The law of succession in Roman Egypt: Siblings and non-siblings disputes over inheritance

Marianna Thoma

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The law of succession in Roman Egypt: Siblings and non-siblings disputes over inheritance

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Numerous petitions preserved on papyri from Roman Egypt prove that various conflicts arose between family members, specifically regarding the division of parental property, while papyrus documents also give evidence of violations of inherited property by non-siblings. The purpose of the proposed paper is to discuss the various kinds of conflicts over an inheritance and the different legal grounds used by the defendants according to their legal status. The aim of this investigation is to show how a legal heir's rights could be protected in such a multicultural society, in which different legal traditions coexisted.

The inheritance system applied in Roman Egypt was complex, as there were several legal systems and people of a different ethnicity were subjected to different legislation. Before the *Constitutio Antoniniana* of 212 CE, which granted Roman citizenship to all free inhabitants of the empire, Roman law applied only to Roman citizens of the province, while the rest of the population were subjected to either Greek or to Egyptian legal norms inherited from the Ptolemaic era. Papyrus documents testify that people in Roman Egypt bequeathed property to their children, regardless of gender or marital status. In classical Athenian law, sons succeeded to their father's estate on an equal footing.[1] In the case there were no sons, daughters would be entitled to the parental inheritance only as *epikleroi*, while they also received a dowry.[2] In Hellenistic and Roman Egypt, Greek daughters were on equal terms with sons as regards entitlement to inherited property, but only if their dowry had not paid out beforehand.[3] According to Roman law, if the father did not leave a will, or if it was for some reason invalid, all his sons and daughters *in potestate* inherited an equal share.[4] If there were no children, the brothers, sisters or nephews of the deceased divided the estate equally between them.[5] After the *senatus consultum Orfitianum* of 178 CE, children of Roman status could also inherit from their mothers.[6] In Egyptian law, the eldest son received a double portion of the parental property in terms of intestate succession, while the daughter would receive an equal share with the younger sons.[7] On the other hand, inhabitants of Roman Egypt had the right to divide their property by making a will. O.Montevecchi, in her study of Egyptian wills, found two kinds of division among children: one allowing equal shares to all, and another tending to favor the eldest son.[8] The evidence of Roman wills suggests that the

[1] See McDowell (1978) 92.
[2] Harrison (1968) 132-133.
[3] Harmon (1934) 144-146; Kreller (1919) 146. Cf. P.Enteux. 9. l. 8-9.
[4] See Gaius Inst. III 2, II 157. See also Johnston (1999) 51-52. The children were known as the *sui heredes*, because they were household heirs and even during their lifetime were regarded in a way as owners of the family property. See Johnston (2015) 200-201.
[5] Gaius Inst. III 9-10. In the absence of them, members of the *gens* or extended family were entitled. Gaius Inst. III 17. See also Jakab (2016) 504-506.
[6] For *SC Orfitianum* see Inst. Iust. III 4, Ulp. 12 ad Sab., Dig. XXXVIII 17.1, Cod. Iust. VI 57.
[7] See P.Vind.Bosw. 6. l. 4: τῷ μὲν Ἀχιλλιανῷ μέρη β ἀπομεριστά, τοῖς δ' ἄλλοις β τὰ λοιπ(ὰ) μέρη γ.
[8] See Montevecchi (1935) 67-121. This pattern is absent from all Roman law wills of Egypt.

Roman testator was most likely to appoint his children as his heirs, either with equal or unequal shares.[9]

Papyrological evidence suggests that in Roman Egypt there were various legal procedures for the acquisition and the protection of the inheritance by a legal heir according to the legal system which he came under. The *ius civile* provided the *hereditatis petitio*, so that the heir could claim possession of the estate.[10] *Agnitio bonorum possessionis* was used for the acquisition of the *bonorum possessio*, which was applied by both the Romans and the peregrines.[11] P.Oxy. IX 1201 of the third century is such an *agnitio bonorum possessionis* (διακατοχὴν κληρονομίας).[12] Towards the end of the republic certain relatives of the testator also had the right to share in his estate and challenge the will by raising court proceedings in the form of the complaint of undutiful will (*querella inofficiosi testamenti*).[13] In Egyptian law, a party who claimed an estate as inheritance from his parents had first to prove his kinship before taking possession.[14] In Alexandrian law, a claimant had first to be established by the authorities as heir and then to perform the ἐμβάτευσις.[15] In any conflict over property, the defendant was required to produce the legal title of his possession: purchase, succession, *usucapio*.[16]

