

## 15 Women's rights of inheritance

According to common law, after a woman transferred to the family of her husband she no longer had any right to inherit from the family into which she had been born. The dowry she took away with her could perhaps have been seen as her share of that inheritance. The one difference was that a woman's dowry was seen as a voluntary gift which did not entail any rights. However, in the Old Babylonian period we know that when an inheritance was being shared out, a daughter could receive the same portion as her brothers. We assume that in those circumstances she must have been an unmarried daughter.<sup>1</sup> Once a couple adopted a woman as their daughter and they gave her the income from a temple (benefice) and a house, 'the share of the inheritance belonging to U., their son'. It seems that the son was no longer alive and we see how freely the couple acted.<sup>2</sup> In Old Assyrian wills shares of the wealth were divided equally between sons and daughters, men and women.<sup>3</sup> We see that often it is the single woman who first of all received attention. A merchant detailed what his wife, his eldest daughter (a priestess) and his sons would receive (his wife always kept the house). The widow could put together a similar will later for her sons and daughters.<sup>4</sup> The only known testament of a woman of that period is that of Ištar-lamassi. After her father and her two sons had died, she bequeathed the inheritance to her sole heir, their daughter in Assur, a priestess, with the expenses for funeral arrangements to be deducted.<sup>5</sup> In Emar an unmarried daughter could inherit.<sup>6</sup>

Often a daughter would have an occasional present from her father, but after her death that would have to be passed on to her male family members, her brothers or her sons. The best-known form of such a gift was the dowry which she took with her. These gifts were well-known in the Neo-Babylonian period, but at that time daughters did not inherit.<sup>7</sup> In this period testaments are rare. Normally

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1 J. Klíma, p. 171 ff., in his article 'La position successorale de la fille dans la Babylonie ancienne', *Archiv Orientální* 18/3 (1950) 150–186; G. R. Driver and J. C. Miles, *The Babylonian Laws* I (1956) 337. Now UET 5 110, where brothers inherit and give to their sister a small part of their father's house and a garden, the amount of her share being about as the same as that of one brother; K. Butz, 'Zwei Urkunden aus dem altbabylonischen Ur, Frauenerbrecht betreffend', *Oriens Antiquus* 19 (1980) 29–35.

2 UET 5 96 with Butz, 33–35 and Westbrook, OBML, 160 n. 5.

3 C. Michel in K. R. Veenhof, *Houses and households in Ancient Mesopotamia* (1996) 293.

4 C. Michel in F. Briquel-Chatonnet, *Femmes* (2009) 35, 157 f. Lamassatum: cf. K. R. Veenhof, *Studies A. Skaist* (2012) 176, 179 f. Cf. T. K. Hertel, *Old Assyrian legal practices* (2013) 339 f.

5 K. R. Veenhof, *Studies M. Stol* (2008) 102, Text A (unpublished), *Studies Skaist*, 172, 176.

6 G. Beckman in M. E. Chavalas, *Emar* 1996) 73.

7 H. Petschow, *ZZS* 76 (1959) 86 n. 149.

the father made gifts to his family during his lifetime, and particularly when he was sick towards the end of his life and 'did not believe that he would recover'. In Old Assyrian we find the expression 'at the gate of death'. These gifts, attested in all periods, are known as *donationes mortis causa*, 'donations in anticipation of death'.<sup>8</sup> Women are often named among the beneficiaries: 'the wives, daughters, grandchildren, and adopted or minor sons of property-owning men, or the children of women whose dowries or inherited property might otherwise revert to the donor's families'.

It was always a problem to know what to do when there were only daughters in the family. Could they receive the inheritance?<sup>9</sup> Here the common-law right, that only men could inherit, had to be disregarded, and this is indeed what happened. Gudea, the city ruler, stated:

From the house that had no son I allowed his daughter to act in the capacity of its son (and heir).<sup>10</sup>

A law of Ur-Nammu reads as follows:

If a man should die while he has no son and heir, then his daughter, who has no husband, shall be his successor.<sup>11</sup>

R. Westbrook pointed out that these circumstances were exceptional. Gudea was writing about the protection of the weak, and Ur-Nammu about the unmarried daughter. In the Bible we find an unusual story illustrating this theme in Numbers 27:1–11. The five daughters of Zelophehad came before Moses and said:

Our father died in the wilderness. But he was not among the company of Korah which combined together against the Lord; he died for his own sin and left no sons. Is it right that, because he had no son, our father's name should disappear from his family? Give us our holding (<sup>h</sup>*huzzā*) on the same footing as our father's brothers (Numbers 27:3–4).

<sup>8</sup> I follow M. W. Stolper in *Studies K. R. Veenhof* (2001) 467 ff.

<sup>9</sup> R. Westbrook, in his book *Property and the family in Biblical law* (1991), discusses inheritance by women at the end of his chapter 'The dowry', see 157–164. – Many articles about this were written by Zafira Ben-Barak and now we have her book *Inheritance by daughters in Israel and the Ancient Near East. A social, legal and ideological revolution* (2006). Of particular interest in this connection is the second part, 'Inheritance by daughters in the Ancient Near East', p. 111–197, but she did not consult modern studies in French or German.

<sup>10</sup> Gudea Statue B vii 44–46 with RIME 3/1 (1997) 36.

