

# *The Rights of a Concubine's Descendants in the Ancient Near East*

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1. The proper transfer of rights and ownership from parents to children is a constant concern in both modern and ancient legislation. Consequently, regulations on the distribution of wealth and procedures of inheritance are numerous throughout history<sup>3</sup>.

A significant question in this respect concerns the eligibility of inheritance for children born outside lawful marriage<sup>4</sup>. For the purposes of this paper, this situation – at least in the Ancient Near East – consists of a man having descendants with a concubine whom he had never taken as a lawful wife.

In ancient Greek law the heirs of a man were his rightful children (*gnēsioi*), that is, those born of a lawful marriage<sup>5</sup>, as well as the chil-

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<sup>3</sup> See i.e. an abstract in J.GILISSEN, *Introduction historique au droit*, Bruxelles 1979, pp.589-616.

<sup>4</sup> It is here studied the case of male descendants. On the female inheritance – which concerns other problems – see especially Z.BEN-BARAK, *Inheritance by Daughters in Israel and the Ancient Near East: A Social, Legal and Ideological Revolution*, Jaffa 2006.

<sup>5</sup> See already T.THALHEIM, *Erbrecht. I. Griechenland*, Paulys Realencyclopädie 6/1 (1907), p.391 or recently A.MAFFI, *Family and Property Law*, in M.Gagarin and

dren he may have adopted in his lifetime<sup>6</sup>. Only in the case of formal adoption could the children of a concubine (*pallake*) have access to their father's inheritance because, at least in Athens, legislation clearly differentiated wives from concubines<sup>7</sup>. There were two types of concubines: those with and those without Athenian citizenship. In the latter case, the child could not become a rightful heir. A particular case was that of Perikles and Aspasia, whose son was legitimized by an exceptional decree<sup>8</sup>. In any event, the child who was not legally acknowledged by his father was considered a bastard (*nothos*) and did not have access to the inheritance.

In Roman Law the ability to become an heir was a more complex matter<sup>9</sup>. The *paterfamilias* had usually to make his will and appoint his heirs. However in the case of a *successio ab intestato* in civil law, the *sui heredes* were the sons and daughters, the descendants who were not under any other *potestas*, the *uxor in manu* (the deceased's lawful wife), the *nurus in manu* (daughter-in-law) and the posthumous children. This norm was modified by an *edictum praetoris* (Ulp.44; D.38.6.1.1) and by Justinian (Nov.118 and Nov.127). In principle, the children of a concubine could not inherit because they were *spurii* or *liberi naturales*<sup>10</sup>. Historically, these illegitimate children could become *legitimi* – and therefore *sui heredes* – via three different methods:<sup>11</sup> either the testator married his concubine (*legitimatio per subse-*

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D.Cohen, eds., *The Cambridge Companion to Ancient Greek Law*, Cambridge 2005, p.255.

<sup>6</sup> ISAEUS, *Philoktemon* 25. See i.e. E.CANTARELLA, *Greek Law and the Family*, in B.Rawson, ed., *A Companion to Families in the Greek and Roman Worlds*, Malden 2011, p.338; H.LINDSAY, *Adoption and Heirship in Greece and Rome*, in B.Rawson, ed., *op. cit.*, pp.352f; H.BARTA, “*Graeca non leguntur*”? *Zu den Ursprüngen des europäischen Rechts im antiken Griechenland. Band II/1 – Archaische Grundlagen*, Wiesbaden 2011, p.549.

<sup>7</sup> Cf. BARTA, “*Graeca non leguntur*”? , p.570.

<sup>8</sup> PLUTARCH, *Perikles* 24, 37; see i.e. D.M.MACDOWELL, *The Law in Classical Athens*, Ithaca 1978, p.90.

<sup>9</sup> See esp. L.A.OLSEN, *La femme et l'enfant dans les unions illégitimes à Rome. L'évolution du droit jusqu'au début de l'Empire*, Bern 1999, pp.101-05.

<sup>10</sup> See however that, since soldiers did not make wills, “an *epistula Hadriani* (119, BGU I 140) is interpreted to mean that the children of soldiers even had a non-testamentary right to inheritance” (G.SCHIEMANN, *Concubinatus*, Brill's New Pauly 3 [2003], p.683).

<sup>11</sup> See especially G.LUCHETTI, *La legittimazione dei figli naturali nelle fonti tardo imperiali e giustinianee*, Milano 1990.

*quens matrimonium*, C.5.27.5ff); the father enrolled his son as a Decurion (*legitimatio per oblationem curiae*, C.5.27.3f); or the prince issued an edict (*legitimatio per rescriptum principis*, Nov.74<sup>12</sup>). Finally, a man could allocate a portion of his wealth to his concubine and illegitimate child(ren) by means of a donation or testament, as long as that man had neither *uxor in manu* nor legitimate children. He could allocate to them a maximum portion of one sixth of his wealth and the concubine's children were entitled to be maintained by their father (Nov.18.5 and Nov.89.12f<sup>13</sup>).

This issue is not necessarily confined to ancient law. For example, Wacke points out regarding German law: "Until 1969 illegitimate children were not considered as related to their father (§ 1589 II BGB aF). Instead of the right to inheritance, they only had an inheritable right to sustenance. Since then they only receive a double statutory portion next to legitimate heirs or a wife as a substitute to an inheritance claim. However, in inheritance law they are equal since 1975 in Italy, since 1978 in Spain, and since 1998 also in Germany<sup>14</sup>".

In the Ancient Near East laws concerning this phenomenon have been known for a long time (§ 2<sup>15</sup>). Furthermore, several legal documents from various periods refer to this matter (§§ 3-7). These texts have been published, some of them recently, though they do not appear to have received detailed attention. This paper intends to describe these sources and their role in shaping inheritance law(s) in the Ancient Near East.

2. The oldest legislation referring to this phenomenon is that of Lipit-Ištar, fifth ruler of the First Dynasty of Isin. The Laws of Lipit-Ištar (LL), written in Sumerian ca. 1930 BC in the South of Mesopotamia,

<sup>12</sup> This edict was enacted in 538 AD, but it has been proposed that the Republican senate and others *imperatores* before Constantine employed a similar legal mechanism (E.VOLTERRA, *Intorno a D. 23, 2, 57 a*, Mélanges Philippe Meylan. Volume I: droit romain, Lausanne 1963, pp.367-77).

<sup>13</sup> See i.e. M.KASER and R.KNÜTEL, *Römisches Privatrecht. Ein Studienbuch* (19. Auflage), München 2008, pp.318 and 333.

<sup>14</sup> A.WACKE, *Inheritance Law*, Brill's New Pauly, Classical Tradition 2 (2007), p.1097.

<sup>15</sup> Biblical sources are not mentioned here. On the matter in ancient Israel see K.ENGELKEN, *Frauen im Alten Israel: Eine begriffsgeschichtliche und sozialrechtliche Studie zur Stellung der Frau im Alten Testament*, Beiträge zur Wissenschaft vom Alten und Neuen Testament 130, Stuttgart 1990, p.124.

have been traditionally divided into a prologue, 38 paragraphs and an epilogue<sup>16</sup>. Some of these paragraphs are devoted to marriage law. One of them (LL 27) states<sup>17</sup>: “If a man’s wife does not bear him a child but a prostitute (KAR-KID) from the street does bear him a child, he shall provide grain, oil, and clothing rations for the prostitute, and the child whom the prostitute bore him shall be his heir; as long as his wife is alive, the prostitute will not reside in the house with his first-ranking wife”. It is actually unclear whether the woman called KAR-KID (Akkadian *ḫarīmtum*) was a prostitute. She may have been a woman who did not live under the authority of a man, either her father/brother or husband – in any case she was unmarried. As can be noted LL states that the children of a concubine could inherit only when the first wife could not provide descendants. Assante points out regarding this paragraph: “It is difficult to believe that the kar.kid in this text is a prostitute (...). The paternity of a child of a prostitute would be hard to establish for one thing. But in this particular law, the child is not only accepted but made heir to his father’s estate, a very serious undertaking in ancient Mesopotamia and one that would not have been legally mandated if the man’s legitimate wife had provided heirs<sup>18</sup>”. Note that LL 27 foresees that a concubine’s children could inherit, but only when the lawful wife did not bear offspring – maybe because the child was considered to be legally of the barren wife<sup>19</sup>.

<sup>16</sup> More recent study in M.T.ROTH, *Law Collections from Mesopotamia and Asia Minor*, WAW 6, Atlanta 1995, pp.23-35 (bibliography in p.250).

<sup>17</sup> Translation by ROTH, *Law Collections*, p.31.

