing of document III is smaller and neater (Černý 1945:37). It would appear that document II is a preliminary draft of document III (Pestman 1982:175), an interpretation to which Černý (1945:52) concurs.

9.5.2 THE TEXT

Černý's (1945:37) translation is as follows:

Document II

List of the division of property
of our mother:

given to Amennakht, 1 millstone
given to Wasetnakht, 1 millstone
given to Menatnakht, 1 *iqr*
given to Qenherkhepeshef, 1 *iqr*
given to Maanakhtef, 1 box
given to Menatnakht, 1 mortar
given to Amennakht, 1 mortar
given to Qenherkhepeshef, 1 mortar
given to Nebnakht, 1 mortar
given to Maanakhtef, 1 wooden *gAtr* box

given to Amennakht, 1 cage (?)

given to Menatnakht, 1 *tp*

¹⁵⁰ The two documents are approximately of the same size. Document II is 21 cm high and 12 cm wide, while document III is 23,3 cm high and 9 cm wide (Černý 1945:36). In both cases the side on which the fibres run horizontally is the side inscribed first (Černý 1945:36). The quality of the two papyri differs considerably (Černý 1945:36). Document II is coarse, thick and blackened by many traces of earlier writing which has been washed off, though not completely, while document III is thin and light reddish-yellow in colour (Černý 1945:36). The original writing of document III has been removed to make room for the present writing (Černý 1945:36). The writing of document II was upside down relatively to document III (Černý 1945:36). Document II shows a 'join', just to the left of the *recto*, on the edge of the papyrus (Černý 1945:36). Document II has 13 lines on the *recto* and on the *verso*. Document III has 20 lines on the *recto* and 17 lines on the *verso* (Černý 1945:36-37). Document III is written in another hand (Pestman 1982:173). In both the documents, the top of the *verso* stands immediately behind the bottom of the *recto*, because the writing of the *verso* was continued after turning the papyrus vertically (Černý 1945:37).

given to Qenherkhepeshef, legs (of a) *mAst*
given to Maanakhtef, 1 *krt*
given to Wasetnakht, 1 *db*

given to Menatnakht, 1 measure
given to Amennakhte, 1 measure
given to Wasetnakht, 1 measure
given to Qenherkhepeshef, 1 sledge
given to Maanakhtef, 1 sledge

given to Qenherkhepeshef, 1 *mAst* of *ab* (?)
given to Amennakht, 1 *Htp* of wood
given to Nebnakht, 1 *Htp* and 1 mortar
given to Menatnakht, one *xd*
given to Maanakhtef, 1 *gAt*-box of stone (?)

Document III

List of the division of the property
of our mother:

given to Amennakht, 1 millstone
given to Wasetnakht, 1 millstone
given to Menatnakht, 1 *iqr*
given to Qenherkhepeshef, 1 *iqr*
given to Maanakhtef, 1 box

Again, another division:

given to Menatnakht, 1 mortar
given to Amennakht, 1 mortar
given to Qenherkhepeshef, 1 mortar
given to Maanakhtef, 1 *gAwr*-box (?)
given to Wasetnakht, 1 mortar

Again another division:

given to Amennakht, 1 cage (?)
given to Menatnakht, 1 *tp*
given to Qenherkhepeshef, legs of a *mAst*
given to Maanakhtef, 1 *krt*

given to Wasetnakht, 1 *db*

Again another division:

given to Menatnakht, 1 measure

given to Amennakht, 1 measure

given to Wasetnakht, 1 measure

given to Qenherkhepeshef, 1 sledge

given to Maanakhtef, 1 sledge

Again another division

given to Qenherkhepeshef, 1 *mAst* of *ab* (?)

given to Amennakht, 1 leg (of?) *Htp* (?)

given to Wasetnakht, 1 *Htp* and 1 mortar

given to Menatnakht, 1 *xd*

given to Maanakhtef, 1 *gAtr*

Again another division:

given to Amennakht, 1 *Sqr*

given to Qenherkhepeshef, 1 foot-rest (?)

given to Maanakhtef, 1 foot-rest (?)

given to Menatnakht, 1 foot-rest (?)

given to Wasetnakht, 1 foot-rest (?)

9.5.3 CONCEPTS AND ELEMENTS IDENTIFIED

9.5.3.1 Date

This text is not dated, but as Pestman (1982:175) argues, the heading suggests that Naunakht herself has not made the division. It is however accepted that it was not made until after Naunakht's death (Pestman 1982:175). If one looks at the contents and also the context of these two texts, then Naunakht did not make these 'division' documents herself. It would most probably have been done after her death in order to give effect to her testamentary disposition.

9.5.3.2 Confirmation of division

According to Pestman (1982:175) document III is entitled 'list of the division of the goods of your mother'. It specifies the goods which were to be awarded to the heirs of Naunakht (four sons and a daughter) (Pestman 1982:175). The documents are a written reflection of the division of Naunakht's property according to her last wishes as set out in her testamentary disposition. The names of Naunakht's children are the same in both

the documents, except for the inclusion of Nebnakht in document II, which does not occur in document III. It would however appear as if his name is replaced in document III by Wasetnakht (a daughter). Černý (1945:52) suggests Nebnakht was Wasetnakht's husband and that his name was reflected (in the draft document II) because he collected the items; his name was replaced by Wasetnakht in the final form (document III).

Documents II and III therefore serve as confirmation that the stipulations of Naunakht's testamentary disposition have been complied with. This corresponds to a certain degree with the modern liquidation and distribution account in South African law which must be lodged with the Master of the High Court by an executor of a deceased estate. This is also a reflection of the division of the deceased's estate. Therefore today it is the Master of the High Court who ensures that the last wishes of a deceased are complied with. Many of the objects mentioned in the division list of documents II and III, being the awarded property of Naunakht, are practically unknown (Černý 1945:38).¹⁵¹

9.5.3.3 Redistribution

These division documents (of Naunakht) are also effectively what we today would call a 'redistribution agreement'– for not only are documents II and III a reflection of the distribution of Naunakht's property according to her testamentary disposition, but it also represents a redistribution of her property. It is obvious that when property has been bequeathed to heirs in a last will and testament without specifying which property goes to which heir, it would be up to the heirs to enter into a redistribution agreement. In this redistribution agreement the heirs decide among themselves which property will go to whom, while still ensuring the effective, just and fair distribution of the property. Černý (1945:51) affirms that Naunakht's children divided the property in portions of approximately equal value. Naunakht's children effectively entered into a redistribution agreement.

¹⁵¹ A discussion of the possible meaning of the objects and the reasoning for the translations of the various objects can be found in Černý (1945:38-39).

9.6 NAUNAKHT DOCUMENT IV, TEXT 1: PROMISE TO HAND OVER LEGACY

9.6.1 BACKGROUND

The discussion in paragraph 9.3.1 is *mutatis mutandis* applicable here. According to Jasnow (2003b:335), document IV¹⁵² contains the two dispositions of Khaemnun (the second husband and surviving spouse of Naunakht).

The two texts of document IV have been written by two different scribes. The first text (lines 1-3) is written bold with good forms and orthography (Černý 1945:40). The second text (line 4 and further) is written carelessly with many mistakes (Černý 1945:40). The first text consists of lines 1-3 (Pestman 1982:173).

9.6.2 THE TEXT

Černý's (1945:40) translation is as follows:

Statement made by the workman Khaemnun before the workman Anynakht, the workman Kēdakhtef, the workman Ḥarnufe, the workman Neferḥotep, the workman Amennakht, the workman Maanakhtef, and the workman Khons: 'Look, I will give this washing bowl weighing 13 *debens* of copper. It shall belong to Qenherkhepeshef (and) no son or daughter shall contest it, nor shall his deposition be heard, it not (being included in) any division.'

9.6.3 CONCEPTS AND ELEMENTS IDENTIFIED

9.6.3.1 Date

The first text is not dated (Pestman 1982:175); despite this Pestman (1982:176) argues that because of the events recounted in the second text, the reason Khaemnun made the promise was because of Naunakht's death.

9.6.3.2 Undertaking to hand over legacy

Černý (1945:40) observes that the reference in line 1 to 'statement made' means more literally 'that which Naunakht said'; it represents a reference to Naunakht's testamentary disposition. The first text of document IV contains a statement by

¹⁵² Document IV consists of a single sheet of papyrus, which is approximately 20 cm in height and 43 cm wide (Černý 1945:39). There are nine lines inscribed over earlier writings on the papyrus of document IV. The earlier writing was erased with considerable care (Černý 1945:39). The text runs across the vertical papyrus fibres, indicating that the document, as we now know it, represents a small section cut from a bigger papyrus¹⁵². The *verso* of document IV is blank (Černý 1945:39-40). Judging from the existence of eight narrow horizontal breaks, it would appear that the papyrus was found rolled along its longer side, probably from bottom to top, meaning that the top edge was outside the roll and obviously suffered some slight damage. The papyrus is now mounted between two sheets of glass (Černý 1945:40).

Khaemnun where he promises to give the washing bowl to his son Qenherkhepeshef (Pestman 1982:175). Černý (1945:52-53) is of the opinion that this is Naunakht's washing bowl to which Qenherkhepeshef is entitled by virtue of his mother's testamentary disposition. Pestman (1982:175) agrees with this assumption and adds that washing bowls made of bronze must have been very rare in Deir el-Medina.

The reference in line 3 to future possible dispositions must be understood, according to Černý (1945:41), not in the sense that no explanatory deposition shall be required from Qenherkhepeshef in future, but rather that no declaration of any of Khaemnun will be listened to by any court. Khaemnun's promise to hand the washing bowl to Qenherkhepeshef is made in the presence of several people, among them his other three sons (Pestman 1982:176).

9.7 NAUNAKHT DOCUMENT IV, TEXT 2: CONFIRMATION OF HANDING OVER OF LEGACY

9.7.1 BACKGROUND

The discussion above referring to the first text of document IV is also applicable here *mutatis mutandis*. The second text (written in another hand) consists of lines 4-9 (Pestman 1982:173).

9.7.2 THE TEXT

Černý's (1945:40) translation is as follows:

Year 3, third month of the inundation, season, day 10. On this day the workman Khaemnun stated; 'As for the washing bowl which I have given (to) the workman Qenherkhepeshef, his [sic!] son, it shall belong to him. Neither any son or daughter nor the wife of Ken shall contest it, nor shall his deposition be heard in future.' Handing over on this day(?) before the workman Anynakht, the workman Kēdakhtef, the workman Nebnakht, the workman Khons, the workman Neferhotep, the workman Amennakht (and) the workman Khaemnun himself, the workman Qenherkhepeshef having declared: 'I will give him $2\frac{3}{4}$ *khar*', and then having sworn an oath by the Lord saying: 'As Amun endures, and as the Ruler endures! If I take this income in grain from my father they shall take away this reward (?) of mine, and I will <give(?)> one pair of sandals to the workman Amennakht and I (?) will give one box (to) the workman Maanakhtef in order to pay for the writings which they have made concerning the deposition of their father.'

9.7.3 CONCEPTS AND ELEMENTS IDENTIFIED

9.7.3.1 Date

The second text of document IV is dated, but the name of the king is omitted (Pestman 1982:176). It is highly probable, taking into account Khaemnun's age, that it is Ramesses V (Pestman 1982:176). It is however significant, according to Pestman (1982:176), to note that Naunakht was not present when the agreement was made and the washing bowl handed over. It can therefore be assumed that the events related by this text occurred after Naunakht's death (Pestman 1982:176).

9.7.3.2 Confirmation of handing over the legacy

In the second text Khaemnun confirms that he has handed over the washing bowl to Qenherkhepeshef, in conformity with his promise in the previous text (as discussed above) (Pestman 1982:176). This promise was, however, made on the condition that Qenherkhepeshef must give Khaemnun an income in grain (Pestman 1982:176). This condition was an essential element of the agreement between Khaemnun and his son Qenherkhepeshef (Pestman 1982:176). Khaemnun also only handed over the washing bowl after Qenherkhepeshef promised under oath to the said agreement (Pestman 1982:176). Khaemnun effectively secured himself, by means of the washing bowl, an income in grain for his old age (Pestman 1982:176). Qenherkhepeshef also on this occasion agreed to give some goods to his brothers but these obligations are only incidental and they did not figure in the oath (Pestman 1982:180).

Several people who were present when Khaemnun made his earlier promise (first text of document IV discussed above) are also present on this second occasion (Pestman 1982:176). However, Maanakhtef is not present on this occasion, although he is a party to the agreement; it appears that he was represented by his brother-in-law Nebnakht (Pestman 1982:180).

9.8 PAPYRUS ASHMOLEAN MUSEUM 1945.96 (ADOPTION PAPYRUS)

9.8.1 BACKGROUND

The document known as the *Adoption Papyrus* dates from the Twentieth Dynasty (Rabinowitz 1958:145) and was written during the reign of Ramesses XI (Sweeney 2002:145). Presently the *Adoption Papyrus* is at the Ashmolean Museum in Oxford, with access number *Papyrus Ashmolean Museum 1945.96* (Eyre 1992:207).

The author of the document was Nanefer, although a scribe wrote on her behalf. The document was written at one sitting (Gardiner 1941:27) although it contains two formally distinct parts (Eyre 1992:207). The text of the document is materially one, forming a continuous entity (Allam 1990:189). The handwriting also appears to be, throughout the document, of the same scribe (Allam 1990:189).

Gardiner (1941:23)¹⁵³ is of the view that the *Adoption Papyrus* is a provincial document from the town of Spermeru, probably south of Herakleopolis. Nanefer was also called Rennufer or Rennefer, and her husband, Nebnefer or Nebnufer, was a stable-master (Allam 1990:189). In the literature it is noticeable that different writers use different transcriptions of the names of Nanefer and her husband Nebnefer. Cruz-Urbe (1988:220) is of the view that Rennefer is another name for Nanefer and uses Nanefer and Nebnefer; Eyre (1992) uses Nanefer and Nebnefer; Allam (1990) writes Rennufer and Nebnufer, while Sweeney (2002) also uses Nanefer. I shall for purposes of this study use the transcriptions Nanefer and Nebnefer.

In the *Adoption Papyrus* Nanefer is referred to as ‘... the musician of Setekh ... wife of Nebnufer (Nebnefer)...’ (Rabinowitz 1958:145). She was from the Middle Egyptian town of Spermeru (Sweeney 2002:145).

The text, written in hieratic, runs parallel to the joins of the original roll (Gardiner 1941:23). It therefore runs across the fibres on the *recto* and along them on the *verso* (Gardiner 1941:23). Gardiner (1941:23) observes that this was the usual practice for *inter alia* letters and short legal texts.

With the present papyrus, the scribe wrote about two-thirds of what he wanted to say and then cut it off the big papyrus roll (Gardiner 1941:23). The scribe then turned the manuscript vertically and continued on the *verso* (Gardiner 1941:23). The *verso* contains only the remaining third and the scribe obviously had plenty of blank space to form the outside of the roll (Gardiner 1941:23). It would then also be on this side where a label (also referred to in the literature as ‘docket’ or ‘address’) could be written, if deemed necessary (Gardiner 1941:23). Joins can be seen just above 1.1 of the *recto* and below its

¹⁵³ This article by Gardiner was published during the Second World War (in 1941) since Gardiner (1941:23) stated he did not want to postpone the publication of this ‘exceptionally interesting Ramesside papyrus’. When this article was written, the original *Adoption Papyrus* was buried, according to Gardiner (1941:23), for ‘safety’s sake’ about forty feet below ground.

last line, 1.26 (Gardiner 1941:23). Corrections to the text are found in various places, indicating that the *recto* is a palimpsest (Gardiner 1941:23).

