

Yiftach, Uri

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Uri Yiftach

ΣΥΓΓΡΑΦΗ ΟΜΟΛΟΓΙΑΣ — ΣΥΓΓΡΑΦΗ ΣΥΝΟΙΚΙΣΙΟΥ
A PROBLEM RECONSIDERED*

To the Memory of William M. Brashear

In one of the first papyri dealing with marital issues to be published, *P. Par.* 13 = *UPZ* I 123 = *MChr* 280 = Meyer, *JP* 20, from 157 BC Memphis, a certain Ptolemaios appeals against the heirs of his late step-father to the strategos, asking for the return among other things of a dowry which his late mother Asclepias had given to Isidoros, on the occasion of their marriage. According to Ptolemaios' account, Isidoros drew up for Asclepias a συγγραφή ὁμολογίας in which he obligated himself to compose within a year a new document, called συγγραφή συνοικισίου.¹

* This subject is dealt with in greater length in my Ph.D. dissertation *Marriage and Marital Arrangements*, prepared at the Tel-Aviv University. I wish to thank Prof. R. KATZOFF and Dr. A. LANIADO for their comments. The responsibility for views expressed in this paper is, of course, entirely mine.

¹ The document was discussed repeatedly by scholars: e.g. B. FRESE, *Aus dem gräko-ägyptischen Rechtsleben* (Halle 1909) 42-43; L. MITTEIS, *Grundzüge*, 201, 207-208, F. MAROI, "Caratteristico documento di "Εγγραφος Γάμος per la storia del matrimonio nell'Egitto greco-romano", *BIDR* 28 (1915) 97-130 at 116-117; J. PARTSCH (ed.), *P. Freib.* III, pp. 19-21; U. WILCKEN, *UPZ*, pp. 579 ff.; V. ARANGIO-RUIZ, *Persone e famiglia nel diritto dei papiri* (Milano 1930) 71; S. G. HUWARDAS, *Beiträge zum griechischen und gräkoägyptischen Eherecht der Ptolemäer- und frühen Kaiserzeit* (= *Leipziger rechtswissenschaftliche Studien*, Heft 64), Leipzig 1933, 25; F. BOZZA, "Il matrimonio nel diritto dei papiri dell'epoca tolemaica", *Aegyptus* 14 (1934) 205-244 at 224-225; H. J. WOLFF, *Written and Unwritten Marriages in Hellenistic & Postclassical Roman Law*, Haverford 1939, 10-11 & 18-19; W. ERDMANN, "Zum *gamos agraphos* der gräko-ägyptischen Papyri", in: *Festschrift Paul Koschaker*, III, Weimar 1939, 224-240 at 224-227; G. HÄGE, *Ehegüterrechtliche Verhältnisse in den griechischen Papyri Ägyptens bis Diokletian*, Köln-Graz 1968, 32-33; B. KRAMER (ed.), *CPR* XVIII, p. 57; A.-M. VIAL & CL. VÉRILHAC, *Le mariage grec - du VI^e siècle av. J.-C. à l'époque d'Auguste* (= *BCH Supplément* 32), Athens 1998, 23.

For the differences in spelling of the term (συνοικισίου vs. συνοικεσίου), see E. MAYSER, *Grammatik der griechischen Papyri aus der Ptolemäerzeit*, I (3), Berlin-Leipzig 1935, 50. For the sake of uni-

Since the source material referring to this clause originates from distinctly Greek communities, these clauses have generally been thought to reflect a Greek legal tradition.² The purpose of the double documentation has remained, however, highly controversial.³ Scholars dealing with this question faced conflicting pieces of evidence: while some documents referred to the συγγραφή ὁμολογίας and the συγγραφή συνοικισίου as two complementary stages of documentation of the same marriage,⁴ in the later Ptolemaic period these terms were used for the designation of independent marriage documents identical to each other as far as the terms of joint life are concerned.⁵

Undoubtedly the most important study dealing with that question was published by H. J. Wolff in 1939.⁶ Wolff observed that *P. Eleph.* 1 (Elephantine, 311-10 BC), which is designated συγγραφή συνοικεσίας, records the performance of the *ekdosis* — the act by which the parents of the bride deliver her to her husband for the purpose of marriage, whereas *P. Tebt.* I 104, which is designated ὁμολογία γάμου (a term which is generally identified with συγγραφή ὁμολογίας), is formulated as a dowry receipt.

This was, in his view, the key to the understanding of the entire problem. At the beginning of the Ptolemaic period, the συγγραφή ὁμολογίας and the συγγραφή συνοικισίου testified two different, complementary acts — the former being a pre-nuptial agreement on the delivery of the dowry, while the latter was used for recording the *ekdosis* and the actual formation of marriage.⁷

In the course of time spouses started to live together before performing the act of *ekdosis* — immediately after the composition of the συγγραφή ὁμολογίας. As a result, clauses setting the terms of joint life, which were formerly kept for the *ekdosis* document — the συγγραφή συνοικισίου — were embedded in συ-

formity I use the first form (following Wolff's example) but for the case in which the papyrus has the other one.