<sup>18</sup> J.ASSANTE, *The kar.kid / ḫarīmtu, Prostitute or Single Woman?*, UF 30 (1998), p.28; in this sense S.DÉMARE-LAFONT, *Aspekte der Stellung der assyrischen Frauen*, in J.Renger, ed., *Assur – Gott, Stadt und Land*, CDOG 5, Wiesbaden 2011, p.247. Other authors still think that the *ḫarīmātu* would have been prostitutes; see i.e. recently H.J.MARSMAN, *Women in Ugarit and Israel: Their Social and Religious Position in the Context of the Ancient Near East*, Oudtestamentische Studien 49, Leiden/Boston 2003, p.419; J.COOPER, *Prostitution*, RIA 1 (2006/2008), pp.11-21; M.SILVER, *Temple / Sacred Prostitution in Ancient Mesopotamia Revisited*, UF 38 (2006), pp.631-63; J.FLEISHMAN, *Father-Daughter Relations in Biblical Law*, Bethesda 2011, p.97f; M.STOL, *Vrouwen van Babylon: prinsessen, priesteressen, prostituees in de bakermat van de cultuur*, Utrecht 2012, pp.251-62.

<sup>19</sup> See in this regard LL 25 and the comments of R.WESTBROOK, *The Female Slave*, in V.H.Matthews, B.M.Levinson and T.Frymer-Kensky, eds., *Gender and Law in the Hebrew Bible and the Ancient Near East*, JSOTS 262, Sheffield 1998, p.222: “The law codes emphasize that slave concubinage cannot confer legitimacy on the offspring, even if both mother and child are freed”.

Another legislative corpus concerning this matter is provided in the renowned Laws of Ḫammu-rapi (LH), king of Babylon in the 18<sup>th</sup> CBC. The laws are written in Akkadian, consisting of a prologue, 282 paragraphs and an epilogue<sup>20</sup>. Some parts refer to marriage and inheritance law, among them the following paragraphs: “(LH 170) If a man’s first-ranking wife bears him children and his slave woman bears him children, and the father during his lifetime then declares to (or: concerning) the children whom the slave woman bore to him, ‘(they are) my children,’ and he reckons them with the children of the first-ranking wife—after the father goes to his fate, the children of the first-ranking wife and the children of the slave woman shall equally divide the property of the paternal estate; the preferred heir is a son of the first-ranking wife, he shall select and take a share first. (LH 171) But if the father during his lifetime should not declare to (or: concerning) the children whom the slave woman bore to him: ‘My children,’ after the father goes to his fate, the children of the slave woman will not divide the property of the paternal estate with the children of the first-ranking wife<sup>21</sup> (...)”. These paragraphs basically state that a man could have children with a female slave but they could only become rightful heirs if he adopted them<sup>22</sup> – and they were second to the children conceived by the lawful wife when it came to choosing assets. The Laws of Ḫammu-rapi have been the main reference and basis for most scholars studying this subject<sup>23</sup>.

A third group of laws yielding information on this phenomenon is from the Middle Assyrian period. The Middle Assyrian Laws (MAL)

<sup>20</sup> See ROTH, *Law Collections*, pp.71-142, (pp.251-253 for bibliography).

<sup>21</sup> Translation by ROTH, *Law Collections*, pp.113f.

<sup>22</sup> By declaring they are his sons, *mārūa*; the legal formula for adoption during the Old Babylonian period is usually “to take PN as son” (PN *ana mārūtīm leqūm*); see § 3 and S.M.PAUL, *Adoption Formulae: A Study of Cuneiform and Biblical Legal Clauses*, MAARAV 2/2 (1979/1980), pp.173-85.

<sup>23</sup> See i.e. E.CUQ, *Études sur le droit babylonien*, Paris 1929, p.62; E.EBELING, *Erbe, Erbrecht, Enterbung*, RIA 2 (1938), p.459; J.KLÍMA, *Untersuchungen zum altbabylonischen Erbrecht*, Monographien des Archiv Orientalní 8, Prag 1940, pp.15 n.5, 18; G.CARDASCIA, *Les droits cunéiformes*, in R.Monier, G.Cardascia and J.Imbert, eds., *Histoire des institutions et des faits sociaux des origines à l'aube du Moyen Âge*, Paris 1955, p.61f; G.R.DRIVER/J.C.MILES, *The Babylonian Laws*, Oxford 1952/1955, I pp.350f; WESTBROOK, *The Female Slave*, p.222; idem, *The Character of Ancient Near Eastern Law*, in R.Westbrook, ed., *A History of Ancient Near Eastern Law*, HdO 72, Leiden/Boston 2003, p.44.

were written in Akkadian (Assyrian dialect) at the beginning of the 11<sup>th</sup> CBC; a high number of sources are attested, among them MAL A with 59 paragraphs<sup>24</sup>. MAL A 41 states: “If a man intends to veil his concubine (*esirtu*), he shall assemble five or six of his comrades, and he shall veil her in their presence, he shall declare, ‘She is my *aššutu*-wife’; she is (then) *aššutu*-wife. A concubine who is not veiled in the presence of people, whose husband did not declare, ‘She is my *aššutu*-wife,’ she is not an *aššutu*-wife. If a man is dead and there are no sons of his veiled wife, the sons of the concubines are indeed sons; they shall (each) take an inheritance share<sup>25</sup>”. Despite some problems of interpretation of the paragraph<sup>26</sup>, it seems clear that the children of a concubine could only inherit if the main wife had not conceived, or if the concubine was eventually taken as a lawful wife (Akkadian *aššatu*<sup>27</sup>).

The legal corpora, therefore, provide for the possibility that the children of a concubine could come to inherit from their father. Two main situations are stipulated. On the one side, it appears that in the Old Babylonian period the children of a concubine could inherit as long as their father adopted them and explicitly acknowledged them as heirs, even if the main wife had also borne children (LH 170). On the other side, other references seem to indicate that the *conditio sine qua non* was that the main wife had not provided descendants (LL 25, MAL A 41<sup>28</sup>). In this second case, it appears that the father did not need to adopt (*ana mārūti leqû* or other formulae) the illegitimate descendants.<sup>29</sup>

3. A series of legal documents have gradually been added to this textual corpus regarding the inheritance rights of the children of concubines. Historiography has largely overlooked these texts, whose

<sup>24</sup> See ROTH, *Law Collections*, pp.153-94 (p.253 for bibliography).

<sup>25</sup> Translation by ROTH, *Law Collections*, p.169.

<sup>26</sup> See G.R.DRIVER/J.C.MILES, *The Assyrian Laws*, Oxford 1935, p.189; secondarily also G.CARDASCIA, *Les lois assyriennes*, LAPO 2, Paris 1969, pp.207-09.

<sup>27</sup> See i.e. V.KOROŠEC, *Ehe*, RIA 2 (1938), p.289; S.DÉMARE-LAFONT, *Middle Assyrian Period*, in R.Westbrook, ed., *op. cit.*, p.543.

<sup>28</sup> See WESTBROOK, *The Character of Ancient Near Eastern Law*, p.57.

<sup>29</sup> Despite of WESTBROOK, *The Character of Ancient Near Eastern Law*, p.57: “Otherwise, the law insisted that prior to his death, the father should have legitimized the son by way of adoption, in order for him to inherit alongside legitimate heirs.” Such legal phenomenon seems only to concern LH 170-171.

legal implications have been omitted. Five documents (or groups of documents) will be shown in chronological order; translations of them are provided at the end of each section<sup>30</sup>.

The first is CT 8 37d (41<sup>st</sup> year of Ḫammu-rapi), from the city of Sippar, published in hand-copy in 1899 (see below for bibliography). It is stated that a certain Šaḫīra married (*īḫuz*) <sup>f</sup>Azātum, who bore him five male children. Among these five sons, Šaḫīra decided to adopt (*ana mārūtišu ilqe*) the eldest one, named Yakunum. It is also stated that <sup>f</sup>Azātum's brothers<sup>31</sup> – or perhaps <sup>f</sup>Azātum and her brothers – would not raise claims against Šaḫīra. It appears that the document is a faithful reflection of the contents of LH 170-171: a man decided to legitimize one of his children – the eldest – by adopting him. It must also be understood that the other children of Šaḫīra, borne with <sup>f</sup>Azātum, did not inherit from their father.