1. Conflicts between family members:

a. Disputes between brothers and sisters over a will and intestacy

Property mainly in rural families was mostly held jointly between brothers and sisters, while most siblings in the cities divided their parental estate after their parents' death without any familial tension mentioned.[17] In the case that there was no legal will, an heir could claim his right to the parental property in terms of intestate succession. A dispute over maternal inheritance between brothers and sisters can be found in a petition from the second century CE.[18] The petitioner Stotoetis with his minor sisters have suffered their older brothers' *iniuria*: Satyros and Arpalos deprived them of their parents' inheritance. The two brothers, without any respect to their brothers' mourning, expelled them from their parents' house, also grabbing all assets belonging to the family. Stotoetis needs the stategus' support for the restoration of the property belonging both to him and his sister, as all of them had the right to

[9] For patterns discernible in Roman wills see Champlin (1991) 111-113.
[10] *Hereditatis petitio* was the claim of an heir founded on a title on civil law. See Dig. V 3, Cod. Iust. III 20, 31. See also Berger (1953) 486 and Mueller-Ehlen (1998).
[11] For *bonorum possessio* see Gaius Inst. III 32 and Schulz (1946) 235.
[12] P.Oxy. IX 1201. ll. 17-19. Aurelius Eudaimon, whose father died intestate, requested the prefect of Egypt to grant him his legal inheritance, on the basis of an edict granting *bonorum possessio* to the legal heirs. Cf. SB VI 9298, P.Amph. II 72, BGU I 140. For remedies available to and against the *bonorum possessor* see Buckland (1957) 238-239.
[13] See Dig. V 2, Cod. Iust. III 28. See also Berger (1953) 665-666. The *querella inofficiosi testamenti* was excluded, when the heir received through the testator's disposition one fourth of what he would have received as his share in intestacy.
[14] See P.Tor.Choach. 12.7 l. 4-7 (= UPZ II 162). In Egyptian law children could acquire by special agreements a kind of lien (κατοχή) on their parents' property during the parents' life since the first century CE. See Taubenschlag (1955) 211.
[15] Taubenschlag (1955) 213.
[16] Cf. SB VI 9121. After the death of Apeis, Serapous did not let Heraclous, the writer of this letter, to stay at the house and asked her to produce some memoranda. The matter may have been connected with an inheritance and the memoranda may have been deeds concerning transference of property. See also Eitrem / Amundsen (1951) 179-181.
[17] For example, in P.Princ. II 79. l. 4 from the fourth century CE three brothers divided their paternal inheritance in order to avoid conflict. Cf. P.Tebt. II 319. See Huebner (2014) 103.
[18] SB VI 8979. Cf. BGU I 226.

equal shares in their parents' inheritance. Another version of the same dispute can be probably found in P.Gen. 3 (= M.Chr. 122), as D. Samuel has pointed out.[19] Pabous and Harpalos, sons of Melas, complained that Stotoetis and Tanephronis, probably their siblings, have gone, in their absence, to the place, where the paternal inheritance was stored under seal and removed the seals. The petitioners caught them in the act resulting in Stotoetis becoming aggressive and assaulting them.