The motivation behind the *Adoption Papyrus* was to ensure the material security and social position of a childless woman (Eyre 1992:207), the childless woman being Nanefér. According to Eyre (1992:207) this was accomplished through a ‘non-divorce’ settlement, control of succession and of the role of the head of the family. This is important as the content refers to issues of family solidarity, marriage strategies and the administration of property rights (Eyre 1992:207). I shall however indicate in paragraph 9.8.3.5 below that there were more reasons or motivations behind the *Adoption Papyrus* and it is my submission that the purpose of the *Adoption Papyrus* was essentially to change the customary intestate succession procedure; therefore it is necessary to include it in this study as a testamentary disposition document.

The *Adoption Papyrus* exemplifies the difficulty of reconstructing and explaining social behaviour on the basis of legal documents (Eyre 1992:207). According to Eyre (1992:213) there are similarities between the testamentary disposition of Naunakht and the *Adoption Papyrus* as testamentary disposition. There are also differences. Documents such as the *Adoption Papyrus* were private documents kept in family archives and were not official court records (Eyre 1992:207). The scribe did not make an effort to supply any background as this was known to the parties involved (Eyre 1992:207). The scribe therefore just wrote down the necessary detail and the formal declarations (Eyre 1992:207).

The *Adoption Papyrus* is a very important document as it is a primary source for family law (Eyre 1992:207). It is submitted that the *Adoption Papyrus* is just as important as a primary source for the law of succession in ancient Egypt. By studying a document like the *Adoption Papyrus* we get a better understanding not only of succession law matters, but also of the context, background and importance of the norms of the ancient Egyptians’ social behaviour.

9.8.2 THE TEXT

I am using the translation as given by Gardiner (1941:23-24):

Year 1, third month of summer, day 20 under His Majesty the King of Upper and Lower Egypt, Ramesse-khaemwese-meryamun, the god, ruler of Heliopolis, given life to all eternity. On this day, proclamation to Amun of the shining forth of this

noble god, he arising and shining forth and making offering to Amun. Thereupon Nebnufer, my husband, made a writing for me, the musician of Setekh Nenufer, and made me a child of his, and wrote down unto me all he possessed, having no son (5) or daughter apart from myself. 'All profit that I have made with her, I will bequeath it to Nenufer, my wife, and if <any of> my own brothers or sisters arise to confront her at my death tomorrow or thereafter and say 'Let my brother's share be given (to me); Before many and numerous witnesses: the stable-master Rir, the stable-master Kairisu, and the stable-master Benereeduanufer; before the stable-master Nebnufer, son of Anrokaia; before the Sherden (10) Pkamen; before the Sherden Satameniu and his wife Adjedo. Behold, I have made the bequest to Rennufer, my wife, this day before Huirimu my sister.'

Year 18, first month of inundation, day 10, under his majesty the King of Upper and Lower Egypt, the Lord of the Two Lands Menmare-setpenptah, the son of Re, the Lord of Diadems, Ramesse-khaemwese-meryamun, the god, ruler of Heliopolis, given life to all eternity. On this day, (15) declaration made by the stable-master Nebnufer and his wife the musician of Setekh of Spermeru Rennufer, to wit: 'We purchased the female slave Dinihetiri and she gave birth to these three children, one male and two female, in all three. And I took them and nourished them and brought them up, and I have reached this day with them without their doing evil towards me, but they dealt well with me, I having no son or daughter (20) except them. And the stable-master Padiu entered my house and took Taammenne their elder sister to wife, he being related to me and being my younger brother. And I accepted him for her and he is with her at this day. Now behold, I have made her a freewoman of the land of Pharaoh, and if she bear either son or daughter, they shall be freemen of the land of Pharaoh in exactly the same way, they being with the stable-master Padiu, (25) this younger brother of mine. And the children shall be with their elder sister in the house of Padiu, this stable-master, this younger brother of mine, and today I make him a son of mine exactly like them. And she said: 'As Amun endures, and the Ruler endures, I (hereby) make the people whom I have put on record freemen of the land of Pharaoh, and if any son, daughter, brother, or sister of their mother and their father should contest their rights, except Padiu this son of mine – for (vs. 5) they are indeed no longer with him as servants, but are with him as brothers and children, being freemen of the land <of Pharaoh> – may a donkey copulate with him and a donkey with his wife, whoever it be that shall call any of them a servant. And if I have fields in the country, or if I have any property in the world, or if I have merchandise (?), these shall be divided among my four children, Padiu being one of them. And as for these matters (vs. 10) of which I have spoken, they are entrusted in their entirety to Padiu, this son of mine who dealt well with me when I was a widow and when my husband had died.' Before many and numerous witnesses, the stable-master Setekhemhab, the musician of Setekh Teuhrai, the farmer Suaweamun, before Taymaunofre and the musician of Anti Tentnebtho.

9.8.3 CONCEPTS AND ELEMENTS IDENTIFIED

9.8.3.1 Date

The two parts of the *Adoption Papyrus* are both dated. The first part of the document is dated on the day of Ramesses XI's accession to the throne (Gardiner 1941:25). The second part of the document is dated a little more than seventeen years later (Gardiner 1941:25). The second part of the *Adoption Papyrus* is dated to year 18 of the reign of the same king, Ramesses XI (Eyre 1992:208). It is my submission that the date of the second

part is the actual date of the *Adoption Papyrus*. As indicated in the discussion below in paragraph 9.8.3.4 (on who the testator/ testatrix was), it is likely that the first part of the document, and therefore the first date, is merely written down as an introductory clause.

9.8.3.2 Label

There appears no label on the outside of the *Adoption Papyrus* (Gardiner 1941:23). As mentioned above in the description of the *Adoption Papyrus*, it was apparently not a necessity to have a label or docket for a private document.

9.8.3.3 Disposition

The *Adoption Papyrus* is a legal declaration divided into two distinct parts (Gardiner 1941:25). Both Part 1 and Part 2 relate in essence to a testamentary disposition. Part 1 refers to the husband's earlier testamentary disposition and Part 2 to the wife's testamentary disposition. In Part 1 it is mentioned in the text that Nebnefer makes a 'writing' for his wife. In Part 2 of the text, the word 'declaration' is used. The words in the quoted translation 'declaration made by', when translated from the original text literally mean 'what was said by' (Gardiner 1941:28). The document was therefore a record of the occasion and the declaration as solemnised and publicised before witnesses (Eyre 1992:207).

The *Adoption Papyrus* is one document and it is the testamentary disposition of Nanefer/Rennefer. The purpose of Part 1 was merely to confirm certain facts. In this regard, it appears very similar to *Papyrus Kahun I 1* which was discussed in paragraph 8.3 above. The discussion of the *Adoption Papyrus* in paragraph 9.8.3.4 and 9.8.3.5 will set out my arguments for regarding the documents as a single testamentary disposition in the case of Nanefer.

9.8.3.4 Testator/testatrix

The *Adoption Papyrus* is one document, one testamentary disposition, as indicated in paragraph 9.8.3.3 above, but consisting of two parts. There is disagreement among scholars as to who the 'author' of the *Adoption Papyrus* is. According to Eyre (1992:208) the best way to understand the document as a whole is to accept that it transcribes the key elements of the 'case', with its supporting evidence, as presented by Nanefer to the 'court' of witnesses in order to 'notarise' her arrangement through publicity.

The first part, Rabinowitz (1958:145) suggests, is a sort of recital or 'whereas' clause introducing the second part. The first part refers to lines 1-12, which form a distinct block and consist of a narrative of past events (Allam 1990:189). The first part contains the date of Ramesses XI's coronation, and Nanefer tells how her husband Nebnefer, the stable master, made a document for her (at the time of the first date of the document) (Eyre 1992:207). In this document Nebnefer formally adopts his wife, Nanefer, as his child since the couple had no children, giving her in effect rights to his matrimonial property: 'all profit I have made with her' to the exclusion of his blood relatives (Eyre 1992:207).

According to Eyre (1992:208), in the first part Nanefer lists the witnesses and quotes *verbatim* Nebnefer's formal declaration. Nanefer recounts her adoption by her husband effected sixteen years ago (Allam 190:189) and the bequest to her of the property which they owned in common (Rabinowitz 1958:145). Therefore the first part lays the legal foundation for the second part, according to Rabinowitz (1958:145).

From the above discussion, one can deduce that the husband Nebnefer appears to have predeceased his wife Nanefer. However, Cruz-Urbe (1988:74) is of the view that the husband, Nebnefer, was alive when the document was written.

Gardiner (1941:25) argues that although Nebnefer had predeceased Nanefer, the opening statement of Nanefer (Part 2 of the *Adoption Papyrus*) starts with the words associating Nebnefer with his widow in expressing their common intention, so that this legal instrument (Part 1) effectively may be regarded as the will of the original testator, Nebnefer. Nebnefer had foreseen the possible claim by one of his siblings to deprive his childless wife, Nanefer, of some part of his estate and therefore adopted his wife as his daughter (Gardiner 1941:25). The use of the notion of adoption shows how deeply the thought of inheritance in the direct line was implanted in the Egyptian mind (Gardiner 1941:25). According to Gardiner (1941:25) Nanefer would make her own will years later.

The second part is a continuation of Nanefer's speech, but begins, however, by a common declaration (together with her husband, Nebnefer) confirming their previous purchase of a female slave (Allam 1990:189). This female slave gave birth to three children, presumably by Nebnefer: a boy and two girls (Eyre 1992:208).

Nanefer's name is now spelt Rennefer (Eyre 1992:208). According to Eyre (1992:208), the spelling change occurs at line 10, the last line of the first part. Eyre (1992:208) suggests this change might imply the first part was copied from an earlier text written by a different hand. The text then proceeds with a lengthy declaration by Nanefer, who is speaking alone (Allam 1990:189). The declaration then abruptly switches to the first person narrative in the singular (Eyre 1992:208). According to Eyre (1992:208) it is clear that Nanefer is speaking. It is however the unusual, peculiar occurrence of the common declaration (by Nanefer and Nebnefer) within Nanefer's testamentary disposition which is a matter on which scholars are not quite in agreement (Allam 1990:189).

Allam (1990:189) suggests that the clumsiness of the scribe can also be seen in Part 1 of the *Adoption Papyrus* where the narration of Nanefer, in the first person singular, is abruptly interrupted by a quotation from words spoken by her husband at an earlier stage. It might be possible that this declaration is an abstract from an earlier document in which the purchase of the female slave was recorded (Allam 1990:189-190).

Cruz-Urbe (1988:220) argues that a deceased person cannot be a party to a contract and suggests a new translation as he observed a 'glaring inconsistency'. Cruz-Urbe (1988:220-221) states that the earlier interpretation that Nebnefer was already deceased when the second part of the document was written, is incorrect as a deceased person could not be a party to a legal contract in ancient Egypt. On this point Allam (1990:189) is of the view that no commentator on the legal proceedings inherent in the *Adoption Papyrus* has ever expressed such a view.

Cruz-Urbe (1988:221) goes on to say that to accept that Nebnefer was already deceased is illogical and would create an impossible situation. Cruz-Urbe (1988:221) argues that one should take the text as having prospective meaning and he suggests the following translation:

As for these matters of which I have spoken in their entirety (above), they are passed on (handed over) to Padiu, this my son, that good might be done for me, when I am a widow, when my husband is dead.

The above translation would then imply that Nebnefer was not dead at the time of the writing of the *Adoption Papyrus*, and he is even listed as one of the two parties in this text (Cruz-Urbe 1988:221). It would then make sense to read the initial phrase of the

second section, 'we purchased', to read 'I took' as a reference to Nebnefer and to read 'she said' as a clear reference to Rennefer, according to Cruz-Urbe (1988:221).¹⁵⁴

Allam (1990:190) in turn suggests that Cruz-Urbe's rendering and understanding cannot be accepted if the papyrus is read attentively and interpreted in the light of our present knowledge of Egyptian common law. Furthermore Allam (1990:190) argues that immediately following this joint declaration, we have the pronoun of the first person feminine, thus indicating unmistakably the gender of the speaker. This suffix-pronoun in this particular passage is written out correctly four times in succession (Allam 1990:190). Allam (1990:190) suggests this was done deliberately. This interpretation appears to be correct because the intention here was to make sure that the reader understands that it was Nanefer speaking again.

According to Allam (1990:191), the entire discourse following the joint declaration has as grammatical subject the first person singular. Looking at the prospective meaning Cruz-Urbe suggests, and assuming the husband and wife act together, it would be highly improbable, according to Allam (1990:190), that Nanefer would in that situation be so forward as to speak explicitly of her husband's death. Allam (1990:190) is in agreement with Gardiner that the translation should be in the past tense, because the translation would then be more coherent and convincing. Allam (1990:191) correctly submits that Cruz-Urbe's suggestions would give rise to a whole series of unnecessary problems of a social and legal nature. Allam (1990:189) is of the view that the suggestion by Cruz-Urbe that Nebnefer was alive during all the proceedings recorded in the Adoption Papyrus is to be rejected because the resulting procedure is alien to what is known of Egyptian legal practice in the disposal of property.

Eyre (1992:209) suggests the first part of the *Adoption Papyrus* is a preamble in which Rennefer explains the arrangements her husband made for her some time ago. Furthermore, Eyre (1992:209) explains it was formalised, in writing, in the presence of many witnesses, during celebrations for the accession of Ramesses XI, an event giving them maximum publicity. Eyre (1992:209) believes that this document contains both elements of marriage settlement and a will, although the device is that of adoption.

¹⁵⁴ Since the statement is a continuation by Nebnefer, according to Cruz-Urbe (1988:221), Padiu is rather Nebnefer's brother, the wife of Padiu is emancipated by Nebnefer and Padiu is adopted by Nebnefer. Regarding the possible claim by others, this according to Cruz-Urbe (1988:221) refers to the family of their (children's) mother (the slave) or their father (presumably Nebnefer).

The *Adoption Papyrus* is considered, for this study, to be a testamentary disposition as this document effectively gives us two examples of a testamentary disposition. It is, however, one document with mention being made of an earlier testamentary disposition. The *Adoption Papyrus* is thus effectively the testamentary disposition of Nanefer/Rennefer, the testatrix.

9.8.3.5 Testamentary capacity

Nanefer/Rennefer had a right to dispose of the slaves, who had been the common property of herself and her predeceased husband, by virtue of the fact that her husband bequeathed to her his share of the slaves (Rabinowitz 1958:145). Nanefer/Rennefer has the testamentary capacity as she is an adult and owner of property. No mention is made about her mental capacity. The same applies to the testator (Nebnefer) of the earlier made testamentary disposition. From the *Adoption Papyrus*, Part 1, it would appear Nebnefer was an adult and the owner of property.

9.8.3.6 Beneficiaries

Mention is made of the following: '[W]e purchased the slave Dinihetiri and she gave birth to these three children ...' (Gardiner 1941:24). We also have the following statement: '... people whom I have put on record freemen of the land of Pharaoh, and if, any son, daughter, brother, or sister of their mother and their father should contest their rights ...' (Gardiner 1941:24). According to Gardiner (1941:24) it is not clear what is meant here. Gardiner (1941:24) asks if Dinihetri perhaps had other children by the same father who had not been dealt kindly with by Nanefer? However, Gardiner (1941:24) suggests that it might rather be the relatives of the adoptive parents that are intended. I agree with this observation of Gardiner in view of the context of this specific papyrus. The literal translation the phrase rendered in the translation above as 'contest their rights', is 'speak against them', which was a phrase which usually had this specialised sense (Gardiner 1941:24).