The status of <sup>f</sup>Bēlessunu, another person mentioned in CT 8 37d, is unclear. The correct interpretation depends on the reading of a fragmented part (ll. 1-3): <sup>1</sup>ša-ḫi-ra ×[...] / <sup>1</sup>be-le-su-nu / <sup>1</sup>a-za-tam i-ḫu-[u]z-ma. Westbrook collated the document, reading D[UMU] (“son”) in the gap and therefore stating that Šaḫīra would have been the son of a man called Bēlessunu<sup>32</sup>. However, there are other possible readings as [u<sub>3</sub>] (“and”), S[AG.GEME<sub>2</sub>-šu] (“his female slave”), or even L[UKUR] (“*nadītum*-priestess<sup>33</sup>”). In this sense, a well-known situation in the Old Babylonian period is represented by a man who marries two women simultaneously. The main one was usually a *nadītum*-priestess of Marduk, a category of women who could be married but were not allowed to bear children; the other woman, who

<sup>30</sup> Old Assyrian documents in which it is mentioned that the children of an *amtum* (lit. “female slave”) inherited are not included. The *amātu* in the Old Assyrian period might not be simply slaves but a type of wives. See in this sense C.MICHEL, *Bigamie chez les Assyriens du début du IIe millénaire avant J.C.*, RHD 84 (2006), pp.155-76; eadem, *Les Assyriens et leurs femmes anatoliennes*, in J.G.Dercksen, ed., *Anatolia and the Jazīra During the Old Assyrian Period*, PIHANS 111, Leiden 2008, pp.209-29; B.KIENAST, *Altassyrisch amtum = “Zweifrau”*, AoF 35 (2008), pp.35-52.

<sup>31</sup> Sentence corrected by R.HARRIS, *Ancient Sippar. A Demographic Study of an Old-Babylonian City (1894-1595 B.C.)*, PIHANS 36, Istanbul 1975, p.356 n.33.

<sup>32</sup> R.WESTBROOK, *Old Babylonian Marriage Law*, Ph.Diss., Yale University 1982, I p.137.

<sup>33</sup> On these priestesses see L.BARBERON, *Les religieuses et le culte de Marduk dans le royaume de Babylone*, Mémoires de NABU 14, Paris 2012 (with previous bibliography, esp. pp.4-6).

would actually bear them, was the main wife's slave, or even a woman the priestess had adopted<sup>34</sup>. The possibility that <sup>f</sup>Belēssunu was a *nadītum*-priestess<sup>35</sup> should be taken into account for two further reasons: firstly <sup>f</sup>Belēssunu was a name born by other *nadītum*-priestesses<sup>36</sup>, and secondly “two women with *nadītu* names are witnesses to the adoption<sup>37</sup>”. It has also been suggested on several occasions that <sup>f</sup>Azātum could actually be a female slave who had been simultaneously married by Šaḫīra together with <sup>f</sup>Bēlessunu, probably her owner<sup>38</sup>. All these circumstances could explain why Šaḫīra had to adopt some of his children to legitimize them.

Document: CT 8 37d.

Transliterations/translations: B.MEISSNER, *Assyriologische Studien III*, MVAeG 10, Berlin 1905, p.55; idem, *Babylonien und Assyrien. Band I*, Heidelberg 1920, p.160; J. KOHLER and A. UNGNAD, *Hammurabis Gesetz III*, Leipzig 1909, p.9; M. SCHORR, *Urkunden des altbabylonischen Zivil- und Prozessrechts*, VAB 5, Leipzig 1913, pp.25f; R. WESTBROOK, *Old Babylonian Marriage Law*, AfO Beih. 23, Horn 1988, p.120.

<sup>1-4</sup> Šaḫīra [...] married <sup>f</sup>Bēlessunu [and<sup>2</sup>] <sup>f</sup>Azātum; she bore him five sons.

<sup>5-9</sup> Among the five sons whom <sup>f</sup>Azātum bore to Šaḫīra, Šaḫī[ra] has adopted his eldest son, Yakunum.

<sup>34</sup> On this legal phenomenon see recently BARBERON, *Les religieuses et le culte de Marduk*, pp.19-21 and 227-35 (with further bibliography); J.J.JUSTEL, *The Involvement of a Woman in her Husband's Second Marriage and the Historicity of the Patriarchal Narratives*, ZAR 18 (2012), pp.191-207 (now add BM 16981, published in BARBERON, *Les religieuses et le culte de Marduk*, 239-40). Note however that the aforementioned phenomenon is also attested in the case of women who were not *nadītum*-priestess.

<sup>35</sup> Cf. B.LANDSBERGER, *Zu den Frauenklassen des Kodex Hammurabi*, ZA 30 (1916), p.70: “A [= husband] heiratet eine *zirmašītu* und zugleich eine Nebenfrau”.

<sup>36</sup> See BARBERON, *Les religieuses et le culte de Marduk*, p.263 (see also pp.8-13 and 28-29); however she does not include CT 8 37d (in p.28 she correctly states that the personal name is no definitive proof).

<sup>37</sup> HARRIS, *Ancient Sippar*, p.332.

<sup>38</sup> I.e. SCHORR, *Urkunden des altbabylonischen Zivil- und Prozessrechts*, p.25; P.KOSCHAKER, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis, Königs von Babylon*, Leipzig 1917, p.192 n.15 (cf. also p.229); HARRIS, *Ancient Sippar*, p.355; C.FRIEDL, *Polygynie in Mesopotamien und Israel. Sozialgeschichtliche Analyse polygamer Beziehungen anhand rechtlicher Texte aus dem 2. und 1. Jahrtausend v. Chr.*, AOAT 277, Münster 2000, pp.114f and n.405.

<sup>10-14</sup>In the future the brothers of/and <sup>f</sup>Azātum shall not raise claims against Šahīra.

<sup>15-17</sup>They have sworn the oath of Šamaš, Aya, Marduk, and Hammu-rapi.

<sup>18-24</sup>(Name of 7 witnesses).

<sup>25</sup> (Date).

4. The second document, written in Akkadian, is a court record also from the Old Babylonian period (BM 96998, see below for bibliography). It would come from Sippar-Amnānum and be written during the reign of Ammi-ditana (17<sup>th</sup> CBC).

The situation described is as follows. A man named Šumum-libši had served in the army, a duty/right which was transferred from parents to sons<sup>39</sup>. The military authorities realized that Šumum-libši had had two children with <sup>f</sup>Šimat-Ištar, who was the sister of a *nadītum*-priestess named <sup>f</sup>Lamassani. One of these two sons was taken by the troops and therefore had probably served in the army; but the other son (Šurārum by name) had not fulfilled such service. The military authorities reported that <sup>f</sup>Šimat-Ištar had taken Šurārum with her and that the latter had to serve in the army. The siblings of <sup>f</sup>Šimat-Ištar (<sup>f</sup>Lamassani herself and a brother named Aḫi-ayamši), however, declared that Šumum-libši had not taken <sup>f</sup>Šimat-Ištar as a wife (ll. 28-34): “We have not married off our sister <sup>f</sup>Šimat-Ištar. She became a philanderer (*alikūtam alākum*<sup>40</sup>) and Šumum-libši, son of Ana-Šamaš-līši, like many other men used to visit her. He neither established a marriage contract (*riksātum*<sup>41</sup>) for her, nor did he provide her ..., nor did we receive the bridewealth (*terḫatum*) for her”. As no witnesses attested to a possible marriage, the judges entreated the parties to testify on oath, which only <sup>f</sup>Lamassani did. Consequently, the military authorities finally lost the litigation.

The relevant matter here is that since <sup>f</sup>Šimat-Ištar was not a legal wife (*aššatum*), her descendants were not eligible to inherit but neither were they obliged to fulfill duties such as serving in the army. We

<sup>39</sup> See the bibliography on this matter in K.R.Veenhof, *Fatherhood is a Matter of Opinion. An Old Babylonian Trial on Filiation and Service Duties*, in W.Sallaberger, K.Volk and A.Zgoll, eds., *Literatur, Politik und Recht in Mesopotamien. Festschrift für Claus Wilcke*, *Orientalia Biblica et Christiana* 14, Wiesbaden 2003, p.331 n.50.

<sup>40</sup> Cf. *alikūtam epēšum* in CAD A/1 p.348.

<sup>41</sup> On the uses and implications of this term see S.Greengus, *The Old Babylonian Marriage Contract*, *JAOS* 89 (1969), 505-14.

do not know the actual status of <sup>1</sup>Šimat-Ištar; though there is no explicit evidence, she could have been a *ḥarīmtum* (cf. § 2), a class of women who had institutional functions in the locality of Sippar-Amnānum<sup>42</sup>. Moreover, “on notera que le fait qu’une femme célibataire ait plusieurs amants et des enfants dont on ignore qui est le père ne semble pas infamant: cette situation est ici acceptée et affirmée par sa famille<sup>43</sup>”; that is, the described circumstances were not forbidden by law.

Document: BM 96998.