Problems could also arise if a brother or sister believed that he or she deserved a larger part of the paternal property and tried to challenge the paternal will. P.Oxy. XLIII 3117 preserves a record of proceedings in court from the third century CE.[20] A certain Serenus died bequeathing the greater portion of his estate to his son Leonides and a lesser share to his daughter Herais. Herais challenged the will and appealed asking for a share equal to that of Leonides in terms of intestate succession. Her basic argument was that her father's will was not opened according to law.[21] As the document is dated after the *Constitutio Antoniniana*, Herais could invoke the Roman law of intestate succession in equal shares, in her claim. The woman's claims were at first accepted, but following her second application to the prefect, Leonides appealed against the judgment of the deputy prefect. Serenus' will remained in force for some years. The dispute over this testament continued for quite some time and the present claimants vindicated half of the estate as Diogenis' heirs, who had inherited from Herais. Conflict over inheritance may be the subject of a damaged papyrus from the second century CE. It includes the summing up of a sessions report of one of the prefects of Egypt.[22] In the first case (P.Oxy. XLII 3015. 1-5), the claimer presented an appeal asking for his share of an inheritance on the basis of a valid will. The other party may have argued that the will was inapplicable, because its terms had been changed. The court's judgment defended the validity of the will, as the testator «according to the Egyptian laws had the right to change his will». A more complicated case, involving again the application of Egyptian law, is described in SPP XX 4 (= M.Chr. 84). Aphrodisius had entered an ἄγραφος γάμος with Sarapous. Horigenes, one of their sons, died bequeathing his estate to one of his brothers and to his cousin Ammonius. Ammonius would then claim that the bequest was valid, because Egyptians could leave their property to whomever they liked, while Aphrodisius argued that the son of an unwritten marriage had no right to make a will in his father's lifetime. The prefect Blaesius Marianus rejected Ammonius' claim, probably because Horigenes did not have this right, being that he was a child coming from such a union.[23] The judge had to encounter two contradictions within the local law and chose the solution that coincided better with the Roman law.[24] All these cases prove that during the Roman era the native Egyptian law was still in use and Roman judges took it into serious consideration. However, after the edict of Caracalla, many Egyptians could also invoke provisions of Roman law in their claims.

On the other hand, P.Lond. II 177 of the first century records a petition by Egyptian Versenouphis to Gaius Vitrasius Pollio for assistance to recover property left to him and his brothers by their father, but which had been seized by their elder married sister. Their father left a will bequeathing some household assets to his wife during her lifetime (*usucapio*). After

[19] Samuel (1980) 255-259.
[20] Abou-Bakr (1992) 22.
[21] The procedure followed by Romans and peregrines, when opening testaments, in the Roman era was determined by the provision of the *lex Iulia vicesimaria* supplemented probably by the Egyptian *edictum provinciale*. See Taubenschlag (1955) 203-204. In some cases, the opening of a testament could be regulated by custom. Cf. P.Lond. II 171b; P.Ryl. II 109. See also Taubenschlag (1952) 42.
[22] P.Oxy. XLII 3015. See also Abou-Bakr (1992) 23-25.
[23] In such a case, the Egyptian law called up the parents to succession.
[24] See Modrzejewski (2012) 88-89.

her death, the children would divide this property between them. However, the elder daughter, with her husband's assistance, took control of these assets, even though she had already received her dowry and her claims had no legal grounds in Egyptian practice.[25] In this case, the testament would be again the subject of investigation. Consequently, conflict over inheritance, very often documented in papyri, is more often than not, between brothers and sisters over parental inheritance.

b. Inheritance disputes between an heir and his/her guardian

However, the most common conflicts between siblings were between an heir and his guardian, very often an uncle, about the disposition of the inheritance. In Roman Egypt, minor children were appointed a guardian, who was responsible for the administration of the orphan's property. However, they sometimes acted against the minor's interests.[26] Uncles would often act as trustees of an estate that, under other circumstances, could have been inherited by them. They would be the nearest agnates in the intestate succession, if their siblings died childless. P.Mich. IX 525 from the second century Karanis testifies that after a man had died leaving all his property to his two minor children, his brother laid claim to the deceased man's estate by employing violence. The widowed mother sent a petition to the prefect accusing her husband's brother of acting like a thief by breaking into their house during the night and stealing all movable household items.[27] The uncle did not lay a claim to all the inherited property, but he intended to make use of a part of it, because he may have been unhappy with his nephew's succession to his brother. Even if there was a legal testament left, an uncle-guardian could ignore or challenge it for his personal gain. P.Mich. XVIII 789 of the first century records another conflict between two sisters and their maternal uncle over the inheritance of their maternal grandfather. Zoilos had bequeathed to Calpurnia and Apia dowries left under the control of his son and their uncle as executor, until the girls' marriage. This document preserves the final settlement between the uncle and his nieces, who several years after getting married managed, via the legal procedure, to obtain their legal dowries in terms of Zoilos' will.