² This is the view after the publication in 1927 of *P. Freib.* III. Earlier it was thought to record an Egyptian ἄγραφος γάμος (e.g. B. FRESE, *op. cit.* [n. 1]).

³ For the various theories before 1939 see O. MONTEVECCHI, "Ricerche di sociologia nei documenti dell'Egitto greco-romano: II. I contratti di matrimonio e gli atti di divorzio", *Aegyptus* 16 (1936) 3-83 at 7-14 and E. SCHÖNBAUER, "Untersuchungen zum Publizitäts-Rechte im ptolemäischen und römischen Ägypten", *ArchPF* 13 (1939) 39-60 at 42-56. See also since then R. TAUBENSCHLAG, *The Law of Greco-Roman Egypt in the Light of the Papyri* 332 B.C. – 640 A.D., Warsaw 1955, 113-115; J. MÉLÈZE-MODRZEJEWSKI, "La structure juridique du mariage grec", in: *Scritti in onore di Orsolina Montevecchi*, Bologna 1981, 231-268 at 250-251 [= *Statut personnel et liens de famille dans les droits de l'Antiquité*, Aldershot 1993, no. 5; Cl. VATIN, *Recherches sur le mariage et la condition de la femme mariée à l'époque hellénistique*, Paris 1970, 164-173]; A.-M. VIAL & Cl. VÉRILHAC, *op. cit.* (n. 1), 21-28.

⁴ *P. Par.* 13 (Memphis [?], 157 BC); *P. Freib.* III 26; 29; 29a; 30 (all from Philadelphia, 179/8 BC).

⁵ H. J. WOLFF, *op. cit.* (n. 1), 8-10.

⁶ H. J. WOLFF, *op. cit.* (n. 1), 7-34. See also IDEM, "Die Grundlagen des griechischen Eherechts", *Tijdschrift voor Rechtsgeschiedenis* 20 (1952) 157-181 at 170-175.

⁷ According to H. J. WOLFF, *P. Tebt.* III 815 recto col. 4,1 ff. belongs to the former category (Teb-tunis, 223/22 BC).

γραφὰὶ ὁμολογίας as well.⁸ Finally, by the beginning of the first century BC, marriages began to be formed by the *de-facto* joining of life of the partners. The *ekdosis* ceased to be performed, and the clause anticipating the composition of the συγγραφή συνοικισίου was left out of the συγγραφή ὁμολογίας, which thus the only marriage document composed.⁹

Wolff's theory became the *communis opinio*,¹⁰ and with one exception — the study of Vial and Vérilhac published recently,¹¹ was never challenged. Doubts, however, rise from all quarters.

The only piece of evidence which connects the act of *ekdosis* to the συγγραφή συνοικισίου is *P. Eleph.* 1.¹² This is hardly enough to establish a firm connection. Granted, it would substantiate Wolff's theory, if we traced a similar correlation between the *ekdosis* and the συγγραφή συνοικισίου in the rest of the source material. This, however, is not the case. With the exception of *P. Eleph.* 1, no marriage document recording the act of *ekdosis* is termed συγγραφή συνοικισίου, nor do we find any reference to the act of *ekdosis* in other συγγραφαὶ συνοικισίου or in documentary papyri mentioning them.

Furthermore, Wolff observed correctly that during the Roman period *ekdosis* was most frequently recorded in marriage documents from Oxyrhynchos.¹³

⁸ H. J. WOLFF, *op. cit.* (n. 1), 27. In his view, at this stage — manifested in *P. Par.* 13, *P. Freib.* III 26; 29; 30 and possibly also in *BGU VI* 1283 (Oxyrhynchos, 216/5 BC) — although the συγγραφή ὁμολογίας dealt with every aspect of the marital life, the *ekdosis* was still felt to be required and the συγγραφή συνοικισίου was consequently still anticipated.

⁹ The clause anticipating the composition of the συγγραφή συνοικισίου was dispensed with, and the συγγραφή ὁμολογίας prevailed as the sole marriage document. This stage is represented by *P. Tebt.* I 104 = *MChr* 285 = MEJER, *Jur. Pap.* 33 = *Sel. Pap.* I 2 = J. HENGSTL, *Griechische Papyri* 72 (*Tebtunis*, 92 BC).

¹⁰ E. G. B. KRAMER, *op. cit.* (n. 1), 56-59.

¹¹ A.-M. VIAL & CL. VÉRILHAC, *op. cit.* (n. 1), 25-26.

¹² Other arguments brought forward by H. J. WOLFF in support of this theory (*op. cit.* [n. 1], pp. 16-18) are not convincing. Wolff claims that the συγγραφή συνοικισίου should be composed by the groom and an elder relative of the bride — that is by the same persons who were expected to perform the ἔκδοσις. We may object that the role played by the elder relative of the bride is perfectly explicable in terms of the dotal arrangements. If the bride is too young to furnish the dowry herself, it is quite natural that this would be done by an elder relative.