First edition: K.R.VEENHOF, *Fatherhood is a Matter of Opinion. An Old Babylonian Trial on Filiation and Service Duties*, in W.Sallaberger, K.Volk, A.Zgoll, eds., *Literatur, Politik und Recht in Mesopotamien. Festschrift für Claus Wilcke*, *Orientalia Biblica et Christiana* 14, Wiesbaden 2003, pp.313-32 (photograph of the document in S.DÉMARE-LAFONT, *Judicial Decision-Making: Judges and Arbitrators*, in K.Radner, E.Robson, eds., *The Oxford Handbook of Cuneiform Culture*, Oxford 2011, p.346). Translations/comments: D.CHARPIN, *Surārum est-il le fils de son père? À propos d’un procès à Sippar-Amnānum*, NABU 2005, pp.2f; DÉMARE-LAFONT, *Judicial Decision-Making*, pp.345-47.

<sup>1-12</sup> Concerning Šurārum, son of <sup>1</sup>Šimat-Ištar, sister of <sup>1</sup>Lamassani, the *nadītum* of Šamaš, daughter of Ili-ismeanni, Warad-Kubi, the general of the troops in the Sippar countryside, Qurrudum the captain, Inapalēsu the captain, Ibni-Sin the military scribe, and the elders of his clan, made the following declaration before Marduk-muballit and Marduk-mušallim, two “fathers of the troops”, Elmešum, the *sandabakkum*, (and) Ili-iqīšam, the “personnel director of the palace gate”, in Sippar-Amnānum, when they had to organize the work of Sippar:

<sup>13-17</sup>“Šumum-libši, son of Ana-Šamas-līši, who belonged to the troops under our command, married <sup>1</sup>Šimat-Ištar, sister of <sup>1</sup>Lamassani, daughter of Ili-ismeanni and Šurārum is his son and Abisum his eldest son, whom the Kassite troops took away. <sup>18-19</sup>We’ have observed that Šumum-libsi, son of Ana-Šamas-līši, who belonged to the troops under our command, left two sons. <sup>20-22</sup>But now <sup>1</sup>Lamassani, the *nadītum* of Šamaš, daughter of Ili-ismeanni, has taken his son Šurārum and he lives with her”.

<sup>42</sup> See SILVER, UF 38 (2006), p.658.

<sup>43</sup> B.LION, *BiOr* 61 (2004), p.132: review of W.Sallaberger, K.Volk and A.Zgoll, eds., *op.cit.*

- <sup>22-25</sup>When they had stated this, one brought ʿLamassani, the *nadītum* of Šamaš, and her brother Aḫi-ayamsi, before the gentlemen. <sup>26-31</sup>The latter interrogated them concerning the mentioned Šurārum and they made the following declaration: “We have not married off our sister ʿŠimat-Ištar; she became a philanderer and Šumum-libsi, son of Ana-Šamas-līši, like the many other men, used to visit her. <sup>32-34</sup>He neither established a marriage contract for her, nor did he provide her [...], nor did we receive the bridalwealth for her”.
- <sup>35-37</sup>When they made this declaration they requested from them (i.e. the plaintiffs) witnesses who had been present when he bound her by marriage, but they did not bring them. <sup>38-40</sup>The gentlemen thereupon considered their case and ordered them to go to the Gate of Šamaš, to bind or release in the throw-net. <sup>41-44</sup>As the gentlemen gave this order one made the emblem of Šamaš, “The Vanguard” of “The House-of-the Judge- of-the-Land”, (and) the emblem of Šamaš of “The-House-of-Judgment” take their stand in the Gate of Šamaš of the “House-of-the-Judgment”.
- <sup>45-48</sup>Warad-Kubi, the general of the troops of the Sippar countryside, the captains Qurrudum and Ina-palēsu, Ibni-Sîn, the military scribe, and the elders of his clan refused to approach the throw-net. <sup>49-51</sup>But ʿLamassani, the *nadītum* of Šamaš, declared as follows in the throw-net: “Abisum and Šurārum were not born as sons of Sumum-libši; I am the one who has raised them”, this she declared.
- <sup>52-55</sup>(That) in the future Warad-Kubi, the general, Qurrudum and Ina-palēsu, the captains, Ibni-Sîn, the military scribe, and the elders of his clan will not raise claims for Abisum and Šurārum, her sons, against ʿLamassani, the *nadītum* of Šamaš, they have sworn with an oath by Šamaš, Marduk and king Ammi-ditana.
- <sup>56-64</sup>(Name of 8 witnesses and one supervisor).
- <sup>65</sup>(Date).

5. The third group of documents comes from Arrapḫe, in the easternmost end of the Mittani Empire. The site of Nuzi yielded the archives of Ḫutiya, son of Kuššiya, found in the so-called “House of Kizzuk<sup>44</sup>”. Two documents from this archive are JEN 666 (court record) and JEN 671 (complementary declaration), both published in hand-copy in 1936. Though this group of documents had received

<sup>44</sup> See G.DOSCH and K.DELLER, *Die Familie Kizzuk. Sieben Kassitengenerationen in Temtena und Šuriniwe*, SCCNH 1 (1981), pp.91-113; M.P.MAIDMAN, *Nuzi Texts and Their Uses as Historical Evidence*, WAW 18, Atlanta 2010, pp.125-41.

some comments, only recently complete transliterations (collated) and translations have been published (see below for bibliography). Both documents would be written during the generation III-IV of Teḫip-Tilla's family, that is, in the first half of 14<sup>th</sup> CBC.

The situation was, in short, as follows. A man named Muš-Teya acquired some property which belonged to his father, Tarmiya (JEN 666). Tarmiya's brother – named Ḫutiya – denounced Muš-Teya for this. Ḫutiya's claim was based on the fact that Tarmiya had formerly declared that he had not taken the mother of Muš-Teya (named <sup>f</sup>Ziliya) as wife (*aššatu*), but as *ḫarīmtu*. Given that Tarmiya had not married legally <sup>f</sup>Ziliya, her descendants were not entitled to the family inheritance, which would therefore correspond to the brothers of Tarmiya<sup>45</sup>. A series of witnesses attested to these circumstances, stressing the fact that Tarmiya had forfeited the legitimacy of the descendants he had had with <sup>f</sup>Ziliya (JEN 671: 26-29<sup>46</sup>). The judges concluded that the two parties had to prove their allegations by resorting to the gods – a common procedure in Nuzi<sup>47</sup> – but Muš-Teya declined and hence lost the litigation (JEN 666: 37-48).

A further indication of the fact that Muš-Teya had not been acknowledged by his father was that he bore a matronym: Muš-Teya son of <sup>f</sup>Ziliya (JEN 666: 2, [<sup>l</sup>m]u-uš-te-e-a DUMU [<sup>f</sup>z]i-li-i[a]). Several explanations have been put forward for the existence of matronyms in Nuzi<sup>48</sup>. One of them has been explained by Grosz as follows: "It is

<sup>45</sup> See C.ZACCAGNINI, *Nuzi*, in R.Westbrook, ed., *A History of Ancient Near Eastern Law*, HdO 72, Leiden/Boston 2003, p.601: "Some court cases (e.g., JEN 333, 666, 671) provide evidence of attempts to get possession of the estate of a deceased brother by invoking privileged inheritance rights against other possessors or claimants."

<sup>46</sup> It is also possible that Tarmiya had borne a daughter with <sup>f</sup>Ziliya; see JEN 671: 23-24.

<sup>47</sup> See i.e. H.LIEBESNY, *Evidence in Nuzi Legal Procedure*, JAOS 61 (1941), pp.134-37; R.E.HAYDEN, *Court Procedure at Nuzu*, Ph.Diss., Brandeis University 1962, pp.34-39; T.FRYMER-KENSKY, *Supranational Legal Procedures in Elam and Nuzi*, SCCNH 1 (1981), pp.115-31.

<sup>48</sup> See K.GROSZ, *Daughters Adopted as Sons at Nuzi and Emar*, in J.M.Durand, ed., *La femme dans le Proche-Orient antique*, Paris 1987, pp.84f; eadem, *The Archive of the Wullu Family*, CNIP 5, København 1988, p.27; eadem, *Some Aspects of the Position of Women at Nuzi*, in B.S.Lesko, ed., *Women's Earliest Records from Ancient Egypt and Western Asia. Proceedings of the Conference on Women in the Ancient Near East. Brown University, Providence. Rhode Island Novembre 5-7, 1987*, Brown Judaic Studies 166, Atlanta 1989, pp.175-77; PH.ABRAHAMI, *Masculine and Feminine Determinatives before Women's Names at Nuzi: A Gender Indicator of*

dangerous to draw conclusions from a single piece of evidence, but I think it is possible to tentatively conclude that sons of prostitutes in Nuzi did not enjoy a high rank, first of all, because prostitution as such was not esteemed and secondly, because born out of the wedlock, they did not have a natural place in a patrilineal society<sup>49</sup>. If we accept this idea, it seems clear that Muš-Teya had not been legally acknowledged by his father and could not use his patronym.