The 'contest', referred to above, according to Rabinowitz (1958:146), appears to represent a Semitic legal usage, which is used in the special sense of 'to appear as an adversary in litigation'. Should they contest the disposition, a curse is placed upon them: the text says '... may a donkey copulate with him and a donkey with his wife ...' (Gardiner 1941:240). According to Gardiner (1941:25), this obscene conditional curse is not uncommon in oaths of the Ramesside period and later.

Then we have the phrase ‘... except Padiu his son ...’, and later in line 10 also the reference to Padiu, the son, which is significant (Gardiner 1941:24). Padiu was hitherto referred to as Renner’s younger brother (Gardiner 1941:24); obviously, in my view, indicating that he now has been adopted. The word ‘except’ might have originated, according to Gardiner (1941:25), in the meaning ‘if (not)’, though the suppression of the essential negative would be very strange. I agree with Gardiner’s observation in this regard.

From the text, referring to the children, we have the following statements: ‘And I took them and nourished them and brought them up ...’ (Gardiner 1941:24). According to Gardiner (1941:24) the ‘I’ here refers to a feminine subject and the ‘brought them up’ is the translation Gardiner uses for the literal meaning of ‘caused them to make the (ir) greatness’. The daughter, Taamenne, was ‘taken as wife’ by Padiu. Nanefer/Rennefer then says: ‘... behold, I have made her a freewoman of the land of Pharaoh ...’ (Gardiner 1941:24).

9.8.3.7 Translation of ‘to bequeath’

We have from the text the following statement: ‘[A]nd as for these matters (vs. 10) of which I have spoken, they are entrusted in their entirety to Padiu, this son of mine ...’ (Gardiner 1941:24). Once again reference is made to Padiu as being the son now, in other words, being the adopted son in my view. Gardiner (1941:24) uses the word ‘entrusted’ here, but the same word (in the original text) was rendered as ‘bequeath’ earlier in his translation.

9.8.3.8 Origin of property

The testamentary disposition deals with the origin of the property to be bequeathed. It serves as a legal basis for ownership before the bequests are made in the testamentary disposition. In this regard the following quotation from Part 1 is applicable:

... Nebnufer, my husband, made a writing for me, the musician of Setekh Nenufer, and made me a child of his and wrote down unto me all he possessed, having no son or daughter apart from myself. ‘All profit that I have made with her, I will bequeath it to Nenufer, my wife, and if (any of) my own brothers or sisters arise to confront her at my death tomorrow or thereafter and say: “Let my brother’s share be given (to me) ...”’ (as translated by Rabinowitz 1958:145).

Rabinowitz (1958:145) uses the word 'thereafter', but goes on (1941:146) to say that Gardiner is correct in using the word 'future'. According to Rabinowitz (1958:146) the expression in the text 'in the future' was an idiom often used by the ancient Egyptians.

The earlier testamentary disposition of Nebnefer quoted by Nanefer/Rennefer in her testamentary disposition (together forming the *Adoption Papyrus*) served the dual purpose of proving her ownership of certain property, but also of giving evidence of her rightful position as legitimate heir. The customary intestate succession heirs (Nebnefer's siblings) are prevented from inheriting because of the testamentary disposition.

9.8.3.9 Specific assets

Another reason why Nebnefer is not speaking in the second part of the document, according to Allam (1990:191), is that Nebnefer does not, in accordance with Egyptian procedure, mention the property he would like to bequeath. This is important, because the devolution of the property is the objective of drawing up such a document (Allam 1990:191). In line 5, we find the words 'all profit that I have made with her ...', which refers to the assets they acquired as a couple. The assets are clearly identified from the *Adoption Papyrus* and I agree with Allam that the devolution of property is the purpose of the document. The *Adoption Papyrus* is therefore effectively the testamentary disposition of Nanefer/Rennefer (which included her predeceased's husband's testamentary disposition merely for purposes of evidence of her ownership and her legitimacy as heir).

9.8.3.10 Adoption

The procedure of adoption in ancient Egypt consisted simply of making a verbal declaration in front of witnesses (Gardiner 1941:25). In Nebnefer's case, he took the precaution of arranging for one of his sisters to be among the witnesses (Gardiner 1941:25). Some years later Nanefer would also make a testamentary disposition. In this document Nanefer tells how she and her husband purchased a female slave and how the female slave gave birth to two daughters and a son (Gardiner 1941:25). It is not mentioned who the father was, but Gardiner (1941:25-26) proposes that it is possible that an Egyptian reader would have taken it for granted, without being told, that the father was Nebnefer.

Nanefer brought the female slave's children up, and reaped her reward in their obedience and kindness (Gardiner 1941:26). When Nanefer became old, not having

children of her own, she adopted the three children of the female-slave and made them her heirs (Gardiner 1941:26). Nenufer/Rennufer overcame the obstacle of the children's slave birth by an act of emancipation in declaring before witnesses that they were 'freemen of the land of Pharaoh' (Gardiner 1941:26).

Nanefer also had a guardian for the children: her younger brother, Padiu, who married one of the daughters (Gardiner 1941:26). Gardiner (1941:26) observes that the technical term for 'guardian'/'trustee' is not present in the *Adoption Papyrus*. Regarding the technical term for 'guardian' or 'trustee', Gardiner (1941:26) is of the view that it must be kept in mind that the ancient Egyptians did not distinguish between definitely distinct applications of the word (Gardiner 1941:26). Nanefer's intention was to also bequeath an equal share of her property to her younger brother, Padiu, the guardian of the children (Gardiner 1941:26). In order to achieve this Nanefer adopts Padiu as well (Gardiner 1941:26).

In ancient Egypt the act of adoption gave the adopted child in question the same rights of inheritance as the parent's biological child (Gardiner 1941:26). In my opinion the adopted child had the same rights as the blood-related child, as is the case today in our modern-day law.

According to Gardiner (1941:23) the facts disclosed in the papyrus are amazing, as nobody at that stage understood that the concept of adoption could be so important in ancient Egypt. According to Sweeney (2002:145) the arrangements made by Nanefer were unusual, and for this reason might have needed official support from legal institutions. Nanefer needed the official confirmation of her adopted children's new status, and especially that of her younger brother, Padiu, since the family of her predeceased husband Nebnefer might dispute these arrangements (Sweeney 2002:145).

Part 1 of the papyrus, line 1-10, forms a distinct block, relating Nebnefer's adoption¹⁵⁵ of Nanefer (Gardiner 1941:27). In the second part a woman (Nanefer) sets free, by way of adoption, certain slaves who at one point in time were the joint property of her and her predeceased husband (Nebnefer) (Rabinowitz 1958:145).

¹⁵⁵ It is interesting to note that the early Roman institute of *manus* made the wife *loco filiae* to her husband, which means that if Nebnefer had been a Roman, he could have made Nanefer his sole *sua heres* by taking her into his *manus* (Gardiner 1941:27).

The *Adoption Papyrus* sheds light on the concept of surrogate mother and the role of the wife. According to Eyre (2007:241) the female slave appears to serve as surrogate mother for the married couple Nebnefer and Nanefer. It is clear from the *Adoption Papyrus* that the childless Nanefer is not divorced, but together with her husband, purchased a female slave who provided the necessary heirs (Eyre 2007:241). The case of Nebnefer and Nanefer is a special one, because both parties had substantial property (Eyre 2007:241). The reason was that they both belonged to cavalry families, with solid family wealth, and Nanefer specifically had inheritance rights to land (Eyre 2007:241). In the case of Nebnefer and Nanefer the imperative appears to be the provision of children (Eyre 2007:241). This is in contrast to the opposite case where children have already been born and the wifeless father requires household management (Eyre 2007:241).¹⁵⁶

Rabinowitz (1958:146) observes that the *Adoption Papyrus* is in reality a manumission (emancipation) document. Adoption was used as a method to set the slaves free (Rabinowitz 1958:146). This method of manumission was also used extensively in ancient Babylonia (Rabinowitz 1958:146).

There are three adoptions mentioned in the *Adoption Papyrus*, and in all three adoption cases the prominent motive is testamentary in nature (Gardiner 1941:26-27). The *Adoption Papyrus* is a clear illustration of a well-known phenomenon, namely the use of adoption for testamentary purposes (Gardiner 1941:27). The first adoption is by Nebnefer where he adopts his wife Nanefer, and the second and third adoptions are by Nanefer herself who adopts the three children of the female slave as well as her younger brother Padiu.

For the ancient Egyptians the interest in adoption was because of its results on the devolution of property (Gardiner 1941:27). The devolution of the adopter's property is declared in express terms (Gardiner 1941:27). In the first adoption there is even an express exclusion of the adopter's siblings, who would have been his customary heirs (Gardiner 1941:27). Gardiner (1941:27) makes a significant observation, namely that we have here the testament in 'embryo' form.

In ancient Egypt the rights to family property was established by the birth of children; the customary entail (customary intestate succession) of property to children was very

¹⁵⁶ Regarding the position of the wife and marriage in ancient Egypt, see Chapter 6.

strong and focused on the children (Eyre 2007:243). This has already been discussed in Chapter 6. The underlying socio-economic emphasis on keeping the property in the family, and more particularly in the family line, was the reason for making use of a surrogate mother in the case of the *Adoption Papyrus*, together with the subsequent adoption of the children by Nanefer.

9.8.3.11 Old age

The children in the *Adoption Papyrus* are said to have behaved well to their adoptive mother (Černý 1945:44-45). This is important, as we saw with Naunakht, as it indicates that children's behaviour towards their parents could influence the parents' attitude when disposing of their property (Černý 1945:44). It is submitted that this 'taking care of the elderly' was part and parcel of the ancient Egyptians' culture and clearly played a role even in their testamentary dispositions.

9.8.3.12 Guardian or trustee

In appointing Padiu as 'guardian or trustee' Nanefer uses the words 'when my husband is dead' (Allam 1990:191). The appointment of a guardian/trustee for the administration of the inheritance was well known in Egypt, as has been discussed in paragraph 5.6 and 7.7 as well as in paragraph 6.2.2.2.

9.8.3.13 Revocation

Allam (1990:190) disagrees with Cruz-Uribe's suggestion that Nebnefer attempted, in the second part of the document, to modify the earlier arrangement he made. It would however, according to Allam (1990:190), have been easier for Nebnefer merely to take back his earlier arrangement altogether and go ahead with a new decision. This would be easier and more practical in ancient Egypt (Allam 1990:190). I agree, since the revocation of a testamentary disposition was known in ancient Egypt, as was indicated in Chapter 8 regarding *Papyrus Kahun VII 1*.

9.9 TABULAR OVERVIEW OF CONCEPTS AND ELEMENTS OF SUCCESSION LAW IDENTIFIED IN TEXTS OF THE NEW KINGDOM

This tabular overview reflects the concepts and elements identified and discussed in this chapter in a summarised version.

| TEXTS | Naunakht I 1 | Naunakht I 2 | Naunakht II III | Naunakht IV 1 | Naunakht IV 2 | Adoption Papyrus |
|---------------------------------|---------------------|---------------------|------------------------|----------------------|----------------------|-------------------------|
| 1. DATE | • | • | | | • | • |
| 2. DISPOSITION | • | | | | | • |
| 3. TESTATOR/TESTATRIX | | | | | | |
| 3.1 Known | • | | | | | • |
| 3.2 Male | • | | | | | • |
| 3.3 Female | • | | | | | • |
| 4. TESTAMENTARY CAPACITY | • | | | | | • |
| 5. BENEFICIARY | | | | | | |
| 5.1 Heirs | • | | | | | • |
| 5.2 Legatee | • | | | | | |
| 5.3 Husband/Wife | | | | | | |
| 5.4 Children | • | | | | | • |
| 5.5 Other | | | | | | |
| 6. LEGATUM | • | | | • | • | |
| 7. DISINHERITANCE | • | | | | | |
| 8. PROPERTY | | | | | | |
| 8.1 Immovable | | | | | | • |
| 8.2 Movable | • | | | | | • |
| 9. BEQUEST (GIVE) | • | | | | | • |
| 10. ACCEPT DIVISION | | • | | | | |
| 11. RECORD OF DIVISION | | | • | | | |
| 12. REDISTRIBUTION | | | • | | | |
| 13. EXECUTOR/ELDEST SON | • | | | | | • |

| | | | | | | |
|----------------------------|---|---|--|---|--|---|
| 14. SEPARATE CLAUSES | | | | | | |
| 15. WITNESSES | • | • | | | | • |
| 16. RECORD OFFICE | | | | | | |
| 17. CONDITIONS | | • | | | | |
| 18. USUFRUCT | | | | | | |
| 19. FIDEICOMMISSUM | | | | | | |
| 20. TRUST | | | | | | |
| 20.1 MORTIS CAUSA | | | | | | • |
| 20.2 INTER VIVOS | | | | | | |
| 21. REVOCATION | | | | | | |
| 22. ADOPTION | | | | • | | • |
| 23. DISPUTE OF DISPOSITION | | • | | | | |

Table 9.1 Concepts and elements of succession law identified from texts of the New Kingdom

9.10 CONCLUSION

Although the documents relating to testamentary dispositions found at Deir el-Medina derive from a specific community which was very literate, the essence of concepts and elements of succession law pertaining to testamentary dispositions, are clearly identifiable and universal, irrespective of the community. It must also be kept in mind that even though the community of Deir el-Medina was very literate the back-up for the written document was still an oral version.

The notion of a testamentary disposition was known in ancient Egypt. From the discussion in this chapter, it is apparent that we are clearly able to identify several concepts and elements relating to testamentary dispositions from New Kingdom testamentary disposition documents. These concepts and elements appear to have been commonly used in the different texts of this period. These concepts and elements represent indeed the embryo form of testamentary disposition concepts and elements. They show some of the first traces of succession law in the ancient world and form the basis of our modern-day law of testate succession.

It is not clear from the texts analysed in this chapter if the belief in the afterlife still played a major role in the ancient Egyptians' testamentary dispositions as no real evidence for this was found in these texts.

From my discussion in this chapter, it is therefore possible to summarise the concepts and elements pertaining to testamentary dispositions from the New Kingdom in the following paragraphs.

9.10.1 DATE

It was necessary to date testamentary disposition documents. Text I of *Papyrus Ashmolean Museum 1945.95*, which is in effect the testamentary disposition of Naunakht, starts by giving the document a date. The same applies to Nanefer's testamentary disposition in the *Adoption Papyrus*. The date is important as it would make it possible to determine which was the deceased's most recent testamentary disposition in a case where the deceased wants to revoke an earlier testamentary disposition for instance.

9.10.2 LABEL

It was the practice to have a 'label' or a 'docket' on the outside of the documents which obviously made its identification easier. In Naunakht's case it identifies her testamentary disposition as a declaratory deed of her property transfer. The label is similar to our modern day heading of a last will or testament in order to immediately identify it, for example: 'This is the last will and testament of X.' However, such a label would not have been a prerequisite for documents relating to testamentary dispositions, as was indicated in the discussion of the *Adoption Papyrus*.

9.10.3 DISPOSITION

It would appear from the texts studied in this chapter that a disposition of assets according to the testator or testatrix's last wishes was accomplished by way of a testamentary disposition document. Naunakht's intention was to dispose of her property before her death and to alter the customary intestate succession. Her disposition document clearly contains concepts and elements of testamentary disposition. It is also possible that Naunakht inherit property from her first husband, Qenherkhepeshef by way of a testamentary disposition document (as she was not a customary intestate heir). The *Adoption Papyrus* is regarded as the testamentary

disposition of Nanefer and mention is also made of Nebnefer's earlier testamentary disposition.