P.Oxy. XXXIV 2713 from the third century CE is the petition to the prefect of an orphaned daughter for recovery of her legal inheritance. Aurelia Didyme's mother inherited, together with her brothers, equal shares from their joint paternal property.[28] When the woman died, Didyme's uncles retained and took the profits from the third share of her maternal grandfather's estate, which ought to have come down to her in terms of succession to her mother. Aurelia Didyme's argument is that it is difficult to be wronged by strangers, but to be wronged by kin is even worse. Parallel to this, she also invokes the weakness of her sex.[29] She submitted her petition in 297 CE, following the *Constitutio Antoniniana*. We should take into consideration that by the *senatus consultum Orfitianum* of 178 CE children, whether legitimate or not, and irrespective of *ius liberorum*, were given *bonorum possessio* in the class *unde liberi* to the property of their mother, though the privilege was not extended to grandchildren.[30] An almost similar case to Aurelia Didyme's is the one in P.Oxy. XVII 2133

[25] See Arjava (1996) 53. In Roman theory, whatever the size of a daughter's dowry, if she had not received one-quarter of her share in the remaining estate, she was able to institute a suit of *querela inofficiosi testamenti*, but could not acquire more than her siblings.

[26] Saller (1994) 183-185.

[27] Despite the legal burdens, there were a number of mothers all over the Roman empire who would act as virtual guardians for their children. During the fourth century CE, Roman law legalized maternal guardianship. See Arjava (1996) 93.

[28] The three of them lived together, maybe after their sister's divorce or her husband's death.

[29] For a discussion of the literary and rhetoric elements of this document see Papathomas (2006) 244-255.

[30] SB I 1010 is a proof of the application of the *senatus consultum Orfitianum* in second century Egypt: a minor successor, with his father as his tutor, claimed the succession to his deceased mother's estate. It is striking that

from the fourth century CE, where a woman had a dispute with her paternal uncle about the measure of her share of an inheritance from her father who has died intestate. She also showed interest in protecting her younger brothers' property rights.[31] She appealed to the prefect because the decisions of lower bodies have not had sufficient weight to be enforceable.[32] Women may have sometimes had particular difficulties in asserting their rights to commonly inherited property by intestate succession, as opposed to male heirs.[33]

In addition, in BGU I 19 (= M.Chr. 85) from the second century CE, Chenalexas, an Egyptian woman, began legal proceedings against her uncle and her cousin who happened to be in possession of all the inheritance of her paternal grandmother. She requested her share in the succession of her deceased father. The affair came before the prefectural court and was judged by the officer Herakleides.[34] Before him, Chenalexas claimed that her father had acquired his part of the maternal succession, while her uncle and cousin declared that he could not have done so, because he had died before his mother. She subsequently demanded to be accorded the advantages of one of Hadrian's constitutions, one of which granted the grandchildren of Egyptians the right of succession to their maternal line.[35] She produced a precedent that is the decision of an epistrategos who had already applied that imperial measure.[36] Menander, the judge, consulted the prefect who decided that Chenalexas should take over the part of the paternal estate her father would have inherited had he survived.[37] This document has raised different opinions among the scholars. Katzoff has concluded that while Greek and Roman law had the institution of representation with no sex discrimination, only Hadrian introduced this notion to Egyptian law, allowing grandchildren to share in the inheritance of their grandparents.[38] In SB XXII 15831 a young man was left two houses with courtyards by his mother. But his maternal uncle laid claim to the houses and implemented unlawful means to put him under pressure.[39] Men, either minors or not, could easily fall victims of their scheming relatives.

Guardians of minors were not the only relatives who could raise a dispute over inheritance. For example, in the fourth century CE, Aurelius Aithiopas, a minor and orphan, submitted a petition to the praeses complaining about Annous, the sister of his paternal grandfather who

succession of mother to children (*senatus consultum Tertullianum*) was dealt with earlier than that of children to mother. See Crook (1967) 67-68.

[31] Kreller stated that daughters were sometimes treated unequally in Egyptian succession due to the double portion bequeathed to the eldest son, although equal division between brother and sister could also occur (Kreller [1919] 147-154). P.Oxy. XVII 2133 proves that still in fourth century CE the normal status of an Egyptian daughter in the intestate succession was that of a younger son. See Harmon (1934) 144.