Finally, <sup>f</sup>Ziliya is referred to as *ḥarīmtu*, a term usually translated as 'prostitute'<sup>50</sup>. As said in regard with LL 27 (§ 2), this translation may not be correct and the term perhaps refers to women who were not under the tutelage of a man (either her father, brother or husband). It seems that Tarmiya had not had legal descendants from his legal wife either, if indeed he did have a wife; otherwise, she would have been referred to in the document and, obviously, his brother Ḥutiya would have had no claim to Tarmiya's inheritance.

Documents: JEN 666 and JEN 671.

Transliteration/translation: J.J.JUSTEL, *L'ensemble documentaire JEN 666 / JEN 671 et la procédure judiciaire d'Arraphe (XIV<sup>e</sup> s. av. J.-C.)*, SMEA 53 (2011), pp.151-70 (with further bibliography).

Comments: On the role of the concubine's descendants in these texts see esp. H.LEWY, *Gleanings from a New Volume of Nuzi Texts*, OrNS 10 (1941), pp.218f; R.E.HAYDEN, *Court Procedure at Nuzu*, Ph.Diss., Brandeis University 1962, pp.37f; T.L.THOMPSON, *The Historicity of the Patriarchal Narratives: The Quest for the Historical Abraham*,

*Social or Economic Independence?*, Cuneiform Digital Library Bulletin 2011, p.1. Cf. also the use of matronyms in Middle Babylonian sources in J.A.BRINKMAN, *Masculine of Feminine? The Case of Conflicting Gender Determinatives for Middle Babylonian Personal Names*, in M.T.Roth, W.Farber, M.W.Stolper and P.v.Bechtolsheim, eds., *Studies Presented to Robert D. Biggs. June 4, 2004*, AS 27, Ann Arbor 2007, pp.1-6.

<sup>49</sup> GROSZ, *Some Aspects of the Position of Women at Nuzi*, p.176.

<sup>50</sup> On the *ḥarīmātu* in Nuzi see especially G.WILHELM, *Marginalien zu Herodot, Klio 199*, in T.Abusch, J.Huehnergard, P.Steinkeller, eds., *Lingering over Words: Studies in Ancient Near Eastern Literature in Honor of William L. Moran*, HSS 37, Atlanta 1990, pp.516-24 (cf. A.ULSHÖFER, *Eine mehrfach gekittete Scherbe – und die verführerische Phantasie. Anmerkungen zu Gernot Wilhelm, "Marginalien zu Herodot, Klio 199"*, Wort und Dienst: Jahrbuch der Kirchlichen Hochschule Bethel 23 [1995], pp.63-70); ASSANTE, UF 30 (1998), pp.16-26, 30, 59-60, 82-86; D.SCHWEMER, *Die Wettergottgestalten Mesopotamiens und Nordsyriens im Zeitalter der Keilschriftkulturen. Materialien und Studien nach den schriftlichen Quellen*, Wiesbaden 2001, p.600; FLEISHMAN, *Father-Daughter Relations in Biblical Law*, pp.108-21.

BZAW 133, New York 1974, p.260; K.GROSZ, *Some Aspects of the Position of Women at Nuzi*, in B.S.Lesko, ed., *Women's Earliest Records from Ancient Egypt and Western Asia. Proceedings of the Conference on Women in the Ancient Near East. Brown University, Providence. Rhode Island Novembre 5-7, 1987*, Brown Judaic Studies 166, Atlanta 1989, pp.165f; J.ASSANTE, *The kar.kid / ħarimtu, Prostitute or Single Woman?*, UF 30 (1998), p.30; J.COOPER, *Prostitution*, RIA 11 (2006/2008), pp.15f.

## JEN 666

- <sup>1-4</sup> Ĥuti[ya, s]on of Kuššiya, has appeared [in co]urt before the judges o[f Š]uriniwe wi[th M]uš-teya, son of <sup>1</sup>[Z]iliy[a]. <sup>5-7</sup>Thu[s] (has said) [Mu]š-[teya: “The inheritance par]t of Tarmiya, so[n of Ku]ššiy[a ...], fo[r] the *pai[ħu la]*nd ...”
- <sup>8-9</sup> And the judges [have summoned<sup>?</sup>] the witnesse[s of] Muš-teya. <sup>10</sup>And Muš-Teššup...; [the witne]sses; Muš-Teya has not presented (them<sup>51</sup>)”.
- <sup>11-15</sup> Thus (has said) Ĥutiya: “My brother Tarmiy[a had s]aid before the men (i.e. the judges): “*Ziliya is not a wife to me; I have made her a ħar[ī]mtu’*”.
- <sup>15-16</sup> And (thus) the judges: “Bring the witnesses of Ĥutiya”.
- <sup>17-18</sup> And<sup>?</sup> (concerning) the witnesses of Ĥutiya, (that is) the declaration of Warad<sup>?</sup>[...]; <sup>18-20</sup>He has declared before the men (i.e. the judges): “There are no witnesses, no tablet [...]”.
- <sup>21-36</sup> (Name of 14 witnesses and one seal of a judge).
- <sup>37-39</sup> These are the witnesses of Ĥutiya, and the judges have sent the witnesses together with Ĥutiya to the gods. <sup>40-41</sup>But Muš-teya has turned back from the gods.
- <sup>41-44</sup> (Name of 3 bailiffs).
- <sup>45-48</sup> (These) three men (are) the bailiffs (testifying) that the gods have judged Muš-teya, and (that) Ĥuti[ya] has won the lawsuit.
- <sup>49-54</sup> (Seals of 6 judges and the scribe).

<sup>51</sup> B.Kaldhol suggests (personal communication) that the Hurrian form  $u_2-ni-u_2-ur$  in JEN 666: 10 might be understood as *un* (root)=*i* (transitive, antipassive)=*b/vur* (negative morpheme); on this latter morpheme see I.WEGNER, *Hurritisch. Eine Einführung*. 2., *überarbeitete Auflage*, Harrasowitz 2007, p.137, and also a parallel in V.HAAS and H.J.THIEL, *Ein Beitrag zum hurritischen Wörterbuch*, UF 11 (1979), p.347 ( $ħu-u-ši-u_2-u[r] = ħuš=i=b/vur$ ). A negative expression actually fits the context of JEN 666: 10, so the sentence might be translated as: “... [the wit]nesses; Muš-Teya has not presented (them)”, or even “Muš-Teya is/was not a producer”. I thank B.Kaldhol for his suggestions.

## JEN 671

<sup>1-17</sup> (Name of 15 witnesses).

<sup>18-20</sup> These are the witnesses of Tarmiya and [...]; thus (have said) they. <sup>21-</sup>

<sup>22</sup> [...] his witnesses [...].

<sup>22-23</sup> [Thu]s (has said) Tarmiya before h[im]: <sup>24-26</sup> “[...]niše<sup>?</sup>, his daughter, is the youngest, (and) his daughter [ʿT]ukkutu is a *ḥarīmtu*. <sup>26</sup>I<sup>1</sup> have not made her a w[i]fe. <sup>27-28</sup>... I<sup>1</sup> have not bound her (in marriage).

<sup>29</sup> She bore (no son) to me”.

<sup>30-37</sup> (Scribe and seals of 6 judges).

6. The fourth document (TB 8001) comes from the excavations at the site of Tell Brak, in the northeast of Syria, a part of the Mittani Empire at the beginning of the Late Bronze Age. It was published in 1988, and a number of authors have commented on its content since then (see below for bibliography). The document was written in the presence of the king Tušratta of Mittani, and should therefore be dated to the middle of the 14<sup>th</sup> CBC.

The document contains, at least partially, the typical formulae of testaments in Late Bronze Mesopotamia (i.e. Emar, Nuzi, etc.). The text states that a certain Yabbi granted Mittanian citizenship (*ana Ḥanigalbatūti uššuru*) to Purame, the son of his concubine (*esirtu*). Moreover, he seems to have put Purame in charge of looking after his mother. Yabbi also granted a series of properties to a woman named ʿTilunaye and her children, as well as to Purame. Finally, the consequences of ʿTilunaye marrying again are stated<sup>52</sup>.

Several comments must be made regarding the deed. The expression used to refer to the granting of Mittanian citizenship to Purame appears also in a document from Umm el-Marra<sup>53</sup> and partially in another from Alalah<sup>54</sup> – both archives belonging to the Mittani Em-

<sup>52</sup> See some Late Bronze Age parallels on this clause, always referred to the testator's wife, in J.J.JUSTEL, “*Se irá desnuda de mi casa...*” *Las relaciones de la viuda con otros hombres y su expulsión del hogar (Norte de Mesopotamia y Siria durante el Bronce Final)*, in J.A.Belmonte and J.Oliva, eds., *Esta Toledo, aquella Babilonia. Convivencia e interacción en las sociedades del Oriente y del Mediterráneo antiguos*, Cuenca 2011, pp.217-40.