It probably was the combination of the written and oral documentation that would give the testamentary disposition its validity. As indicated in the discussions of the texts in this chapter, the norm in ancient Egypt was to conclude most transactions orally and the written word or document was the exception. It was, however, the practice in cases which would appear to be more complicated to rather confirm the terms with a written document. The people from Deir el-Medina were also much more literate than the average Egyptian. I would however maintain that the general norm all over Egypt was rather to confirm matters relating to inheritance in writing when there was a deviation of customary succession principles.

9.10.4 TESTATOR

From Naunakht's testamentary disposition it is clear that she is mentioned as being the testatrix (and Qenherkhepeshef the testator of a possible earlier testamentary disposition). We therefore have certainty who the author is, and even more important, also that a woman could make a testamentary disposition. The same applies to the *Adoption Papyrus* of Nanefer and also to the earlier testamentary disposition of Nebnefer.

9.10.5 TESTAMENTARY CAPACITY

It is evident from the testamentary disposition of Naunakht that Naunakht had the testamentary capacity to draft a testamentary disposition. She was an adult and owned property. It was clear that a woman could have testamentary capacity. No mention is made about her mental capacity but it might be unnecessary to mention it as the testamentary disposition was done in a court, implying therefore she had the mental capacity to appear. Both Nanefer and Nebnefer had testamentary capacity in the *Adoption Papyrus*, as both were adults and had property to bequeath.

9.10.6 BENEFICIARIES

Naunakht's beneficiaries were heirs and one legatee (her children), and they were clearly identified by name. It is clear from *Adoption Papyrus* who the beneficiaries were.

Against the backdrop of the ancient Egyptians' understanding of their socio-economic world, the aim was always to protect the family assets by keeping them within the

family. This can be deducted from the Naunakht texts and the *Adoption Papyrus*; the need for adoption arose in order to make sure the property stayed within the family.

9.10.7 LEGACY

In Naunakht's testamentary disposition a specific item could be bequeathed to a specific person (the copper washing bowl to the son Qenherkhepeshef). It was also necessary for the family members to adhere to the wishes of the testatrix. In the case of Naunakht it was necessary to give an undertaking, and a confirmation that effect would be given to the legacy as provided for in the testamentary disposition.

9.10.8 DISINHERITANCE

It was possible to disinherit someone. Naunakht wanted to deviate from customary intestate succession principles which would prescribe that all her children were to inherit from her. In order to do so Naunakht drafted her testamentary disposition with, *inter alia*, an express clause disinheriting some of her children. This was apparently done because not all the children looked after her in her old age (an important aspect of Egyptian culture).

9.10.9 BEQUEST

In both the Naunakht texts and the *Adoption Papyrus* the intention of the testatrix or testator was to bequeath property to beneficiaries. The devolution of property was the purpose of drawing up the testamentary dispositions.

9.10.10 SPECIFIC ASSETS

In each case discussed in this chapter, specific assets are referred to. These are specifically mentioned in the testamentary disposition and therefore identifiable. This is important as it was necessary to know which assets were to be bequeathed. This refers to both legacies and residual property.

9.10.11 WITNESSES

When the oral agreement was to be confirmed in writing this was done before witnesses. It would also appear that these witnesses usually were important people within the community. Their status would be mentioned and their full names given. Naunakht document I is a typical example in this regard. This allowed witnessed to be identified and made it possible to recall them should there be a dispute. In a case like the

Adoption Papyrus it would also appear to be important to use specific witnesses (Nebnefer used his sister as witness) in order to avoid a possible future dispute; the purpose of the witnesses being, in essence, to authenticate the testamentary disposition.

9.10.12 REVOCATION

It was possible to revoke an earlier testamentary disposition in ancient Egypt. This is one of the reasons why the testamentary dispositions needed to be dated. If a testator or testatrix changed his or her mind, it was possible to revoke a previous testamentary disposition.

9.10.13 COURT

Naunakht document I appears to have been drafted in a court. It would therefore be necessary, it appears, when an oral disposition was to be confirmed in writing, that this was done in a court with all the accompanying requirements relating to a scribe, witnesses etc. in order to legitimise it. This procedure appears to have been prescribed in the New Kingdom.

9.10.14 OLD AGE

It was socially required of children to look after their elderly parents in ancient Egypt. A reference to this can be found in one or the other form in all the texts. In the case of Naunakht it is likely that this is also Naunakht's reason for the disinheritance clause. The importance and value the ancient Egyptians attached to family life and the nuclear family is evident from the reference being made in the text to this duty of caring for the elderly. Mention is also made of caring for aged parents in the *Adoption Papyrus*.

9.10.15 MORTUARY PROVISIONS

There are no explicit references to mortuary provisions or provisions for the mortuary cult of the deceased. It is however implied, as this custom was entrenched in ancient Egyptian culture by the time of the New Kingdom, that the eldest son had to look after the mortuary cult of the deceased.

9.10.16 DISPUTE

It was possible in ancient Egypt to dispute the testamentary disposition of the deceased. As discussed, it would appear *prima facie* that should an interested party dispute the testamentary disposition of a deceased person, this would again be heard in a court. The

outcome would be that once a decision had been reached that the party who had disputed the testamentary disposition would take an oath to accept the outcome and the validity of the testamentary disposition. We have an example of this in the Naunakht documents.

9.10.17 CONFIRMATION OF DIVISION

It is apparent that the wishes of the deceased in terms of the testamentary disposition would be adhered to and that a confirmation of the division of the estate was done. The discussion of the Naunakht documents indicated that this confirmation was done in respect of the distribution of the estate in accordance with the testamentary disposition. This, in effect, is what is still customary today. A liquidation and distribution account (as confirmation of the division) is drafted after the testator's death.

9.10.18 REDISTRIBUTION

It was obviously not always possible to divide exactly the same portion of the property among the heirs. It was therefore necessary to redistribute the property among the heirs in order to still ensure, that even though they did not inherit exactly the same property, they still would inherit equally as per the relevant testamentary disposition. This is clear from the discussion above of the Naunakht documents.

9.10.19 ORIGIN OF ASSETS

It was necessary, and perhaps even a requirement, to state the origin of the property one was about to bequeath in a testamentary disposition. In all the texts discussed the testator or testatrix would state the origin of the assets he or she is about to bequeath. This was necessary in order to prove one's legal ownership of the property to be bequeathed. It is also important to note that it indicates the purpose behind the testamentary disposition, which is the ultimate continuation of and protection of family property.

9.10.20 ELDEST SON, GUARDIAN AND/OR TRUSTEE

The concept of 'eldest son' was well entrenched in ancient Egyptian succession procedures. From the texts discussed in this chapter it is clear that the eldest son would have implicit duties to fulfil. It would be quite acceptable to compare the role of the eldest son in ancient Egypt with that of the modern executor. It is the duty of the eldest son (executor) in ancient Egypt, to see to the burial of the deceased, look after the

mortuary cult of the deceased and to deal with the division of the deceased's property. In the case of Naunakht she creates a legacy for her eldest son and thus one can deduce that this is a reward of some kind for fulfilling exactly these duties. This is also the case in the *Adoption Papyrus* where Nanefer, the surviving spouse, in the first instance fulfils this duty as 'eldest son', and in her estate, it would be her brother, Padiu, who would in turn fulfil this duty. In the *Adoption Papyrus* Padiu also acts as guardian or trustee for his adopted siblings as per his mother's instructions in her testamentary disposition.

9.10.21 OBJECTIVE

The purpose and objective of the testamentary disposition was to make sure that family property was being protected and stayed within the family. It would safeguard the continuation and protection of the family property for the family. The testamentary disposition was a way to alter the customary line of succession. It was also a way of incorporating adoption for testamentary disposition purposes, thereby excluding the customary heirs, as was indicated in the discussion of the *Adoption Papyrus*. The purpose of Naunakht's testamentary disposition was among others to disinherit some of her children, again thereby altering the customary succession rules.

9.10.22 ADOPTION

It is significant that the ancient Egyptians already knew the concept of adoption which they seemed to apply frequently. In the case of the *Adoption Papyrus* we have three different adoptions. The purpose of each adoption was essentially for the adopted person to become a lawful heir. The *Adoption Papyrus* is actually the testamentary disposition of Nanefer, but in stating her testamentary disposition Nanefer applied the concept of adoption (and also relates how her husband did the same in adopting her) in order to 'create' heirs, she herself being childless. Another significant feature of the ancient Egyptians' concept of adoption was that the adopted child could inherit from both their adoptive mother and father. This is an extraordinary feature for an ancient civilisation.

9.10.23 CONCLUDING REMARKS

In summary we have several remarkable features and elements of testamentary dispositions referring to the legal, but also to the religious and socio-economic world of the ancient Egyptians. It would appear that there are fewer explicit references to mortuary endowments in the texts in this chapter (dating from the New Kingdom) as

was the case in texts from the Old and Middle Kingdom, but as indicated I nevertheless believe that this was still very much an implied feature of ancient Egyptian culture and of testamentary dispositions of the New Kingdom.

CHAPTER 10

CONCLUSION

10.1 GENERAL DISCUSSION

To understand law in ancient Egypt, one must understand that the Egyptians' world was governed by Divine Power. The role of religion was to act as a binding force in order to keep the community together. Religion was embedded in society. One of the most important principles of ancient Egyptian religion was *maat*, a concept which was central to the understanding and appreciation of the social order. *Maat*, the personification of universal order, justice and truth formed the basis for law. It was the king's task to defend *maat*, thereby maintaining and restoring order and as a result of this, the king had to issue appropriate laws. *Maat* became the focal point of the ancient Egyptian legal system. Justice is what holds the world together, and it does so by connecting consequences to deeds.

The notion of eternal life in the Old Kingdom centred on the eternal continuation in the tomb. The deceased crossed to the 'beautiful-west', the city of the deceased. In the Middle Kingdom the tomb became a point of potential access of symbolic contact between this world and the afterlife. The deceased therefore no longer lived in the tomb. This was due to the development of an imaginary geography of the underworld kingdom of Osiris. The understanding of the afterlife developed and the emphasis switched from perpetuation to transition. The judgement of the dead was modelled on the mythical trial during which Osiris 'urged' his claims successfully against his murderer Seth, in the process overcoming death. From this point onwards every dead person hoped for vindication after death in order to follow Osiris into immortality. The ancient Egyptians' believed in eternal life, with death being merely the doorway to another existence and also that it was essential to sustain the spirit (*ka*) of the deceased by offerings and rituals.

Law in ancient Egypt was initially governed by religious principles and personified especially by the goddess Maat. The gods and specifically Maat were perceived as guardians and source of law. The concept of *maat* essentially represented aspects of order, truth, justice and balance. Egyptian law was based on *maat* with the king being the link between *maat* and law as lawgiver. In order to ensure *maat* on earth the king

made law. Law was established on earth to keep order and by obeying it, the principles of *maat* were followed. Law would eventually emerge separate from religion and would the application of law be coherent in ancient Egypt. We have sources for law from the Old and Middle Kingdoms, with an abundance of sources from the New Kingdom. Although the ancient Egyptians did not have a concept of jurisprudence it is possible to identify key elements of jurisprudence. These include elements of justice, balance, impartiality on the one hand and elements of tradition, precedent and custom on the other hand.

The living and dead formed part of the same community resulting in a moral relationship between the dead and living in ancient Egypt. The deceased was dependent on sustenance by the immediate family who survived him. There was thus a strong sense of obligation to sustain the deceased. Succession law is essentially concerned with transfer of property at someone's death and deals with the rules which govern the devolution of the estate of a person upon death. Succession law assist to maintain and strengthen the socio-economic structure of a society. Succession law fulfils a social function as it maintains and protects the family as a social unit. This explains why succession law is influenced by social trends affecting the family. For this reason it is important to understand the socio-economic life in ancient Egypt. The nucleus family was the core of Egyptian society. The immediate family was to inherit the property, in order to sustain the deceased, in terms of intestate customary succession law or alternatively in accordance to instructions given by the deceased prior to death by means of a testamentary disposition. The pious foundation was set up to provide for sustenance after death. Although foundations sprang up out of religion they reflect the very first signs of several aspects of succession law, especially relating to testamentary dispositions. Even though there was an obligation to sustain the deceased this piety diminished over time and the need arose to make these arrangements prior to death. Free testation, which included women, was to allow for the institution of an heir in order to protect family property from being split up. It would be the eldest son who would be responsible at the death of the *de cuius* for the burial, inheritance process, sustenance etc. The pious foundation, as a testamentary disposition, became a permanently established juridical mechanism. Religious and ethical instructions to care for the deceased lost their force and legal obligations were created in their place. The pious foundation can therefore be regarded as the building blocks of testamentary dispositions.

Documents serve as sources for succession law, which can be oral or written. Documentation existed before writing and took the form of testimonies, human memories and witnesses. When writing developed it did not replace oral documentation. However, as writing spread, fixed forms and fixed norms of written records developed. The custom developed of giving an oral version before a court and/or witnesses. The purpose of the witnesses was to authenticate the document. The document was then written down by professional scribes. This applied especially in matters referring to legal documents. The court would usually rely on the written document as evidence. The validity of a testator's last wishes was dependent upon the oral last wishes being written down. The written document serve as indisputable evidence of an oral legal act.

Although sources for succession law in ancient Egypt is scarce, the advantage is that succession law is not usually the most progressive part of a civilisation's law. The *Codex Hermopolis*, for example, from around 700 BCE, which might be a late source, provides valuable information on succession law as we also know that the contents of the codex appear to be much older.

Like in our modern societies two systems of succession law developed in ancient Egypt, namely the customary intestate succession law and the testamentary disposition (representing testate succession law).

Customary intestate succession was obviously applicable when there was no testamentary disposition. Husbands and wives did not inherit from each other. The deceased's descendants were the immediate heirs, with the custom, initially, of the eldest son being the sole heir. Obviously the reason was for him (or her) to be responsible for the sustenance of the deceased, taking care of the nuclear family and the family property. Eventually the children of the deceased, in the first *parentela*, would become the heirs and the principle of *per stirpes* was applied. Only if there were no descendants did the brothers and sisters become the intestate heirs. If there were also no brothers and sisters, the estate would go to the parents of the deceased. Only if there were no surviving parents the estate would go to the deceased's collaterals. Fundamentally, as in our modern law of succession, the estate would always first go down to the descendants before it would go up to the ascendants and collaterals of the deceased.

There were however circumstances which made it impossible or even undesirable to follow customary intestate succession principles. In ancient Egypt ways developed to intentionally alter customary intestate succession. Arrangements made in this regard by the *de cuius* prior to death represent the very first signs of testamentary disposition, which we today would call testate succession law. Initially the focus was on provisions for sustenance by way of the pious foundation, which reflects the close relationship with religion. The endowments in these foundations contain concepts and elements of succession law in general and of testamentary dispositions in particular. There remains however a reluctance to use modern terms like 'will' for these arrangements made prior to death. The term 'testamentary disposition' thus appears to be more satisfactory as there are also different types of documents in ancient Egypt that serve this purpose. The *imyt-pr* was a document used to transfer property specifically prior to death to someone other than the customary intestate succession heirs. The word *imyt-pr* is indeed often translated as 'will' and is the best known form of a will from ancient Egypt. The idea was to transfer property, but essentially it was a testamentary disposition made prior to death, to become effective once the *de cuius* dies. It might be that the meaning and purpose of the *imyt-pr* changed over time, but it was used as a kind of 'will'. The Egyptian testamentary disposition was effectively a declaration of last intent, and this could be achieved, apart from the foundation and *imyt-pr*, also with what is called donations, fictitious sales, divisions, adoptions, marriage settlements etc. The fact is that no translation is conclusive and thus the wider term 'testamentary disposition' is more appropriate.