[32] Hobson (1993) 213.

[33] See also P.Cair.Isid. 63 from the fourth century CE, where the petitioner Taesis blamed her paternal uncle for misappropriation of her paternal inheritance, and his family for assault against her.

[34] He was an officer judging by delegation of the prefect.

[35] BGU I 19. ll. 5-7.

[36] In Roman Egypt, the relative lack of jurists led to a greater dependence on judicial decisions as precedents. For imperial constitutions see also Taubenschlag (1959) 3-28.

[37] Cf. Ulp. 5 off. proc., Dig. V 1.79.1: «when judges doubt about the law, they usually receive an answer from the provincial governor». Menander asked the prefect whether Hadrian granted this right and if the grant had retroactive force, because the grandmother had died before. For the meaning of καθολικόν in line 5 see Katzoff (1986) 122-123.

[38] In Egyptian law, grandchildren represented their deceased parents. See Taubenschlag (1955) 185. Hadrian tried to extend Roman law in this area in order to achieve greater uniformity of legal institutions in the empire. See Katzoff (1970) 239-242.

[39] See also Sijpesteijn (1995) 211.

committed unjust acts against him.[40] Annous tried to abuse Aithiopas' father's animals and decided to proceed against Aithiopas, although she had never laid any claim to their property before. The boy used as a kind of *captatio benevolentiae* the fact that he was an orphan suffering the injustice of a person who was supposed to protect him.

c. Parents-Children disputes over inheritance

Although parents were supposed to protect their children's rights, they could sometimes contravene children's legal claims to the other parent's inheritance. A complicated family dispute over maternal inheritance is the subject of a papyrus document from the second century.[41] Philippos and Charition, Greeks from Fayum, submitted an hypomnema to the epistrategus requesting their maternal inheritance. Their mother has died leaving them land and slaves, while their father, who remarried, had neglected his paternal duties and registered the property in his second wife's name. Using their weakness due to minority as an argument, the petitioners asked to recover maternal property which they were legally entitled to. Aphrodisios probably had the right to use the property during his lifetime, because the petitioners reacted only after the property had been registered in the name of their stepmother. Mothers, mainly of Greco-Egyptian ethnicity, are found in papyri of the Roman period to have been appointed as their children's guardians.[42] Although mothers, and specifically widows, tended to protect their children's inheritance rights, papyri testify some cases, in which the mother-guardian had embezzled her own children's patrimony before they came of age, alone or with a second husband's assistance.[43] In P.Oxy. VI 898 from the second century, Didymus complains of having been defrauded by his mother –his guardian. Matrina, after numerous acts of bad faith, had obtained possession of a deed belonging to Didymus and deprived him of his rightful property. She had not even paid his maintenance allowance for three months in order to prevent him from undergoing proceedings against her. However, Diogenes had already taken steps to have another guardian appointed for him, also asking the strategus' help.

2. Trespassing on inherited property by non relatives

Conflicts over inherited property could also arise from persons outside the family, specifically neighbors.[44] In P.Oxy. VIII 1121, Aurelia Techosis from Oxyrhynchus complains that whereas she had nursed her ill mother until her demise, two of her mother's neighbors in a commonly owned house carried off all the movables which rightfully belonged to Techosis, as she was her mother's legal heir. She intended to proceed against the offenders and characterized their act as plunder and robbery. The petitioner used the *SC Orfitianum* as legal grounds for her claims, and on social grounds, the fact that she had fulfilled her filial duties towards her mother during her mother's lifetime.[45] Children who had not shown obedience and respect towards their parents could be disinherited by them. This document proves that in Roman Egypt the intention to acquire the *hereditas* could be also made manifest by the care and the burying of the testator. This practice is also attested in a letter of the third century

[40] P.Sakaon 40. Cf. P.Mil.Vogl. VI 264, where Patron complained about his grandfather's daughter Thabarous and P.Oxy. XII 1468, where Aurelius Theoninus accused his great-uncle of false claim to the ownership of slaves belonging to him.
[41] P.Meyer 8.
[42] See for example SB V 7568; BGU VIII 1813.
[43] Huebner (2014) 108.
[44] P.Flor. III 319 records a conflict over property between Sarapion and probably her neighbors about usurpation of her land.
[45] For *SC. Orfitianum* see note 6.