<sup>53</sup> UEM T1, published by J.COOPER, G.SCHWARTZ and R.WESTBROOK, *A Mittani-Era Tablet from Umm el-Marra*, SCCNH 15 (2005), pp.41-56.

<sup>54</sup> AIT 13: 4-6, whose concrete expression is *aššum Ḥanigalbatūti šabātu*. For this document, published in 1953, see recently CH.NIEDORF, *Die mittelbabylonischen Rechtsurkunden aus Alalah (Shicht IV)*, AOAT 352, Münster 2008, pp.239-44.

pire.<sup>55</sup> The verb *wašāru* D (TB 8001: 4 and UEM T1: 5-6) is also used, in general, to convey the manumission of a slave; that is, it may mean “to free, to release<sup>56</sup>”. Due to this, and because the actions were carried out by a *privatus* and not by the king, it has been suggested that the persons who were given a new status were slaves<sup>57</sup>. We would then have the following situation: a free citizen decided to manumit a slave and to grant him citizenship, making him an heir<sup>58</sup>.

Following the above, it seems that Yabbi had a wife named <sup>f</sup>Tilunaye. Despite the mention that the children of <sup>f</sup>Tilunaye could have access to the inheritance (ll. 9, 17), it does not seem that they were actually conceived by Yabbi, because in that case their personal names would be stated – as is the case of Purame. It seems rather that these possible children who might be conceived in future are referred to, or even that <sup>f</sup>Tilunaye had previous children. Yabbi had also taken a concubine (*esirtu*) with whom he might have conceived Purame<sup>59</sup>. Yabbi decided to legitimize Purame, probably via manumission and by the granting of citizenship. Thus, Yabbi could explicitly establish that Purame could inherit a series of assets (ll. 10-13).

Note that the concubine – whose personal name is not stated – is called *esirtu*, the term used in MAL A 41 (§ 2). If the idea that Yabbi had not (yet) had descendants with <sup>f</sup>Tilunaye is right, then TB 8001 seems to be based on legislation similar to MAL A 41, whereby the legitimation of the descendants of an *esirtu* is only possible where there are no descendants by the main wife. In any case, this deed shows that illegitimate children could inherit by means of a will, just like in Roman law (§ 1).

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<sup>55</sup> All these documents were written in the presence of the King of Mittani, and therefore bear his dynastic seal; see W.SALLABERGER, B.EINWAG and A.OTTO, *Schenkungen von Mittani-Königen an die Einwohner von Bašīru. Die zwei Urkunden aus Tall Bazi am Mittleren Euphrat*, ZA 96 (2006), pp.85f.

<sup>56</sup> AHW p.1485, CAD U/W pp.313-17. See other examples mentioned below (§ 8) in Emar VI 177: 21' and JEN 622: 9.

<sup>57</sup> See the concrete arguments in COOPER, SCHWARTZ and WESTBROOK, SCCNH 15 (2005), p.48, partially accepted by E.VON DASSOW, *State and Society in the Late Bronze Age. Alalah under the Mittani Empire*, SCCNH 17, Bethesda 2008, pp.49-51.

<sup>58</sup> Note that also in the Justinian law the freedom of a slave and his acknowledge as heir were granted with only legal one deed (C.6.27.5; Inst.2.14pr.).

<sup>59</sup> See the comments of N.J.J.ILLINGWORTH, *Inscriptions from Tell Brak 1986*, Iraq 50 (1988), p.104; VON DASSOW, *State and Society in the Late Bronze Age*, p.50 n.119.

On the other hand, we do not know whether the abovementioned UEM T1 reflected similar circumstances. It reports that a Gubbi granted Mittanian citizenship (*ana Ḫanigbatūti uššuru*) to a woman named <sup>f</sup>Azzu, her children and another man named Ari-ḫamri. Neither this part nor the subsequent clauses reveal whether it was the same case as TB 8001, that is, whether <sup>f</sup>Azzu was the concubine of Gubbi, and Ari-ḫamri their son. Another document from Tell Brak, TB 6002<sup>60</sup>, mentions a man transferring properties to a woman and her sons, but it is not stated that the couple was married<sup>61</sup>. It is possible but not necessary to infer that TB 6001 reflects the same circumstances as TB 8001.

Document: TB 8001.

First edition: N.J.J.ILLINGWORTH, *Inscriptions from Tell Brak 1986*, Iraq 50 (1988), pp.99-105; see also J.EIDEM, *The Inscriptions*, in D.Oates, J.Oates and H.McDonald, eds., *Excavations at Tell Brak. Vol. 1: The Mittani and Old Babylonian Periods*, Cambridge/London, p.41. A photograph of the document is to be found in Iraq 49 (1987), pl.XLIV.

Translations/comments: J.COOPER, G.SCHWARTZ and R.WEST-BROOK, *A Mittani-Era Tablet from Umm el-Marra*, SCCNH 15 (2005), pp.43-45, 50-51; CH.NIEDORF, *Die mittelbabylonischen Rechtsurkunden aus Alalah (Shicht IV)*, AOAT 352, Münster 2008, pp.242f; E.VON DASSOW, *State and Society in the Late Bronze Age. Alalah under the Mittani Empire*, SCCNH 17, Bethesda 2008, pp.49-51; M.STOL, *Vrouwen van Babylon: prinsessen, priesteressen, prostituees in de bakermat van de cultuur*, Utrecht 2012, p.126.

<sup>1-2</sup> Yabbi made an agreement before the king Tušratta.

<sup>3-5</sup> He has released Purame, the son of his concubine; he has granted him the citizenship of Ḫanigbat, and given his mother to that person.  
<sup>6</sup>He has appointed him as heir of his estate.

<sup>7-10</sup> (Concerning) the immovable ... in the town of Nawar: he has completely given these to <sup>f</sup>Tilunaye and the sons of <sup>f</sup>Tilunaye.  
<sup>10-13</sup>(Concerning) the immovable of ... (and) the parcels of one *maryānnu* in the town of Nawar: he has completely given these to Pu-

<sup>60</sup> The document was published in I.L.FINKEL, *Inscriptions from Tell Brak 1984*, Iraq 47 (1985), pp.191-94; J.EIDEM, *The Inscriptions*, in D.Oates, J.Oates and H.McDonald, eds., *Excavations at Tell Brak. Vol. 1: The Mittani and Old Babylonian Periods*, Cambridge/London, p.41.

<sup>61</sup> The possibility was raised by FINKEL, *Inscriptions from Tell Brak 1984*.

rame. <sup>14-18</sup>He has given all of his estate and the totality of his property to <sup>r</sup>Tilunaye and the sons of <sup>r</sup>Tilunaye, and to Purame.

<sup>19-21</sup>If in the future <sup>r</sup>Tilunaye lives as wife (of another man), she shall be accursed together with her sons.

<sup>22-23</sup>Yabbi shall be in control (of the estate) as long as he lives.

7. A final instance comes from the Neo Assyrian period (StAT 3 111). The document was written in the Assyrian dialect of Akkadian in 676 BC, and has been recently published (see below for bibliography). It consists of a very fragmented court record (*dēnu* text) whose contents are barely discernible. It has been stated that “the dispute seems to concern a marriage agreement between the respective families, and involves also Bēl-ahhē-erība and his son<sup>62</sup>”.

Basically, it seems that Tardītu-Aššur – representing Bēl-aḥḥē-erība – undertakes a lawsuit against Bēl-aḥu-iddina and his son, whose name does not appear. Tardītu-Aššur’s allegation alludes to the latter though it is not possible to establish with certainty what he means. Bēl-aḥu-iddina states: “My daughter [...] the ones guilty of her state as *ḥarīmtu*” (ll. 7-8: DUMU-MUNUS-*ia*<sub>2</sub> [...] / [×× L]U<sub>2</sub> LUL.MEŠ *ša*<sub>2</sub> *ḥa-ar-mu-ti-ša*<sub>2</sub> [...]). The term LUL (Akkadian *sarru*) appears in other Neo Assyrian documents in the context of criminal and legal suits<sup>63</sup>. The term *ḥarīmūtu* is translated by the dictionaries as “state of a prostitute/Prostituierenstand<sup>64</sup>”. However, as we have already seen, the term does not necessarily refer to prostitutes but to women who did not live under the authority of a man (§§ 2, 5<sup>65</sup>). The rest of the document is, unfortunately, very damaged and we do not know why there was a payment, though we do know, thanks to the seals on the document (l. 11’)<sup>66</sup>, that it was received by Tardītu-Aššur. After the list of witnesses and the dating, a reference is also made to another payment (l. 25’) and perhaps to an ordeal (l. 26’: ) [*a*<sub>2</sub>-*na* IGI I[D<sub>2</sub>...]).

<sup>62</sup> PNA p.283.