During the Old Kingdom, most of the royal pyramid complexes and private *mastaba* tombs were built. The inscriptions and texts in these pyramids and tombs, including surviving papyri, give us important information relating to succession law and in particular testamentary dispositions. Although these inscriptions and texts might refer to the elite, the essential elements of testamentary dispositions are clearly identifiable and universal, irrespective of social status. with mortuary provisions being made. It is exactly these testamentary dispositions that would give us the first concepts and elements of succession law and specifically of testate succession law. These are the first signs of the emergence of testate succession law – a significant achievement for an ancient civilisation, already developing these concepts and elements of testamentary dispositions at this very early stage of history at a time when Rome and Roman law were not even established.

From the Middle Kingdom we have an abundance of surviving textual sources providing us with the earliest full range of written language. It is likely that the link to the ancient initial 'foundation' and the importance of the belief in the afterlife developed to form new concepts and elements used in testamentary dispositions – as has become clear from the analysis of texts from the Middle Kingdom. These provisions would be copied in testamentary dispositions like the *imyt-pr*. It remains difficult, from our modern perspective, to classify legal categories in the ancient Middle Kingdom texts in terms of modern legal concepts, for instance as being an example of usufruct, a trust, or a *fideicommissum*. The texts contain elements of all of these modern legal concepts. The study of such elements remains important, since they clearly seem to be the foundations of the later development of these concepts by the Romans and Roman law, which we still use today in most modern civilisations. These concepts and elements pertaining to testamentary dispositions are indeed a relevant and meaningful source for understanding the emergence and development of succession law.

In the New Kingdom it is apparent that the notion of a testamentary disposition was known and we are able to identify certain existing and new concepts and elements relating to testamentary dispositions from New Kingdom testamentary disposition documents. It is not clear from the New Kingdom texts analysed whether the belief in the afterlife still played a major role in the ancient Egyptians' testamentary dispositions as no real evidence for this was found in the texts studied.

10.2 DISCUSSION OF CONCEPTS AND ELEMENTS OF SUCCESSION LAW FROM THE OLD, MIDDLE AND NEW KINGDOM TEXTS

The main findings regarding the various categories of concepts and elements of succession law as discussed in the relevant chapters are summarised in the next paragraphs.

10.2.1 DATE

The date of a testamentary disposition in ancient Egypt is important as there might have existed more than one testamentary disposition when someone died. An indication of the date would then be valuable as it would make it possible to determine which was the deceased's latest or most recent testamentary disposition. The date is also important where a previous testamentary disposition is revoked or an addition is made (such as a codicil). The date appears to be a prerequisite for any legal document.

In the Old Kingdom, it is possible to establish the date of the testamentary disposition in the *Inscription of Metjen*, the *Inscription of Nikaure* and from Niankhka's testamentary disposition.

In *Papyrus Kahun I 1* from the Middle Kingdom the dates are once again specifically mentioned. In both Wah's testamentary dispositions and the copy of his brother's (Ankhren's) testamentary disposition the date is given. This is important as the different dates prove to us that one document was drafted earlier. The importance of the date is evident from *Papyrus Kahun VII 1* which deals *inter alia* with the revocation of an earlier testamentary disposition. However, it would appear that in the case of the *Inscription of Djefa-Hapi* adding the date was not deemed necessary as it was obvious (being inscribed onto his tomb) that it related to Djefa-Hapi's death and the mortuary provisions.

It is clear from the New Kingdom texts studied that it was deemed necessary to date testamentary disposition documents. Text I of *Papyrus Ashmolean Museum 1945.97*, which is in effect the testamentary disposition of Naunakht, starts by giving the document a date. The same applies to Nanefer's testamentary disposition in the *Adoption Papyrus*.

10.2.2 LABEL

The use of a label or heading is important since it is similar to what we still do today in headings of wills and testaments, for example: 'The last will and testament of X.' The purpose is to enable someone to immediately identify the document.

In the Middle Kingdom the so-called label appears to have been used quite regularly. *Papyrus Kahun I 1* begins with the label of Wah's testamentary disposition. In Wah's testamentary disposition mention is made of an earlier testamentary disposition of his brother, Ankhren. This earlier made testamentary disposition also has a label or heading.

In the case of Mery, the label is brief, but clearly identifies the document and its purpose. In the case of a tomb inscription it also had a heading, as we saw in the case of the *Inscription of Djefa-Hapi*. This heading in the tomb inscription immediately identifies the content of the text and the author.

During the New Kingdom it was the practice to have a label or 'docket' on the outside. In Naunakht's case it identifies her testamentary disposition as a declaratory deed of her

property transfer. From the *Adoption Papyrus* it would appear a label would not have been a prerequisite for documents relating to testamentary dispositions.

10.2.3 DISPOSITIONS

A feature of a testamentary disposition is that there must be a declaration of intent by a testator to dispose of his property by means of a testamentary disposition document. The testamentary disposition is a declaration in a document by the testator regarding the devolution of his property after death.

The purpose and objective of the testamentary disposition in ancient Egypt was to make sure that family property was being protected and stayed within the family. It would safeguard the continuation and protection of the family property for the benefit of the family. The testamentary disposition was a way to alter the customary line of succession. It was also a way of incorporating adoption for testamentary disposition purposes, thereby excluding the customary heirs. The general norm all over Egypt was rather to confirm matters relating to inheritance in writing, when there was a deviation of customary succession principles by means of a testamentary disposition.

During the Old Kingdom, from the *Inscription of Metjen*, we have more than one testamentary disposition document. We have Metjen's testamentary disposition itself, but also the reference to a prior *imyt-pr* made by his mother. It appears as if the *imyt-pr* was used as testamentary disposition document especially in cases where the beneficiaries were siblings of the testator, as was the case in the *Inscription of Metjen*. The *Inscription of Metjen* appears to consist mostly of legal contracts and decrees which guaranteed the continued maintenance of Metjen's various estates and funerary cults, referring to the pious foundation as the origin of the testamentary disposition.

Also from the Old Kingdom in the case of the *Inscription of Nikaure* we have a *w \overline{d} t-mdt* document serving as a testamentary disposition document. In the case of Heti he made a disposition, more literally, he gave out an 'order' from his 'living mouth'. From the *Inscriptions of Niankhka* in his tomb it would appear that there are several testamentary dispositions documents within the text (like the foundation, the reference to *imyt-pr* and *w \overline{d} t-mdw*), all of which contain concepts and elements of succession law.

During the Middle Kingdom words like 'says', 'declare' etc. are used in the testamentary disposition documents. From this and the contents and context of the document it is clear that a testamentary disposition was intended.

Papyrus Kahun I 1 is one single testamentary disposition and is in essence the testamentary disposition of Wah. An earlier testamentary disposition made by his brother (Ankhren) is merely quoted with the sole purpose to confirm Wah's ownership of the property. It is, however, clear that both Wah and Ankhren intended to draw up testamentary dispositions. The purpose of both Wah's and Ankhren's testamentary disposition was clearly to dispose of property by way of the testamentary disposition.

Papyrus Kahun VII 1 is identified as an *imyt-pr* (testamentary disposition). It is clear that Mery had the intention to dispose of his property in terms of a testamentary disposition prior to death. A disposition of assets by means of a testamentary disposition can therefore be deduced from the contents and especially the intention of the testator.

In the New Kingdom, Naunakht's intention was to dispose of her property before her death and to alter the customary intestate succession procedure. It is for this reason that Naunakht's document is indeed a testamentary disposition document containing important concepts and elements pertaining to succession law. The *Adoption Papyrus* is regarded as the testamentary disposition of Nanefer/Rennefer and is again used to alter the customary intestate succession line of heirs. From the Naunakht documents we learn that it probably was the combination of the written and oral documentation that would give the testamentary disposition its validity.

10.2.4 THE TESTAMENTARY DISPOSITION COMES INTO EFFECT AT THE TESTATOR'S DEATH

As a rule testamentary dispositions appear to have become effective upon the death of the testator, but there were exceptions.

We know from the *Inscription of Niankhka* from the Old Kingdom that the testamentary disposition normally comes into effect after the *de cuius's* death. However, *Papyrus Kahun VII 1* from the Middle Kingdom is an example of an exception where the son with immediate effect (implying at the time of drafting of the testamentary disposition) is appointed as 'staff of old age'. The inclusion of an 'exception to the rule' type of clause was a reflection of the fact that the ancient Egyptians used various documents for testamentary disposition purposes.

10.2.5 TESTATOR/TESTATRIX

The testator or testatrix is the person making the testamentary disposition regarding the devolution of his or her property after his or her death.

From the Old Kingdom in the *Inscription of Metjen* we have Metjen as the testator. In the case of the *Inscription of Metjen* reference is made to the *imyt-pr* of Metjen's mother as being the testatrix of the will. It is therefore clear that we have a very early example of a woman being able to make testamentary dispositions in ancient Egypt. In the *Inscription of Nikaure* it is stated that Nikaure is the testator.

The testator is identified in all the Middle Kingdom documents discussed. This is important as there can thus be no confusion in respect of who the author of these testamentary dispositions were and whose last will and testament was intended.

From *Papyrus Kahun I 1* it is apparent that Wah is the testator of the testamentary disposition and Ankhren the testator of the earlier made testamentary disposition. It is therefore clear that the testators of both these documents are identifiable; both are male. From *Papyrus Kahun VII 1* it is evident that the testator is a male, identified in the document as Mery.

In the New Kingdom, from Naunakht's testamentary disposition it is clear that she is mentioned as being the testatrix. We therefore have certainty who the author is, and even more important, also once again an indication that a woman could make a testamentary disposition. The same applies to the *Adoption Papyrus* of Nanefer and also to the earlier testamentary disposition of Nebnefer.

10.2.6 TESTAMENTARY CAPACITY

Testamentary capacity requires that the testator or testatrix must have the mental capacity to dispose of his or her property, in other words he or she should be of sound mind.

From the *Inscription of Metjen* dating from the Old Kingdom it is important to note, regarding the reference to the mother's prior testamentary disposition, that women in ancient Egypt had the right to own property and to dispose freely thereof. In the *Inscription of Nikaure* this capacity is confirmed by the words 'living upon his two feet without ailing in any respect'. The reference of 'being of sound mind' in Nikaure's

testamentary disposition is significant as this appears to be an essential principle in ancient Egyptian testamentary dispositions. In the case of Heti, the reference to 'living mouth' has an effect similar to Nikaure's 'while he was alive upon his two feet'. This clearly indicates that it was important to confirm that the testator had the mental capacity to draw up a testamentary disposition. As previously indicated, we have from the *Inscription of Niankhka* an example that the testator of a testamentary disposition had to have the testamentary capacity to do so as we read that the testator made the testamentary disposition 'from his mouth, when he was still alive and on his feet, being equivalent to the English phrase 'of sound mind and body'.

From the Middle Kingdom, both the testators in *Papyrus Kahun I 1* appear to have the capacity to make a testamentary disposition as it would appear they were both adults who owned property. It is also implied that Wah was already old when he made his testamentary disposition. There is no reference in this papyrus to their mental capacity. Both Wah's and Ankhren's positions in society are mentioned, which in my view is an indication that it was necessary to do this in order to prove the testator's standing and his testamentary capacity to make a testamentary disposition.

Mention is made in *Papyrus Kahun VII 1* of the testator's 'old age'. It is therefore clear from the content and context of the testamentary disposition that Mery was an elderly man when this disposition was drafted. No mention is made of the testator's mental capacity in *Papyrus Kahun VII 1*.

In the New Kingdom it is apparent from the Naunakht documents that Naunakht had the testamentary capacity to draft a testamentary disposition. She was an adult and owned property. It is once again apparent that a woman could have testamentary capacity. No mention is made of her mental capacity but it might be unnecessary to mention it as the testamentary disposition was done in a court, implying therefore she had the mental capacity to appear. Both Nanefer and Nebnefer had testamentary capacity in the *Adoption Papyrus*, as both were adults and had property to bequeath.

10.2.7 BENEFICIARIES

The aim of testamentary dispositions was always to protect the family assets by keeping them within the family. Even when the line of customary intestate succession was altered by the testamentary disposition, the idea was still to protect the family assets. It is clear that the testamentary dispositions were drafted against the backdrop of the

ancient Egyptians' understanding of their religion and their socio-economic circumstances.

During the Old Kingdom, from the *Inscription of Metjen* we know that the beneficiaries were Metjen's children. The beneficiaries in the *Inscription of Niankhka* appear to be his wife and children. From the *Inscription of Nikaure* we know that there were eight columns in the inscription and the eight heirs were named separately. Each column started with the name of the beneficiary followed by the award. It is thus clear from the *Inscription of Nikaure* that specific assets were awarded to specific beneficiaries. This would make them legatees in terms of present-day law of succession principles, which is an astonishing feature to occur in such an early ancient Egyptian testamentary disposition. The beneficiaries in the testamentary disposition of Heti are the children, but the children are in actual fact *fiduciarius* heirs.

From the Middle Kingdom texts discussed, we have certainty as to who the beneficiaries were since they were identified. It is also clear from the texts that the beneficiary could be male or female, and might even include a minor child. In *Papyrus Kahun I 1* (from both testamentary dispositions it contains) the identity of the beneficiaries was known. Wah is the beneficiary of the earlier testamentary disposition and Wah's wife and children (including an apparently minor son) were the beneficiaries of Wah's testamentary disposition. In both cases the testamentary disposition was used to change the customary intestate succession procedure and thus in effect the beneficiaries.

The beneficiaries in *Papyrus Kahun VII 1* are the children of the testator, although they are not individually named in the testamentary disposition. One can make the assumption that the names were omitted in order to prevent excluding children born after drafting the testamentary disposition. It might also be the case that the beneficiaries in *Papyrus Kahun VII 1* are in effect legatees as specific assets are awarded to them.

It is apparent from Naunakht's testamentary disposition, from the New Kingdom, that her beneficiaries were heirs as well as one legatee, and they were clearly identified by name. This is also evident from the *Adoption Papyrus*; the need for adoption arose in order to make sure the property stayed within the family. The *Adoption Papyrus* is an example where someone other than customary succession heirs were able to inherit.

10.2.8 USE OF THE VERB *rdi* ('TO GIVE') AND ITS TRANSLATIONS

In the texts the word used for the act to award or bequeath assets (*'rdi'*) is usually translated as 'to give' or 'given'. However, given the contents and legal context of the testamentary disposition and the intention of the testator/testatrix, it is submitted that the translation 'to give' or 'given') should rather be replaced with 'to bequeath' or 'bequeathed', which would be the correct term. When something is 'given' to someone in terms of succession law, such property is indeed 'bequeathed'.

From the Old Kingdom the word for 'to bequeath something' is translated in the *Inscription of Metjen* and the *Inscription of Nikaure* as 'given'. From the Middle Kingdom, *Papyrus Kahun I 1* and *Papyrus Kahun VII 1* also use the word 'give'. However, the purpose of both testamentary dispositions of *Papyrus Kahun I 1* and *Papyrus Kahun VII 1* was to bequeath property.

It is apparent from the Naunakht documents and the *Adoption Papyrus* that the intention of the testatrix or testator was to bequeath property to beneficiaries. The devolution of property was the intention.