CE.[46] Helen reproached her brother for neglecting their brother's funeral. As a result, a foreign woman, probably a concubine or a friend, inherited his property.

In P.Col. VII 173 from the fourth century CE an orphan girl submitted a petition to the prefect, because two men had sold land she had inherited from her mother.[47] Aurelia Tapaeis mentioned that Antiourios, her half-brother, and Atisios acted illegally (πρᾶγμα παρανομώτατον). She invoked the law protecting her rights as heir, also mentioning that she was an orphan and minor. In a similar way, there is the case of Gemellos in the second century Karanis, who complained to the prefect about the encroachment of his property.[48] He and his sister had inherited property from their intestate father and then their uncle, eight years before. Now, two men, Julius and Sotas, have made use of the inherited land and prevented them from enjoying the fruits of their property.[49] Moreover, in P.Oxy. XLVI 3302 from the early fourth century CE, a lady, with the *ius trium liberorum*, petitions the prefect for protection against tax-collectors. Her property, originating from her paternal inheritance, was illegally acquired by «violent and influential persons». These persons may well have been probably her own guardians. She had recourse to appeal for its restitution to the incumbents of the prefecture. Despite her not having benefitted from or earned any income from her property, tax-collectors tried to subject her to liability for taxes on that property. As a result, she was obliged to request the prefect's intervention once more. In P.Oxy. XXXVIII 2852 Sambous, with her guardian Saras, made a legal summon and formal initiation of civil procedure, because Apion and Dionysius had assumed forcible possession of property belonging to her cousin and a part of her inheritance bequeathed through the will of her grandfather. She also confirmed that the testament was legal and valid, as it has been deposited in the public archives. A common remedy for misappropriation was an action on ownership brought by the plaintiff who would claim that the defendant had wronged him by taking possession of his land.[50]

3. Conclusion

Papyrus documents from Roman Egypt record numerous disputes over inheritance. In this paper I have discussed the most common types among them. Family conflicts arose mostly from an intestate inheritance and specifically involved uncles and cousins, who came in the second line of the intestate succession after the deceased person's children, and who often intended to misappropriate their siblings' inheritance. Even if there was a valid will, family members would invariably raise doubts against it or even seize their relatives' property, particularly if they could not claim a *querela inofficiosi testamenti*. Both in the case of intestate succession and testamentary disposition, the victim could submit a petition to the authorities and obtain justice through legal proceedings, but usually only after a long period of time. When Roman authorities judged these cases, they would often take into consideration Egyptian customs, as in most of these disputes recorded on papyri, it was families of Egyptian or Greco-Egyptian status who were involved. However, in a situation where there existed contradiction between the different legal systems, there was a tendency to find a solution coinciding with Roman law, especially from the third century and thereafter. The papyrus documents prove that men and women suffered quite in the same way from their

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[46] P.Oxy. VII 1067.

[47] The contract of the sale is preserved in P.Col. VII 181.

[48] P.Mich. VI 422. According to Taubenschlag this document confirms the theory that the *agnitio bonorum possessionis* was also applied by peregrines (Taubenschlag [1955] 216).

[49] Julius was a tenant on land belonging to Gemellus. Cf. PSI X 1102, where two minors claimed their inheritance rights against the heirs of three men, who had seized their father's property.

[50] See Taubenschlag (1955) 249.

relatives' greed and desire to seize their legal property. The most common inheritance-related disputes arose against minors who were legal heirs of the patrimony. Due to the minors' legal disabilities and young age, widowed mothers were supposed to protect their rights. Papyri also attest that women fell victims, more often than not, of property violation from people outside the family, mainly neighbors, and these cases involved acts of violence and thefts. In conclusion, either inside or outside the family, there were people who were not satisfied with the terms of a will or the intestate succession and decided to act violently in order to seize some amount of property. Despite any difficulties when having recourse to authorities, the multicultural society of Roman Egypt appeared to show a responsible and sincere attitude towards an heir's rights to protect their property, also giving them the opportunity and the legal mechanisms to obtain justice, according to the legal system which they came under. Women, in spite of any legal disabilities, did vindicate their rights of inheritance, alone or with the assistance of a male, even when pitted against their close relatives.

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