<sup>63</sup> CAD S p.183a; K.DELLER, “<sup>LÚ</sup>LUL = <sup>LÚ</sup>*parrīsu* und <sup>LÚ</sup>*sarru*”, OrNS 30 (1961), 255-57.

<sup>64</sup> AHW p.325b; CAD H p.102.

<sup>65</sup> On some *ḥarīmātu* in the Neo-Assyrian sources see COOPER, RIA 11 (2006/2008), pp.14f.

<sup>66</sup> FAIST, *Alltagstexte aus neuassyrischen Archiven*, p.169.

Despite the difficulties in understanding the document, K. Radner assumes “dass es um die Anerkennung eines Sohnes der erwähnten Tochter, die eine Prostituierte ist oder war, mit Bēl-aḥḥē-erība gehen konnte<sup>67</sup>”. If we accept this idea, it could be a similar case to those referred to above. Bēl-aḥḥē-erība could have had descendants with a *ḥarīmtu*, daughter of Bēl-aḥu-iddina. The most likely explanation is that the family of the *ḥarīmtu* wanted the right of the child to inherit from Bēl-aḥḥē-erība to be acknowledged, which the latter did not accept. Note that similar situations may have been usual, according to Neo-Assyrian sources relating to lower stratum families<sup>68</sup>.

Document: StAT 3 111.

First edition: B.I.FAIST, *Alltagstexte aus neuassyrischen Archiven und Bibliotheken der Stadt Assur*, StAT 3, Wiesbaden 2007, pp.167-69.

Comments: K.RADNER, AfO 44/45 (1997/1998), p.385: review of R.Jas, *Neo-Assyrian Judicial Procedures*, SAAS 5, Helsinki 1996.

<sup>1</sup> (Seal).

<sup>2-5</sup> Lawsuit which Tardītu-Aššur has brought against Bēl-aḥḥu-iddina (and) his sons, concerning Bēl-aḥḥē-erība. <sup>5-6</sup>(Thus has said) Tardītu-Aššur: “The son of Bēl-aḥḥē-erība [...]” <sup>7-8</sup>(Thus has said) [B]ēl-aḥu-iddina: “My daughter [...] the ones guilty of her state as *ḥarīmtu*.” <sup>9-11</sup>They approached [the su]pervisor of the city (and) the mayor [for law]suit [...].

(Some lines very fragmentary).

<sup>11</sup> [...] he has received [...] mi]nas of silver.

<sup>12-23</sup> (18 witnesses).

<sup>24</sup> (Date).

<sup>25</sup> [He has...] a talent at the gate of [...].

<sup>26</sup> [...] to the riv[er...].

8. The described documents (§§ 3-7) reveal very different legal and family circumstances. In general, they can be divided into two groups. One group concerns litigations, undertaken because of a claim over an inheritance process (BM 96998, JEN 666/671, StAT 3 111). Another group is made up of contracts made unilaterally by a man who decided to free/adopt/grant a status to a biological though illegitimate child (CT 8 37d, TB 8001).

<sup>67</sup> Cited in FAIST, *Alltagstexte aus neuassyrischen Archiven*, p.168-69.

<sup>68</sup> See especially G.GALIL, *The Lower Stratum Families in the Neo-Assyrian Period*, CHANE 27, Leiden/Boston 2007, p.322.

Some of these texts state that the son of a concubine became legitimate and could therefore receive a portion of the inheritance. This is clearly the case of the two unilateral contracts (CT 8 37d, TB 8001), but also of the paragraphs of the legal *corpora* (LL 27, LH 170-171, MAL A 41). This right seems to be rejected in the case of the other documents (BM 96998, JEN 666/671, StAT 3 111).

The fact that the father<sup>69</sup> had to adopt/acknowledge the illegitimate child in order to provide access to the inheritance can be noted in LH 170-171 and seems to be fully reproduced in CT 8 37d. Likewise an acknowledgement also appears in TB 8001, though it is not an adoption *stricto sensu* but the granting of citizenship.

It is only explicitly stated in LH 170-171 that the children of a concubine could inherit provided the first wife had not borne any descendants. This is probably the case in CT 8 37d, though it is not entirely certain because no reference is made to any offspring of Šaḫīra borne by ʾBēlessunu. In LL 27 and MAL A 41 it is set forth that only if the main wife had not had descendants could the children of the concubine inherit. These are the circumstances registered in most of the rest of the cases, in general from later periods and from northern Mesopotamia – and also the circumstance foreseen in Roman law (§ 1). This phenomenon is clear in JEN 666/671, because the administrator of the inheritance process is possibly the brother of the ‘testator’. It has also been pointed out (§ 6) that the ʾTilunaye mentioned in TB 8001 probably had borne no offspring.

Following the above, and despite the scarce evidence, two trends may be identified in the Ancient Near East regarding the inheritance rights for the descendants of concubines. On the one hand, in Southern Mesopotamia, in the early second millennium BC (with the exception of LL 27) it appears that these illegitimate children could be *sui heredes* even in cases where their father had had descendants by his main wife – though they had to be legitimized by their father by means of an adoption. On the other hand, in Northern Mesopotamia

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<sup>69</sup> In no case a formal declaration by the mother is required. This phenomenon – the father’s acknowledging – is attested in the Old Babylonian document TCL 18 153: 9-12, though the legal circumstances are different and not related to concubinage; see especially M.T.ROTH, *A Scandal in Larsa*, in G.Frame, E.Leichty, K.Sonik, J.Tigay and S.Tinney, eds., *A Common Cultural Heritage. Studies on Mesopotamia and the Biblical World in Honor of Barry E. Eichler*, Bethesda 2011, pp.77-88 (with previous bibliography).

and peripheral areas of the Ancient Near East a man could only appoint his illegitimate children as *sui heredes* if he (still) had not had descendants – sons or daughters – by his legal wife.

Two instances from the Late Bronze Age can be recalled in this respect and serve as support of this view<sup>70</sup>. The first one originates in the Emar archives, in North Syria (13<sup>th</sup> CBC). It is Emar VI 177, a very fragmentary document published in 1986<sup>71</sup>. The text is a man's last will, whereby he seems to give his properties to different people, his sons amongst them. He also refers to the dowries for several of his daughters. The testator also states: “[May] Itti-EN, son of my female slave, honor my wife Ḫuti. When Ḫuti dies, [Itt]i-EN shall be free; my sons shall not claim against him<sup>72</sup>”. It has been suggested that Itti-EN was an illegitimate son the testator may have had with his female slave<sup>73</sup>. Thus, while the testator provides some properties to be inherited by his legitimate sons (and the dowry for his daughters), for Itti-EN it is simply stated that he was to be free upon the death of the testator's wife.

A second instance is JEN 622 from Nuzi (§ 5), from the archive of Enna-mati son of Teḫip-Tilla. The document, published in 1936, is a “tablet of agreement” (*tuppi tamgurti*) typical of Nuzi, and has received some comments<sup>74</sup>. It is stated: “Enna-mat[i] has released Ḫa-

<sup>70</sup> Another document from the Late Bronze Age is RS 94.2168 from Ugarit – written in alphabetic cuneiform script and Ugaritic language – in which the right of the female slaves' descendants (besides the free ones) to inherit is mentioned. For a discussion on the document see the bibliography mentioned in J.J.JUSTEL, *La posición jurídica de la mujer en Siria durante el Bronce Final*, p.67, and now add the extensive discussion by D.PARDEE, *RS 94.2168 and the Right of the Firstborn at Ugarit*, in W.H.van Soldt, ed., *Society and Administration in Ancient Ugarit*, PIHANS 114, Leiden 2010, pp.94-106.

<sup>71</sup> Transliteration and translation in D.ARNAUD, *Recherches au pays d'Aštata: Emar VI*, Synthèse 18, Paris 1985/1987, III pp.190-92; copies in I pp.99, 162, 169.

<sup>72</sup> LI. 20' -22': a-nu-ma Ḫit-ti-EN DUMU-NITA<sub>2</sub> GEME<sub>2</sub>-ia Ḫu-ti<sub>12</sub> D[AM-ia li]-ip-laḫ<sub>3</sub> / ki-i-me-e Ḫu-ti<sub>12</sub> EGIR-ki ši-im-<ti>-ši ta-lak Ḫit-ti-EN a-na ḪUTU muš-šur / DUMU-MEŠ-ia a-na muḫ-ḫi-šu la-a i-ra-gu-mu.

<sup>73</sup> R.WESTBROOK, *Emar and Vicinity*, in R.Westbrook, ed., *op.cit.*, p.666.