10.2.9 SPECIFIC ASSETS

From the Old Kingdom, in the *Inscription of Metjen* we have evidence that it was possible to bequeath immovable property at a very early stage in ancient Egypt's history. It would appear that the focus, at least initially, of testamentary disposition documents was on immovable property, which supports the idea that testamentary dispositions were initially drawn up to make provision for supplying of sustenance and the rituals for the deceased.

In the case of the *Inscription of Nikaure*, also from the Old Kingdom, we are dealing with immovable property. In this case specific property was awarded to specific legatees. In the case of the *Inscription of Niankhka* specific assets, in this case immovable property, are identified and awarded. The purpose of the awarded property in the case of the *Inscription of Niankhka* was to make provision for sustenance after death, indicating the close relationship between the belief in the afterlife and provisions being made in a testamentary disposition document.

The property awarded in the testamentary dispositions from the Middle Kingdom is mentioned in each case discussed in Chapter 8. It is clear that the property to be awarded had to be identifiable so as to avoid any confusion after the testator's death.

Furthermore, it is apparent that in the case of *Papyrus Kahun I 1* we have both movable and immovable property as part of the inheritance. In this papyrus, the property referred to include 'possessions in country and town', 'all his household', three slaves, a tomb and rooms (a house).

In *Papyrus Kahun VII 1* reference to specific assets is found, namely to the house and its contents, which must go to certain people, which might in effect be regarded as an example of a legacy.

It can be deduced from the discussion of the Middle Kingdom texts that the property awarded could include both movable and immovable property.

Specific assets are once again referred to in texts from the New Kingdom. These are mentioned in the testamentary disposition and therefore clearly identifiable. This is important as it is necessary to know which assets are to be bequeathed. It refers to both legacies and residual property.

10.2.10 ORIGIN OF ASSETS

It was necessary and customary for the ancient Egyptians to mention the origin of the property they intended to dispose of in testamentary disposition documents as this emphasised or was proof of ownership of the assets to be bequeathed. Of importance regarding these texts is the insistence by the ancient Egyptians to mention in their testamentary dispositions the origin of their property. It appears to be a necessity for the ancient Egyptians and might even be a legal requirement in drafting testamentary dispositions. Mentioning the origin of the property to be disposed of indicated the purpose behind the testamentary disposition, which is the ultimate continuation and protection of family property.

It is important to note from the texts dating from the Old Kingdom, for example the *Inscription of Metjen*, that an effort is made to explain the origin of the deceased's assets, and that this is being done at a very early stage of ancient Egyptian history. In the *Inscription of Metjen* we have the two testamentary dispositions, each mentioning the

origin of the property which now forms the 'deceased estate'. The *Inscription of Niankhka* confirms the origin of the assets to be awarded.

The Middle Kingdom testamentary dispositions also refer to the origin of property. In *Papyrus Kahun I 1* Wah bequeaths his property, but before doing this, he states the origin of and his title to the property by quoting from the earlier testamentary disposition of his brother Ankhren from whom he obtained the property in the first place. This confirms the origin of the property and Wah's legal ownership thereof. We do not have any reference to the origin of property in *Papyrus Kahun VII 1*.

In the *Adoption Papyrus* dating from the New Kingdom Nanefer again indicates the origin of her property by quoting her husband's earlier testamentary disposition, in the process confirming her legal right as owner to dispose of the assets.

10.2.11 SEPARATE CLAUSES

In the *Inscription of Nikaure* Nikaure nominates the different legatees with each legacy in a separate column in the testamentary disposition, effectively creating different 'clauses'. This is a significant precedent for future testamentary clauses as they are still being used today.

10.2.12 RECORD OFFICE

In the Old Kingdom text of the *Inscription of Metjen* reference is made to a document stating what belonged to the beneficiaries in terms of the *imyt-pr* and which document was placed in a record office. It would appear that there was from very early on a need to keep record of the distribution of assets in terms of a testamentary disposition.

From the Middle Kingdom text *Papyrus Kahun I 1* we have a statement after the copy of Ankhren's testamentary disposition that it was placed as a record in the office of the second reporter of the south. It would appear that it was customary to have the testamentary disposition placed in a record office.

In modern times this would correspond to the Master of the High Court of South Africa, with its interesting early Dutch law name of 'die Weesheer' (lit. 'Master of Orphans'); the difference being that nowadays last wills and testaments are only submitted to the Master of the High Court once the testator has died.

10.2.13 ELDEST SON

Initially the duty of the eldest son was primarily to attend to mortuary duties. However, it was also expected of him to take charge of the deceased's estate, like modern-day executors. The concept of 'eldest son' was well entrenched in ancient Egyptian succession and/or inheritance procedures. From the texts discussed in this study it is clear that the eldest son would have implicit duties to fulfil. It is the duty of the executor, or eldest son in ancient Egypt, to see to the burial of the deceased, look after the mortuary cult of the deceased and to deal with the division of the deceased's property.

In the *Inscription of Niankhka*, dating from the Old Kingdom, we find that the eldest son has been appointed as 'administrator' in the testamentary disposition document, emphasising again the important role the eldest son played in succession law matters. It is an indication of the importance of this position that someone is tasked with the responsibility of the administration of the estate similar to the later executor of a deceased estate. It was important that someone took control of the deceased's estate and was responsible for the administration of the estate. In Heti's testamentary disposition the eldest son is appointed as 'administrator' in the testamentary disposition, effectively fulfilling the role of the modern executor of a deceased estate. In *Papyrus Berlin 9010* we have yet again confirmation of the eldest son playing an important role as the administrator of a customary intestate succession matter. A strong case has been made out that the eldest son automatically became the administrator in the case of customary intestate succession. It would appear that it was also the eldest son in the case of *Papyrus Berlin 9010* who acted as executor or 'administrator' of the estate in disputing the existence and validity of a possible testamentary disposition.

The Middle Kingdom text *Papyrus Kahun I 1* does not mention an eldest son. However, a later inscription on the document does mention that a son was born to the couple, but it is unclear whether this addition was made to make provision for the traditional role of the eldest son. It is suggested this was rather done to include the son into the group of possible *fideicommissarii*.

In the case of *Papyrus Kahun II 1* the eldest son also had to step into the shoes of the deceased in order to see to the fulfilment of an incomplete agreement. *Papyrus Kahun II 1* is an example where the son acts as the eldest son, the administrator of the estate. In this capacity, the son recovers an outstanding obligation, or outstanding debt, which

resulted from an incomplete transaction. It was the eldest son's duty to recover this obligation owing to the deceased estate, since one party to an agreement did not fulfil his obligation towards the deceased. The eldest son thus had to act on behalf of the deceased estate.

In the case of Naunakht, she created a legacy for her eldest son and thus one can deduce that this is a reward of some kind for fulfilling exactly these duties. This is also the case in the *Adoption Papyrus* where Nanefer, the surviving spouse, in the first instance fulfils this duty as eldest son, and in her estate, it would be her brother, Padiu, who would in turn fulfil this duty.

10.2.14 TRUST, USUFRUCT AND *FIDEICOMMISSUM*

It remains difficult to assign modern-day legal terminology to ancient Egyptian concepts. The concept of *fideicommissum* is already present in the early Egyptian pious foundation. Of course the ancient Egyptians did not use these legal terms, as these were developed by Roman law and carried into our modern-day law. It is however clearly visible that elements of these legal concepts are already present in these ancient Egyptian testamentary dispositions.

It must be kept in mind that both the trust and the *fideicommissum* have a common fiduciary nature and are related in function, since property is entrusted to one person for the benefit of others. The term *fideicommissum* initially implied that an object was entrusted (*commissum*) to the good faith (*fides*) of the recipient. Closely related to both the trust and *fideicommissum* is usufruct.

The *fideicommissum* principles as used in ancient Egypt developed from the pious foundation and were a clear way of protecting the family property and to ensure that it stayed within a family line. This is significant as it precedes Roman law and clearly must be the very first signs of this concept to appear in history, later to be developed by Roman law and subsequently adopted in modern law.

In the Old Kingdom the testamentary disposition document of Heti provides an example of a 'family *fideicommissum*'. A *fideicommissum* was effectively accomplished by Heti. There was an effective 'gift over' in favour of the fideicommissary, with the fiduciary and the fideicommissary being identified. The purpose was to make provision for the mortuary endowment. A *fideicommissum* was also created in the *Inscription of Niankhka*

as reference is made to *fiduciarius* heirs, but importantly also to *fideicommissarius* heirs. The text from Sennuankh again provides us with an example of a *fideicommissum*.

We do not find an example of usufruct as we know the concept today in *Papyrus Kahun I 1* from the Middle Kingdom, although we might have the related legal notion of *usus* here in the sense of the wife being allowed to stay in the rooms, giving her the right of *habitatio*. *Papyrus Kahun I 1* also effectively creates a *fideicommissum* when Wah bequeaths his assets to his wife, but adds that she will give the property to one or more of her children. It is for this reason that it was important to make the later inscription of another child born, effectively including him into the group of possible ultimate heirs. In *Papyrus Kahun I 1* the wife is the *fiduciarius* and the children are the *fideicommissarius* heirs.

From *Papyrus Kahun I 1* it might appear that a *mortis causa* trust was created, but my view is that the testamentary disposition of Wah intended the children to be the ultimate heirs and the wife only a fiduciary heir, and therefore it should rather be regarded as a *fideicommissum*. The fact that the wife does not inherit the rooms, but is merely allowed to stay there, creating in effect a *habitatio* for her, supports my argument for a *fideicommissum*.

The tomb inscription known as the *Inscription of Djefa-Hapi* is a good example where a *fideicommissum* is confirmed to last from generation to generation, with the property keeping its fiduciary character. In the case of Djefa-Hapi the sole purpose of the *fideicommissum* is to provide for sustenance and services in the afterlife.

10.2.15 WITNESSES

Witnesses remained the primary way of authenticating the written transcripts as written documents were still dependent on local witnesses for enforcement. When the oral agreement was to be confirmed in writing this was done before witnesses. Today in our modern-day law of testate succession the witnesses still play a crucial role in authenticating wills and testaments.

In inscriptions in Old Kingdom tombs, like the *Inscription of Metjen*, there was no need for witnesses, as the priests responsible for the mortuary sustenance and rituals were effectively the witnesses ensuring the fulfilment of the wishes of the deceased. The testamentary disposition in the inscription omits the names of witnesses as the various

mortuary priests who performed the mortuary cults in the tomb chapels served to authenticate the documents. The lasting inscription onto tomb walls would ensure the protection of property rights and oblige the mortuary priests (as implied witnesses to these 'contracts') to comply with the provisions contained in the testamentary disposition documents.

In *Papyrus Berlin 9010* the existence and validity of an alleged testamentary disposition was disputed. In order to resolve the issue, the court required the testimony of persons who were alleged to have been present when it was drafted; in other words, the witnesses to the drafting of the testamentary disposition. The witnesses had to take an oath confirming the existence and contents of the testamentary disposition and that it was indeed made at all.

In the Middle Kingdom it is apparent from *Papyrus Kahun I 1* that the testamentary disposition of Wah again concludes with a list of witnesses in whose presence the testamentary disposition was written. The witnesses are named and identified, in my opinion because it might be necessary in future to call upon them to authenticate the testamentary disposition in case of a possible dispute over the existence, validity or contents of the testamentary disposition.

Papyrus Kahun VII 1 also concludes with the list of witnesses, who are named and their titles are mentioned as well, which seems to be important as it makes it easier to recall them in future if necessary to authenticate the testamentary disposition in cases where the validity or existence of the testamentary disposition is placed in question.

In the testamentary disposition of Mery (as in the case of Wah) there are three witnesses indicated, each named and identified. It would appear that it was important to name and identify the witnesses in ancient Egypt as it was necessary to know who they were in case of a potential dispute later. It also is an indication that these witnesses were well known in the community.

In the tomb inscriptions no names of witnesses are found. It is submitted that the requirement of witnesses being present was superfluous in this case as the disposition was written on the tomb walls, most probably in the presence of the priests.

It would also appear that witnesses usually were important people within the community. Their status would be mentioned and their full names given. The Naunakht

documents from the New Kingdom are a typical example in this regard. This allowed witnesses to be identified and made it possible to recall them should there be a dispute. In a case like the *Adoption Papyrus* it would also appear to be important to use specific witnesses (Nebnefer used his sister as witness) in order to avoid a possible future dispute.

10.2.16 REVOCATION

A testamentary disposition represents no more than a declaration of intent and can therefore be altered or revoked by the testator at any time prior to death. This is one of the reasons why the testamentary dispositions needed to be dated. If a testator or testatrix changed his or her mind, it was possible before death to revoke a previous testamentary disposition.

In the *Inscription of Nikaure*, from the Old Kingdom, Nikaure's one daughter predeceased him and he made a later note that her portion should go to his wife, giving us a first indication that it was possible to amend or revoke a testamentary disposition in ancient Egypt.

During the Middle Kingdom it was also possible to revoke an earlier testamentary disposition in ancient Egypt. *Papyrus Kahun VII 1* is a clear example from the Middle Kingdom of the possibility in ancient Egypt to revoke an earlier testamentary disposition. The testator (Mery) in this testamentary disposition revokes a previous testamentary disposition in favour of his son's mother (perhaps his first wife).

10.2.17 DISPUTE

Although *Papyrus Berlin 9010* from the Old Kingdom is not a testamentary disposition, it deals with a dispute between the eldest son and the executor/administrator of the estate. The relevance for this study is the fact that the existence and validity of a testamentary disposition could be disputed in ancient Egypt. The eldest son, as customary intestate succession administrator and heir, contested the existence and validity of his father's testamentary disposition. The possibility of disputing a last will and testament is still an important element of our law today.

Papyrus Kahun II 1 from the Middle Kingdom is not a dispute in the true sense, in my view, but rather deals with the recovery of an outstanding obligation by the eldest son. It would appear that a transfer took place between the deceased and a third party. In

Papyrus Kahun II 1 the eldest son explains that his father drew up a transfer document (*imyt-pr*) for an exchange of property and explains that the other party to the transaction never fulfilled his obligation. In essence, *Papyrus Kahun II 1* deals with an 'incomplete' transaction where one party did not fulfil his obligation in terms of a contract. The third party's obligation is still owing to the deceased, and by implication to the deceased estate. The eldest son is fulfilling his duty as 'executor' of the deceased estate in recovering this outstanding obligation which is an asset of the deceased estate. It was therefore possible for the executor to step into the shoes of the deceased and see to the fulfilment of a prior agreement.

From New Kingdom texts, specifically that of Naunakht's documents, we know that it was possible in ancient Egypt to contest the testamentary disposition of the deceased. It would appear *prima facie* that should an interested party contest the testamentary disposition of a deceased person, this would again be heard in a court. The outcome would be that once a decision had been reached that the party who had contested the testamentary disposition would take an oath to accept the outcome and the validity of the testamentary disposition.

10.2.18 MORTUARY PROVISIONS

It was the duty of the priests and surviving family to provide sustenance for the deceased and it became necessary to make arrangements for this prior to death by the testator. One of the main objectives, at least initially, of a testamentary disposition was to make provision for sustenance after death. The purpose of the testamentary disposition document might well have been to provide for sustenance of the deceased after death, but in the process several concepts and elements of succession law came into existence and were developed. The purpose of the testamentary disposition was to make provision for the mortuary endowment after death, but in the process succession law principles such as *fideicommissum* were developed.