<sup>11</sup> Ur-Nammu § B2, CUSAS 17 (2011) 249 with 268; C. Wilcke, *Festschrift J. Krecher* (2014) 552f. The next paragraph, fragmentary, speaks of the rights of her younger sister. – M. T. Roth, *Law collections* (1995) 26, assumed that these were laws of Lipit-Īstar.

Moses consulted God about the problem and received the answer that the following rule should now be applied:

'When a man dies leaving no son, his inherited property (*naḥ<sup>o</sup>lātō*) is to pass to his daughter' (Numbers 27:8).

It was of course considered important for the property of Zelophehad to remain within the tribe. Since he had fathered five daughters, it was felt that there was only a minimal chance that a boy would be born.

We now present a few Akkadian texts showing what actually happened in real life. A father in Syria made a will around 1200 BC and foresaw that sometimes only daughters would survive. He first of all indicated that his wife would be the 'father and mother of my house', and then continues:

And if my son A. should die and has no offspring, then I appoint my daughters as 'wife and husband'. They shall honour my gods and my ancestors. After my death they shall inherit and maintain their mother. And if my son remains alive, he shall marry off his sisters.<sup>12</sup>

Evidently women could finally inherit under the guise of being men.

From the Old Babylonian period we know of an unexpected division into two equal shares of a house between two women.<sup>13</sup> In another text from this period a woman died who had inherited a field and a house as her share of the property. Her daughter sold all of this to a man. It is unclear whether the property was passed down in this way through the female line.<sup>14</sup>

An unusual incident is the case of the princess from Aleppo who demanded from her brother a share in the house because it had been the property of her mother. She therefore had the right of inheritance. The king decided that the brother was allowed to choose first. He chose the upper floor with the roof. The house below was for her. This was a judgement of a true Solomon.<sup>15</sup>

There are a few cases where the daughter was named by the father as the heir without restrictive conditions.<sup>16</sup> In another instance it is stipulated that if her father were to have sons after her, they would inherit everything and the daughter would be given a field and a house.<sup>17</sup>

<sup>12</sup> D. Arnaud, *Semitica* 46 (1996) 12, ME 155 (from Tell Mumbaqaat).

<sup>13</sup> D. Charpin, *Archives familiales* (1980) 73 (TS 18).

<sup>14</sup> S. J. Lieberman, *RA* 76 (1982) 102 n. 21, MAH 15888.

<sup>15</sup> AT 7 with TUAT NF 1 (2004) 130 f.

<sup>16</sup> J. Paradise, 'A daughter and her father's property at Nuzi', *JCS* 32 (1980) 189–207, esp. 190 f.

<sup>17</sup> HSS 19 20 with Ben-Barak, *Inheritance by daughters in Israel and the Ancient Near East* (2006) 141–144.

Below we give the somewhat shortened version of a will from Nuzi. Here a man takes into account the possibility that he will die before his wife, and that his only daughter and no menfolk will administer his estate.<sup>18</sup>

The will of U. He has made a will for Š., his daughter.

These are the words of U.: I have adopted my daughter Š. as a son. Everything, my fields, my houses, my investments, my acquisitions, my slaves and one ..., in the city of A., in the city of U., in the district of T., and in the city of M., all of this, which is written down, in cities and villages, great and small (...), I have given to Š., my daughter, whom I have adopted as a son. These are the words of U.: My wife Ša. I have appointed as a father to my daughter Š. As long as Ša. shall live, Š. shall honour her and care for her. Whenever Ša. dies, Š. shall mourn her and bury her. If Š. is not obedient to Ša., then they shall shackle her, shave the mark of the slave on her head, put her in the workhouse and muzzle her. (...) If Ša., my wife, should go to live with a man, then her brothers shall kill her. My wife shall not give anything away to a strange man.

In the Old Babylonian period Akkadian was used as the written language in Elam, an important country in Western Iran and the direct neighbour of Babylonia to the east. Therefore we include in our survey texts from there. The right of inheritance of women in this country appears to have been unusual.<sup>19</sup> We see that a father gave a house and property to his daughter whilst deliberately excluding his sons. Possibly this property was passed down through the female line. In return he required her to make offerings for the dead, including himself.

As long as I live, she shall feed me. When I die she shall bring the offerings for the dead.<sup>20</sup>

In another text an Elamite woman named her husband as her heir.

You are my husband, you are my son, you are my heir.

He could finally inherit the gift which she herself had received from her father.<sup>21</sup> There is a powerful example where a father states that a field for his daughter must be passed down from daughter to daughter.<sup>22</sup> We know that in the royal house of Elam the succession passed to the descendants of the sister of the ruling sovereign.<sup>23</sup>

<sup>18</sup> E. R. Lacheman, *Sumer* 32 (1976) 116–119 no. 2, with Paradise, 191 n. 12, G. Dosch, *SCCNH* 2 (1987) 77 ff.

<sup>19</sup> Ben-Barak, 181–186. However, P. Koschaker, *ZA* 43 (1936) 231 f., senses nothing unusual.

<sup>20</sup> MDP 23 285.

<sup>21</sup> MDP 28 399.

<sup>22</sup> MDP 23 200:31.

<sup>23</sup> W. H. van Soldt, 'Matrilinearity. A. In Elam', *RIA* VII/7–8 (1990) 586–588. Cf. C. Wilcke, *CUSAS* 17 (2011) 36 f. In the royal family: F. Vallat in: J. M. Sasson, *CANES* 2 (1995) 1029 f.; H. Koch, *TUAT NF* 6 (2011) 282 f.