<sup>74</sup> H.LEWY, *Gleanings from a New Volume of Nuzi Texts*, OrNS 10 (1941), pp.217f; J.PARADISE, *Nuzi Inheritance Practices*, Ph.Diss, University of Pennsylvania 1972, pp.311f; M.P.MAIDMAN, *A Socioeconomic Analysis of a Nuzi Family Archive*, Ph.Diss, University of Pennsylvania 1976, pp.60, 245, 446 n.1065; E.CASSIN, *Le semblable et le différent. Symbolismes du pouvoir dans le Proche-Orient ancien*, Paris 1987, pp.290f. For a list of transliterations/translations of the document see

rim-ninu, the daughter of <sup>f</sup>Akim-ni<nu>, [w]ith her son Kai-Teššup, to <sup>f</sup>Akim-ninu<sup>75</sup>". The use of the verb *wašāru* D could indicate (though not necessarily) that <sup>f</sup>Šarim-ninu had been a slave (§ 6). It also appears that Kai-Teššup was disinherited (*kašādu* D<sup>76</sup>) from that moment on and was no longer an heir of Enna-mati (ll. 12-15). We know, through other documents, that Enna-mati had a wife named <sup>f</sup>Uzna and at least three sons<sup>77</sup>. We do not know whether JEN 622 ought to be dated to before Enna-mati's marriage to <sup>f</sup>Uzna and the birth of his son(s) or to a later time. A possible interpretation is that, after having conceived descendants with <sup>f</sup>Uzna, Enna-mati had had a son called Kai-Teššup with a concubine (<sup>f</sup>Šarim-ninu); he might have adopted or legitimized him somehow and it even appears that Kai-Teššup had been given a document in this respect (ll. 19-21). Once Enna-mati had conceived descendants with his wife <sup>f</sup>Uzna, Kai-Teššup could no longer have access to the inheritance, which was reserved for the legitimate offspring. It was therefore necessary to draft a document (JEN 622) expressly stating this situation.

9. Finally, a brief comment on the question of the legal and social status of concubines is in order<sup>78</sup>. These women are not frequently mentioned by the sources, at least in private records. Data from the royal family are another matter<sup>79</sup>. As can be gathered from what we

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M.P.MAIDMAN, *The Nuzi Texts of the Oriental Institute. A Catalogue Raisonné*, SCCNH 16, Bethesda 2005, p.247.

<sup>75</sup> Ll. 5-9, collated: <sup>1</sup>en-na-ma-t[i] / <sup>1</sup>ša-ri-im-ni-nu / DUMU.MUNUS a<sup>3</sup>-ki-im-ni-<nu> [i]-ti 'ka-i-te-ššup / DUMU-ša-ma a-na <sup>1</sup>a-ki-im-ni-nu / u[n-t]e-eš-ši-ir.

<sup>76</sup> On this meaning see CAD K pp.280b-81a.

<sup>77</sup> See especially M.P.MAIDMAN, *The Tehip-tilla Family of Nuzi: A Genealogical Reconstruction*, JCS 28 (1976), pp.127-55.

<sup>78</sup> See i.e. FRIEDL, *Polygynie in Mesopotamien und Israel*, pp.41-43; MARSMAN, *Women in Ugarit and Israel*, pp.123-25; STOL, *Vrouwen van Babylon*, pp.123-26.

<sup>79</sup> I.e. in Nuzi the references to concubines (*esrētu*) are attested almost exclusively in palace registers or in the documentation belonging to Šilwa-Teššup, son of the king of Arraphē. See CAD E pp.336f; M.A.MORRISON, *Šilwa-Tešup: Portrait of a Hurrian Prince*, Ph.Diss., Brandeis University 1974, pp.374-76; G.WILHELM, *Das Archiv des Šilwa-Teššup. Rationenlisten II*, AdŠ 3, Wiesbaden 1985, p.25. For the concubines (*esrētu*) attested in the palace of Nuzi see W.MAYER, *Nuzi-Studien I. Die Archive des Palastes und die Prosopographie der Berufe*, AOAT 205/1, Kevelaer/Neukirchen-Vluyn 1978, pp.111-15; B.LION, *Les femmes comme signe de puissance royale: la maison du roi d'Arrapha*, in G.Wilhelm, ed., *Organization, Representation, and*

have seen so far, concubines did not have the same position as legitimate wives. This can be observed not only in the status of their descendants but also in the right to wear a veil in public (MAL A 40) or the right to live with the man in question (LL 27). To a large extent, it depended on the family or the institution the concubine belonged to. As it has been noted, “in the Hittite empire and in Nuzi the *e[srētu]*-women had a high social position and belonged to the royal household; in M[iddle] A[ssyrian], on the other hand, the term refers to concubines of private citizens<sup>80</sup>”.

Concubines, in the texts we have seen, do not usually take part in the legal deed, mainly focused on the legitimacy of her descendants. On some occasions, not even her personal name is mentioned (TB 8001, Emar VI 177, StAT 3 111).

At times, they are referred to as a *ḫarīmtu(m)* (LL 27, JEN 666/671, StAT 3 111), a term which did not necessarily denote a prostitute but a woman who did not live under the authority of a man (§§ 2, 5, 7). This unquestionably must have also been the case of BM 96998 (§ 4), where it is stated that Šimat-Ištar had become philanderer and was free to have relationships with other men.

On other occasions, it is directly stated that the concubine was a slave (LH 170-171, probably CT 8 37d and TB 8001). A female slave would have been also the concubine that appears in Emar VI 177, and perhaps also the one which is attested in JEN 622 (§ 8<sup>81</sup>). As it has been pointed out, “sex with slaves had a long pedigree in the Ancient Near East, but arguably assumed special significance under the formal constraints of socially imposed monogamy<sup>82</sup>”. The fact that the con-

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*Symbols of Power in the Ancient Near East*, CRRAI 54, Winona Lake 2012, pp.531-542 (esp. pp.538f).

<sup>80</sup> CAD E p.337a.

<sup>81</sup> In this regard see the letter ARM 26/2 547 from Mari, where it is stated: “J’ai entendu à plusieurs reprises<sup>?</sup> (parler) d’une servante ([GEM]É), parmi ma domesticité, qu’un soldat-*rêdum* a chez lui en s’en portant garant, mais qu’il ne peut prendre pour femme (*a-na si<sub>2</sub>-in-ni-i[š-tim]*) quoiqu’il en ait un enfant” (translation by B.LAFONT, *Quatrième partie*, in *Archives épistolaires de Mari I/2*, ARM 26/2, Paris 1988, p.538). In this case, though the man had borne children with the female slave, he was not entitled to marry her; other information concerning the son’s status or inheritance is not provided.

<sup>82</sup> W.SCHEIDEL, *Monogamy and Polygyny*, in B.Rawson, ed., *A Companion to Families in the Greek and Roman Worlds*, Malden 2011, p.113; see also W.SCHEIDEL, *Sex*

cubine was a slave would not be important because, as Westbrook thinks, “the offspring of a free concubine had no better right to inherit than of the offspring of a slave concubine<sup>83</sup>”.

Finally, at other times this concubine is referred to by the technical term which is mainly used in Assyria, *esirtu* (MAL A 41, TB 8001). It may be noticed, however, that in order to legitimize a son conceived with a *esirtu*, in MAL A 41 it is expressly stated that the man had to take her as a wife (*aššatu*), whereas in TB 8001 this does not appear to have been necessary.

In conclusion, it is apparent that in the Ancient Near East the descendants of a concubine did not have the same hereditary rights as those of the lawful wife. Nonetheless, it was possible to legitimize them via adoption or by granting them a special status. These types of mechanisms are well known in classical law (Ancient Greece, Rome), but it is noteworthy that Ancient Near Eastern documents come from many centuries earlier. Besides, despite the different origins of these documents, they seem to generally follow the stipulations of legal corpora from various periods. This phenomenon is clear in the correspondence between the Laws of Ḫammu-rapi (LH 170-171) and the Old Babylonian document CT 8 37d. It can also be noted that in later documents the descendants of a concubine could only be legitimized if the father had not had children with the lawful wife; this situation fully met the provisos of later legal corpora as MAL A 41 – as well as earlier as LL 27. While concubines in these documents do not seem to have had a lower social status than other women, it is also true that their descendants did not have the same rights as legitimate children. The father did often resort to the aforementioned mechanisms.

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*and Empire: A Darwinian Perspective*, in I.Morris and W.Scheidel, eds., *The Dynamics of Ancient Empires*, New York 2009, p.281.

<sup>83</sup> WESTBROOK, *The Female Slave*, p.222 (cf. *contra* MARSMAN, *Women in Ugarit and Israel*, p.124). Westbrook (p.223) notes that the examples of legitimation by adoption present in the legal *corpora* refer to free concubines: “Whether the freed children of a slave concubine were equally entitled in those circumstances, or whether a distinction was being drawn between slave and free concubines, cannot be determined”. However in LH 170 (and probably CT 8 37d) the concubine was a slave.