During the Old Kingdom the inscriptions usually establish rules for the mortuary cult of the deceased buried in the tomb chapels by means of the testamentary disposition document. In the *Inscription of Metjen* we have bequests of immovable property in order to make provision for sustenance after death. There was a close relationship with religion in respect of the process relating to assets and their transfer at death. The *Inscription of Metjen*, inscribed on the tomb walls, was done to emphasise and confirm

the testamentary disposition (namely the pious foundation) and the implied duties of the priests (and family) for sustenance and rituals after death. It would appear that the *Inscription of Nikaure* awarded immovable property in order to enable the siblings to sustain the deceased.

In the case of Heti a *fideicommissum* was effectively created in the testamentary disposition in order to make provision for the mortuary cult. The *Inscription of Niankhka* provides us with excellent examples of the interplay between the belief in the afterlife and provisions made prior to death by means of the testamentary disposition document.

There are no specific provisions for sustenance or offerings from *Papyrus Kahun I 1* (Middle Kingdom). It is, however, quite clear that there is still a link with the belief in the afterlife as Wah (who was also a *wab*-priest) makes provision in his testamentary disposition to be buried in his tomb with his wife. From the offering table scene of Ankhren it is also clear that there remains a close link to and relationship with religion and in particular the belief in the afterlife on the one hand and the inception of concepts and elements of testamentary dispositions on the other.

The case of Djefa-Hapi from the Middle Kingdom is a good example of a provision being made by means of a *fideicommissum* for sustenance after death.

There are no explicit references to mortuary endowment or provisions for the mortuary cult of the deceased from the New Kingdom texts studied in this thesis. It is however implied, as this custom was entrenched in ancient Egyptian culture by the time of the New Kingdom, that the eldest son (and family) had to look after the mortuary cult of the deceased.

In summary, we have several remarkable features and elements of testamentary dispositions referring to the legal, but also to the religious and socio-economic world of the ancient Egyptians.

10.2.19 GUARDIANSHIP

From *Papyrus Kahun I 1* we have an example of the appointment of a guardian for a minor child in the testamentary disposition. Provision was made in the testamentary disposition for the appointment of a guardian to act on behalf of the minor child until he would come of age.

10.2.20 WISHES

Papyrus Kahun I 1 provides us with an example of a wish in a testamentary disposition when Wah ‘wishes’ or ‘requests’ that he be buried in the tomb with his wife. This is similar to wishes found today in wills and testaments, which are not legally enforceable. It is not clear that we can deduct the same of these ancient stipulations, but I am of the opinion they were also not legally enforceable.

10.2.21 CONDITIONS

From the discussion of the testamentary dispositions in this study it is clear that the ancient Egyptians were familiar with conditional clauses in testamentary dispositions. One of the main functions or purposes of the ancient Egyptian testamentary disposition was the creation of conditions in the testamentary disposition. This is evident from the earliest testamentary dispositions, namely the pious foundations. These conditions refer to concepts like usufruct, trust and *fideicommissum*. The reason for the conditional clause in the ancient Egyptian testamentary disposition was obvious; its intention was for the property to be protected for a specific reason. This had to do with the socio-economic circumstances at the time where the nuclear family as well as religion (sustenance in the afterlife) played a primary and even overriding role.

The testamentary disposition of Wah in *Papyrus Kahun I 1* from the Middle Kingdom contains an implied condition. The award is made to the wife on condition that she shall give it again to any of her children she chooses. Wah’s intention was for the children to be the ultimate heirs, effectively establishing a *fideicommissum*.

10.2.22 HABITATIO

Related to usufruct and *usus* is the notion of *habitatio*, the legal term for the right of free residence in the house of another without detriment to the substance of it. *Habitatio* entitles the relevant party therefore to an exclusive right of ‘dwelling’, expiring at the relevant party’s death.

In *Papyrus Kahun I 1*, (Middle Kingdom) Wah declares in his testamentary disposition that his wife shall be able to dwell in the rooms built for him by his brother without fear of being cast out. This provision being made for the surviving spouse in *Papyrus Kahun I 1* is clearly an example of *habitatio*. This is another significant example from the distant

past of ancient Egypt where a concept still being used today, such as *habitatio*, is already present.

10.2.23 CODICIL

From *Papyrus Kahun I 1* (Middle Kingdom) we know that an extra line was added to the testamentary disposition at a later stage, showing that a son was born from this relationship and making provision for him. This addition to the initial testamentary disposition implies that a testator could amend or add to an existing testamentary disposition prior to death, in a way similar to what today is known as a codicil – an addendum to a will or testament. It is significant that we are able to identify elements of a codicil in ancient Egyptian documents as far back as the Middle Kingdom.

10.2.24 LEGACY

From Naunakht's testamentary disposition (New Kingdom) it is clear that a specific item could be bequeathed to a specific person. It was also necessary for the family members to adhere to the wishes of the testatrix. In the case of Naunakht it was necessary to give an undertaking, and a confirmation that effect would be given to the legacy as provided for in the testamentary disposition.

10.2.25 DISINHERITANCE

It was possible in ancient Egypt to disinherit someone, although we do not have an example of complete disinheritance before the New Kingdom. Naunakht (New Kingdom) clearly wanted to deviate from customary intestate succession principles which would prescribe that all her children were to inherit from her. In order to do so Naunakht drafted her testamentary disposition with, *inter alia*, an express clause disinheriting some of her children. This was apparently done because not all the children looked after her in her old age. It would appear that it was necessary to justify disinheriting someone and for this reason Naunakht mentions the fact that she was not looked after by some of her children in old age.

10.2.26 COURT

The Naunakht documents appear to have been drafted in a court. It would therefore be necessary, it appears, when an oral disposition was to be confirmed in writing, that this was done in a court with all the accompanying requirements relating to a scribe, witnesses etc. in order to legitimise the proceedings.

10.2.27 OLD AGE

It is apparent that it was socially required of children to look after their elderly parents. A reference to this can be found in some form in all the texts discussed. In the case of Naunakht it is accepted that this is also Naunakht's reason for the disinheritance clause. The importance and value the ancient Egyptians attached to family life and the nuclear family is clear from the reference being made in the text to this duty of caring for the elderly. Mention is also made of caring for aged parents in the *Adoption Papyrus*.

10.2.28 CONFIRMATION OF DIVISION

From the discussion of the texts in this study it is concluded that the wishes of the deceased in terms of the testamentary disposition would be adhered to and that a confirmation of the division of the estate was done. The discussion of the Naunakht documents (New Kingdom) indicated that this confirmation was done in respect of the distribution of the estate in accordance with the testamentary disposition. This, in effect, is what is still customary today. A liquidation and distribution account (as confirmation of the division) is drafted after the testator's death.

10.2.29 REDISTRIBUTION

It was obviously not always possible to divide exactly the same portion of the property among the heirs. It was therefore necessary to redistribute the property among the heirs in order to ensure, that even though they did not inherit exactly the same property, they still would inherit equally as per the relevant testamentary disposition. This again becomes clear from the discussion of the Naunakht documents (New Kingdom). The children inherit different property, but in apparent equal share, as per document drafted after Naunakht's death.

10.2.30 ADOPTION

Adoption played an important role in ancient Egyptian succession law (and later in Roman succession law). The process of adoption entitled someone to inherit intestate from the *de cuius*. Adoption therefore allowed someone to 'become' a blood relative and descendant of the *de cuius* for purposes of succession law processes.

It is significant that the ancient Egyptians already were familiar with the concept of adoption, which they seemed to apply rather frequently. Adoption was a way of altering

the principles of customary intestate succession. It was sometimes used when a couple was childless, but most often in order to allow the wife to inherit.

In the case of the *Adoption Papyrus* from the New Kingdom, we have three different adoption cases. The purpose of each adoption was essentially for the adopted person to become a lawful heir. The *Adoption Papyrus* is actually the testamentary disposition of Nanefer, but in stating her testamentary disposition Nanefer applied the concept of adoption (and also relates how her husband did the same in adopting her) in order to 'create' heirs, she herself being childless. Another significant feature of the ancient Egyptians' concept of adoption was that the adopted child could inherit from both the adoptive mother and father. This is an extraordinary feature for an ancient civilisation to already exhibit such a 'modern' approach to gender equality.

10.3 FINAL CONCLUSION

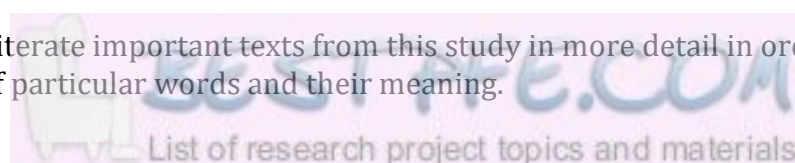
In conclusion, it is apparent that there is a strong link between the belief in the afterlife and the inception of testamentary dispositions in ancient Egypt. It is also apparent that important elements and concepts of succession law can be identified from these testamentary disposition texts from the Old, Middle and New Kingdoms.

The testamentary disposition document of ancient Egypt must be one of the oldest examples of testate succession law known to us today. It represents the inception and first building blocks of modern-day wills. Although very remote in time, the modernity of the purpose and basics of the ancient Egyptian testamentary disposition document is astonishing. These testamentary disposition documents and concepts pertaining to succession law were well known, established and in use in ancient Egypt centuries before Rome was established. The resemblance to our modern-day wills and testaments through our Roman testate succession law heritage is remarkable.

10.4 SUGGESTIONS FOR FUTURE RESEARCH

In completing this study, some areas of potential future research were identified. Important questions and promising new directions for future research may, among others, include the following:

1. To transliterate important texts from this study in more detail in order to identify the use of particular words and their meaning.



2. To study further examples of testamentary dispositions in Greco-Roman Egypt as well as the first truly Roman testamentary dispositions, since there appears, *prima facie*, to be a development line and influence from Egyptian law on Roman succession law.
3. To look into specific eras of Egyptian history in order to identify and discuss more examples of testamentary dispositions.
4. To look into the relationship and connection between the early pious foundation and the development of *fideicommissum*, trusts and usufruct.

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List of abbreviations of journal titles

| | |
|-------|---|
| AJCL | American Journal of Comparative Law |
| BASOR | Bulletin of the American Schools of Oriental Research |
| GM | Göttinger Miszellen – Beiträge zur ägyptologischen Diskussion |
| JARCE | Journal of the American Research Center in Egypt |
| JEA | Journal of Egyptian Archaeology |
| JESHO | Journal of the Economic and Social History of the Orient |
| JNES | Journal of Near Eastern Studies |
| JRS | Journal of Roman Studies |
| JSH | Journal of Social History |

List of Egyptian sources

Amarah Stela

Balat Clay Tablet 3689-7, 8 and 11

Book of the Dead

Codex Hermopolis

Decree of Horemheb

Heti

Inscription of Djefa-Hapi

Inscription of Kaemnofret

Inscription of Mes

Inscription of Metjen

Inscription of Niankhka

Inscription of Nikaure

Inscription of Sennuankh

Inscription of Tjenti

Inscription of Wepemnofret

Instruction for the Vizier
Ostrakon Berlin 10627
Ostrakon DeM 108
Ostrakon DeM 764
Ostrakon Gardiner 55
Ostrakon Louvre E 13156
Ostrakon Petrie 16
Papyrus Ashmolean Museum 1945.96
Papyrus Ashmolean Museum 1945.97
Papyrus Berlin 3047
Papyrus Berlin 3096
Papyrus Berlin 9010
Papyrus Bulaq 10
Papyrus BM 10073
Papyrus BM 10120
Papyrus BM 10591
Papyrus BM 10827
Papyrus Cairo CG 58092
Papyrus Geneva D 409
Papyrus Leiden
Papyrus Moscow 123
Papyrus Philadelphia 2
Papyrus Philadelphia 10
Papyrus Turin 2021
Papyrus Turin 2118
Papyrus UC 32037
Papyrus UC 32055
Papyrus UC 32058

Papyrus Vienna KHM Dem. 9479

Stela Cairo CG 34016

Stela Cairo JE 31882

Stèle Juridique

ADDENDUM A:

TIMELINE

(Source: Wilkinson 2016:xxxi-xxxiii)

| PERIOD / DATES (BCE) / DYNASTY / KING | DEVELOPMENTS IN EGYPT |
|--|--------------------------|
| <i>Early Dynastic Period, 2950-2575</i> | |
| First Dynasty, 2950-2750 | |
| Second Dynasty, 2750-2650 | |
| Third Dynasty, 2650-2575 | Step Pyramids at Saqqara |
| <i>Old Kingdom, 2575-2125</i> | |
| Fourth Dynasty, 2575-2450 | Great Pyramid at Giza |
| Fifth Dynasty, 2450-2325 (nine kings, ending with Unas, 2350-2325) | Pyramid Texts |
| Sixth Dynasty, 2325-2175 (five kings, ending with Pepi II, 2260-2175) | Harkhuf's expeditions |
| Eighth Dynasty, 2175-2125 | |
| <i>First Intermediate Period, 2125-2010</i> | Civil war |
| Ninth/Tenth Dynasty, 2125-1975 | |

| | |
|---|------------------------------|
| Eleventh Dynasty (1st part), 2080-2010 (three kings, including Intef II, 2070-2020) | |
| <i>Middle Kingdom, 2010-1630</i> | |
| Eleventh Dynasty (2nd part), 2010-1938 (three kings, ending with Mentuhotep IV, 1948-1938) | |
| Twelfth Dynasty, 1938-1755 (eight kings, including: Amenemhat I, 1938-1908 Senusret I, 1918-1875 Senusret III, 1836-1818) | Golden age of literature |
| Thirteenth Dynasty, 1755-1630 | |
| PERIOD / DATES (BCE) / DYNASTY / KING | DEVELOPMENTS IN EGYPT |
| <i>Second Intermediate Period, 1630-1539</i> | Civil war |
| Fourteenth Dynasty, c.1630 | |
| Fifteenth Dynasty 1630-1520 | Hyksos invasion |
| Sixteenth Dynasty, 1630-1565 | |

| | |
|---|---|
| Seventeenth Dynasty, 1570-1539 (several kings, ending with Kamose, 1541-1539) | |
| <i>New Kingdom, 1539-1069</i> | |
| Eighteenth Dynasty, 1539-1292 (fifteen kings, including: Ahmose, 1539-1514 Thutmose I, 1493-1481 Thutmose III, 1479-1425 Hatshepsut, 1473-1458 Amenhotep III, 1390-1353 Akhenaten, 1353-1336 Tutankhamun, 1332-1322 Horemheb, 1319-1292) | Reunification Battle of Megiddo Amarna revolution |
| <i>Ramesside Period, 1292-1069</i> | |
| Nineteenth Dynasty, 1292-1190 | |
| Twentieth Dynasty, 1190-1069 (ten kings, including Ramesses V, 1150-1145 | |

| | |
|---|---|
| Ramesses XI, 1099-1069 | |
| <i>Third Intermediate Period, 1069-664</i> | |
| <p>Twenty-first Dynasty, 1069-945</p> <p>Twenty-second Dynasty, 945-715</p> <p>Twenty-third Dynasty, 838-720</p> <p>Twenty-fourth Dynasty, 740-715</p> <p>Twenty-fifth Dynasty, 728-657</p> <p>(five kings, starting with Piankhi, 747-716)</p> | <p>Political division</p> <p>Kushite conquest</p> |
| PERIOD / DATES (BCE) / DYNASTY / KING | DEVELOPMENTS IN EGYPT |
| <i>Late Period, 664-332</i> | |
| <p>Twenty-sixth Dynasty, 664-525</p> <p>(six kings, starting with Psamtek I, 664-610)</p> | |
| <p>Twenty-seventh Dynasty</p> <p>(First Persian Period), 525-404</p> <p>(five kings, including Darius I, 522-486)</p> | Persian conquest |
| Twenty-eighth Dynasty, 404-399 | |

| | |
|--|--------------------|
| Twenty-ninth Dynasty, 399-380 | |
| Thirtieth Dynasty, 380-343 | |
| Thirty-first Dynasty (Second Persian Period), 343-332 | |
| Macedonian Dynasty, 332-309 | |
| Alexander the Great, 332-323 | |
| <i>Ptolemaic Period, 309-30</i> | Death of Cleopatra |

ADDENDUM B

EGYPTIAN TERMINOLOGY LIST¹⁵⁷

A

Aw – deceased

Awt – offering-gifts

Abt – family

AHt – field, plot of (cultivated) land, immovable property

Ax – spirit, literally ‘an affective one’. (The transfigured state of the dead in the afterlife, blessed spirit.)

Axt/ia – tomb

i

i – say

iAwt/iswi – old age

iw – complaint

iw.y mwt – when he (testator) is dead

iwyt – house

iwa – inherit, act as heir

iwaw – heir, factual heir after death of *de cuius* (the future heir)

iwsu – the symbol of justice

iwat/iwaat – heiress, heritage, inheritance

iwgrt – realm of the dead

ib – heart

ip – assign, allot

imi – give (*imperfectum* of rdi)

imy-r hp – overseer of law

imyt-pr – estate, property, will, content of house, formal transfer document serving purpose of will/testament (literally ‘the scroll that the house is in’)¹⁵⁸

¹⁵⁷ This provides merely a list of some Egyptian words with possible or most appropriate translations of their meanings. Of course we do not precisely know what the exact meaning is in every context, but this is an attempt to create a basis which can serve as a working document for future studies.

¹⁵⁸ As discussed in Chapter 6 of this study, the word cannot be transliterated merely to mean ‘will’ or ‘testament’.

imm ir s nb Abt.f m Axt. f – let every man do what he wants with his
 property
 imm ir s nb sxr n iSt.f – let every man dispose (freely) of his property
 imHt – netherworld
 iri anh – to take an oath
 ir ib – do the will (of someone)
 iri mAat – the practice of justice
 iri n hm.t – to take as a wife
 iri hp – application of law by a court or official
 iri hy – to take as a husband
 iry hp – the application of a law by a court or an official, one who pertains to the law
 ir wn (n) nA adD Sri – if the children are small (minor)
 ir mtr – to bear witness
 iSt – property, belongings
 it – father, paternal/maternal grand-father, father-in-law (male ascendants). Plural
 forefathers
 it – guardian

y

yH.t – fields, lands (immovable property)

a

aAbt – offering, pile of offerings
 awty – roll
 anh – oath
 anh n nb – oath of/to the lord.
 anh n nTr – oath of/to the lord
 anh.t n n iw.t – citizeness
 an st – piece of land
 ark – to swear
 ak hbs – maintenance
 at – room, department, house
 adA – wrong/false

adAt – false one

w

wAwAw – income

wa (n) nAy.f Xrdw – one of his (*de cuius*) children

wa sX n sanx – a deed of maintenance

wpwt – household document

wnm – consume in the sense of usufruct (in legal terms)

wnm n sbin.n.f – one who eats without being able to damage

wDA – proceed

wD(t) – command

wD mdw – give command

wDt-mdw – command, testament

b

bA – soul or personality, external manifestation

bAk – male slave

bAk.t – female slave

bw hwrw – criminal action or wrong doing

btA – wrong, crime

p

p sp nk – the remaining property

pr – house

pr.t-xrw – comprehensive services which were required for all the members of the family (it would later evolve to become applicable for specific individuals due to the emergence of individualism instead of family solidarity)

pr-Dt/ Dt – estate, foundation/ *stiftung*, funerary establishment

pS – divide

f

fAt wAwAw – delivery of income

fdk – to deliver a decision/ an act of closure

m

mAwD – endowment

mAat – An abstract term representing justice, order and truth. The feather of the goddess Maat became an ideogram for the concept of *maat*

mity – copy

mni – moor, land, join, attach, marriage

mwt – mother, mother's mother, mother-in-law (female ascendants)

mHt – to take possession of

msww, mswt – children

m-sA pAy.y aHa – after the lifetime (of the testator)

m-sHDt – transferring to

mDAt – scroll

mdt Hr – contest (a will/testament)

mDdt – share (in his possession)

n

nwy – collect

n wS pS – without division

nb – heir

nbt pr – mistress of the house

ns – to repudiate

nk.w – things, property, estate

nty mtw.y (n) wS sX – that which belong to me (the intestate heir) without document

ntt m Aw – who is deceased

r

r – declaration (public oral declaration of intent)

rwDw – administrator, representative, trustee, caretaker

rn – name

rt/ rt n ms – order, rank

(r)di – give, grant, bequeath (within testamentary disposition context)

h

hbs.t – wife

hm.t – wife

hm.t tAy – wife

hms irm – to marry ('to sit with')

hnw – chapel

hnn – document

hy – husband

hn – speech, complaint, petition

hp – law

hpw – laws

hry n Axt – Document about division of property serving purpose of a will/testament

hrw sDA.n (i) im – the day I died

hr rdwy – under the charge (care) of

hd n ir hm.t – money to become a wife

H

Hwwt – estates (immovable property)

Hm-kA – servant of the kA, kA priest, funerary priest (although also recently suggested it means agent/employee in household of noble patron), 'employee' in the instance as trustee

Hm.w-ka – all the personnel/employees of the household/estate

Hnw – movables

HqA Hwt – chief of an estate (immovable property)

Htp – offering

Htp di nswt – an offering which the king gives

hw – offerings

x

xa – a measure of 1000 square cubits, 10 arouras

xp n – to accrue to

xpt – decease/ deceased/ death/ dead

xr pS-w st n tny n Xa – it is next divided into shares

xr tw Dd-f – he is made to declare

xt – property

xm – contract/ bilateral agreements

X

Xnn – modify

Xri-Hb – lector-priest

Xrt.w Hwt – sons, male children

Xrt.w s-Xm.t – daughters, female children

S

sA – son, grandson, great-grandson, son-in-law (male descendants)

sAt – daughter, granddaughter, daughter-in-law (female descendants)

sw(A)D – hand over, bequeath

swnt – sale, exchange

swt – shadow

swD/ sw(A)D – hand over, bequeath, conveyed

sbq – minor, under age

spr – petition

spXr – publicise

sn – brother, mother's brother, father's brother, father's brother's son, mother's sister's son, brother's son, sister's son, brother-in-law (male collateral)

snw – food-offerings

snn – copy, record

sn-xm – younger brother

snt – sister, mother's sister, father's sister, mother's sister's daughter, sister's daughter, brother's daughter, sister-in-law (female collateral)

sX n tny – apportion, assign shares

sHmt n sanx – endowed women

sX – document

sXw dbA HD – fictitious sales document, serving purpose of a will/testament

sX n dnit, sX n pS or sX n dnit pS – individual (non-public) testamental division

sDA - die

s

S.wAD – that which is assigned to the trustee/guardian

Snt/Sn – dispute

Sr – (used collectively) sons

SraA – eldest son (earlier also sA smsw)

k

kA – the double or life force

km – gardens (immovable property)

knbt – local court/ governing body of local temple

knb. t – title deed

q

qrst – burial

g

grk(t) – dowry

grg – falsehood

grg pr – marriage, ‘to found a house’

t

tAy – husband

tp – capital

tp n pS – account of a division

tny. t/ty. t – share, portion

d

di – see (r)di above

di wy – divorce

dbA HD – money transfer

ḏbn – the weight used in the scale pans of a balance

ḏmw-r – hear a deposition

D

DADA . t – court, judicial institution

Dd – gives/ speaks/ dispute

Dd hna/ dd irm – to litigate with

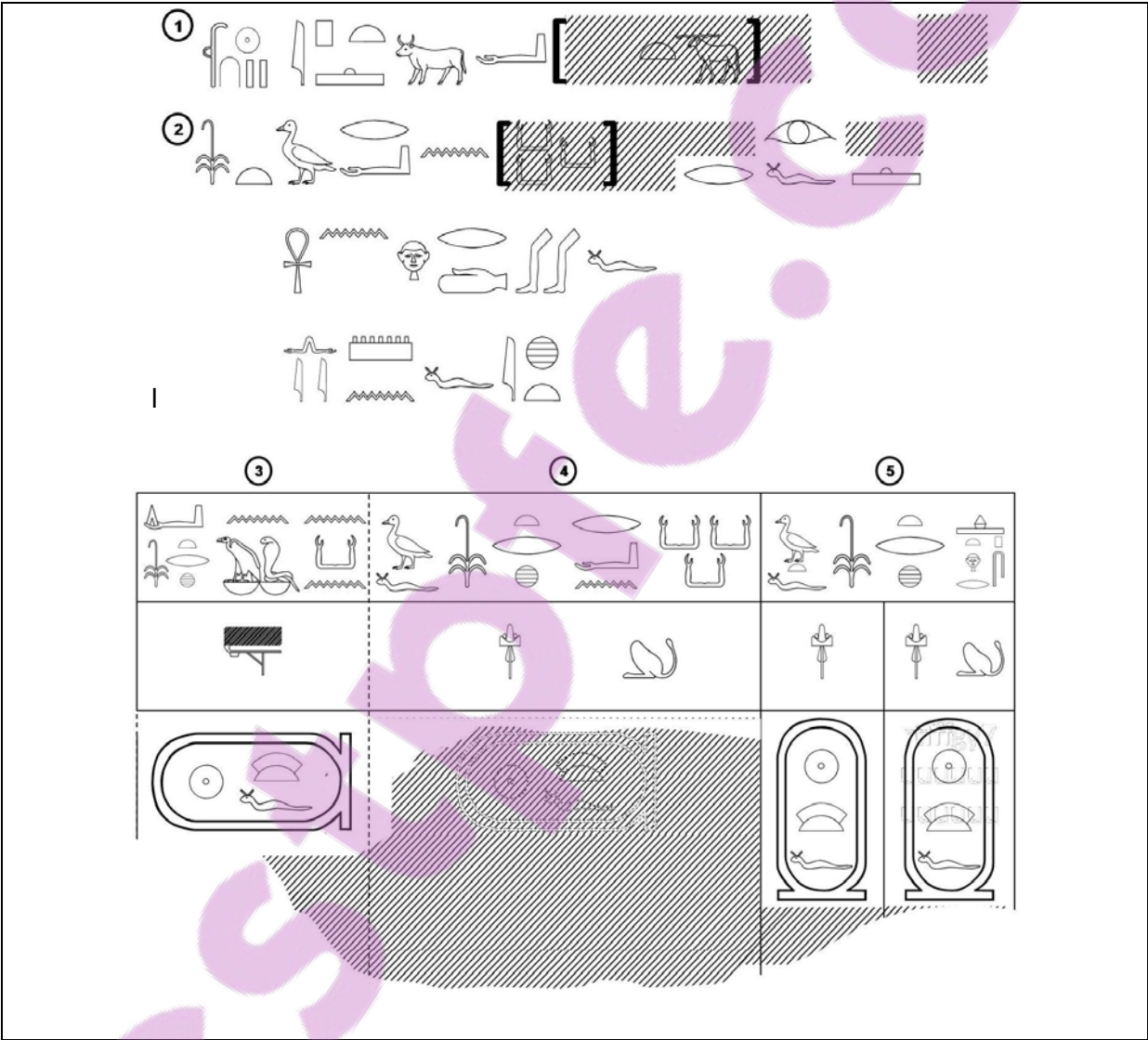
Ddt – statement

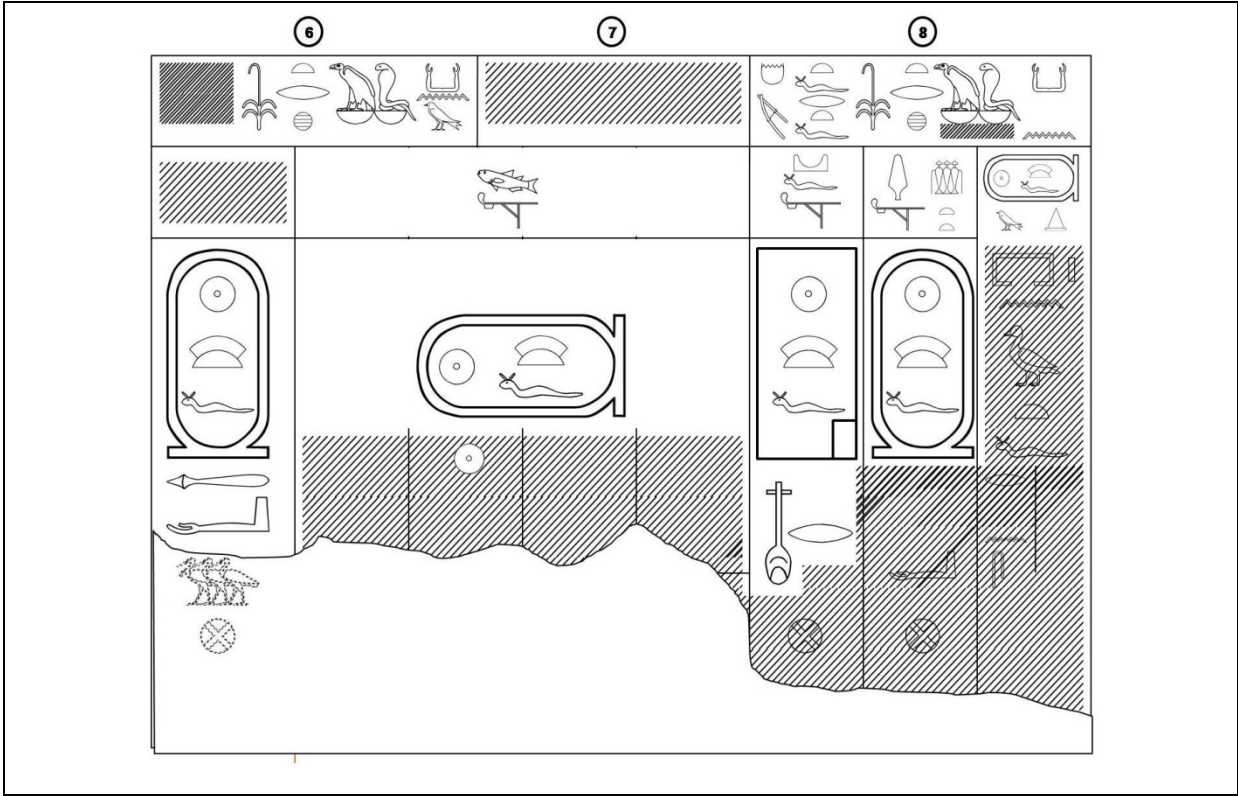
ADDENDUM C

EXAMPLES OF ORIGINAL TEXTS

C.1 Nikaure

The text below represents the hieroglyphs from Sethe (1903:16-17). The reason for including the hieroglyphic script version is because it is important for the discussion about legatees (paragraph 7.4.3.5, 7.4.3.7 and 7.4.3.8).





C.2 UC 32058 (*Papyrus Kahun I 1*; courtesy of the Petrie Museum of Egyptian Archaeology, UCL)









Fragment of a papyrus scroll (Kahun 1.1 PL.X11) containing ancient Egyptian text in hieroglyphs. The fragment is divided into two main sections by a horizontal fold. The top section contains several lines of text, with some characters written in red ink. The bottom section also contains text, with some characters written in red ink. The fragment is heavily damaged, with significant portions missing and the edges frayed.

C.3 The Naunakth documents