Wolff also claims that the verb προσφέρειν — “to convey” which is used in marriage documents to describe the delivery of the dowry in the framework of the act of *ekdosis* is frequently used in relation to a dowry delivered in a συγγραφή συνοικισίου. Wolff concluded that the συγγραφή συνοικισίου is the document attesting the act of *ekdosis*. At the same time, as Wolff himself (*Marriages*, 16 n. 46) admits, there are several pieces of evidence that show that the verb signifies the delivery of dowry (φερνή or προσφορά) in general as well. For a different interpretation of the use of this verb in this context see G. HÄGE, *op. cit.* (n. 1), 26-27.

¹³ *P. Oxy.* II 372 *descriptum* (AD 74-75); III 496 = *MChr* 287 (AD 127); 497 (II AD); 604 *descriptum* (II AD); VI 905 (AD 170); X 1273 = *Sel. Pap.* I 5 (AD 260); *PSI Congr.* XX 10 recto 14-28 (AD 174). Possibly a routine element of the formulary of marriage documents in Hermoupolis as well. See *P. Vindob. Bosw.* 5 (Hermoupolis, AD 305).

Had the *συγγραφαὶ συνοικισίου* been the documents recording the act of *ekdosis*, we would have expected to find a proportionally high number of references to them in the source material from this district. This too, is not the case. Out of six occurrences of the term *συγγραφή συνοικισίου* in the Roman period,¹⁴ two originate from Oxyrhynchos, two from the Arsinoites, one from Hermoupolis and one is of unknown provenance.¹⁵

Finally, according to Wolff, when partners attested in their *συγγραφαὶ ὁμολογίας* that they intend to draw up a *συγγραφή συνοικισίου*, what they had in mind was actually the performance of the *ekdosis*. Yet it is inexplicable, why such a round-about way should be used to express the intention to perform this act. In the Hellenistic and the Roman periods people showed little hesitation to mention the act of *ekdosis* in plain words, if they wished to do so.¹⁶

Just as insecure is Wolff's description of the evolution of the *συγγραφή ὁμολογίας* from a pure, pre-nuptial dowry receipt in the third century BC to a perfect marriage document in the first century BC. First, the assumption that the "pure dowry receipts" in our possession were composed before the marriage was formed, is based entirely on the presumption that the composition of the *συγγραφή συνοικισίου* anticipated in them coincided with the formation of marriage by *ekdosis*. As shown above, this presumption is everything but secure.

Second, we cannot accept that in the early Ptolemaic period it was common to draw up a "pure dowry receipt" — a document in the form of dowry receipt which contains no provisions regulating the terms of joint life. With one exception,¹⁷ all the supposed "pure dowry receipts" are extracts of marriage documents, composed and deposited in a *grapheion* in order to accord the financial transactions resulting from the marriage enhanced security. Clauses relating to the terms of joint life, which were composed in Ptolemaic Egypt according to a routine formulary, could be dispensed with in such an extract. This does not mean that they were not incorporated in the original document.

The small number of complete marriage documents from the third century BC indicates rather that as early as this period spouses could draw up their marriage document either as an *ekdosis* document or as a dowry receipt and incorporate in them any clause they wished.¹⁸ This did not impede them from anticipating the composition of a further document.

¹⁴ Except of those anticipated in the Alexandrian *synchoresis* BGU IV 1101,20 which Wolff relates to a different system of double documentation.

¹⁵ *P. Amh.* II 71,8 (Hermoupolis, AD 178-179); *P. Mich.* V 262,15 (Tebtunis, AD 34-35); *P. Oxy.* II 250,16 (Oxyrhynchos, AD 60-61); 266,11 = *MChR* 292 = *Sel. Pap.* I 7 (Oxyrhynchos, AD 96); *P. Princ.* II 31,8 (Arsinoites, AD 79-80); *P. Vars.* 18,6 (origin unknown, AD 138-61).

¹⁶ *E.g. P. Petr.*² 25,25-26 (Crocodilopolis, 226/5 BC); BGU IV 1105,5-7 (Alexandria, ca. 10 BC); *P. Cair. Preis.* 2,14-16 (Hermoupolis, AD 362).

¹⁷ *P. Hib.* II 208 (Hibeh, 265-50 BC).

¹⁸ Apart from the seven extracts from Theogenis published in CPR XVIII and an extract from Tebtunis, five marriage documents date to the first century of Ptolemaic rule in Egypt, four of them

In short, unlike Wolff, I do not believe that *συγγραφή συνοικισίου* was ever used as a particular term to denote documents recording the act of *ekdosis*, nor that the *συγγραφή ὁμολογίας* was a pre-nuptial dowry receipt which was gradually transformed into a perfect marriage document. It is rather a different explanation, that proposed by Partsch, Kunkel, Arangio-Ruiz and Schönbauer,¹⁹ which seems to me more probable: the purpose of the double documentation should be sought in the publicity which the deposit of the second marriage document in a public archive bestowed upon the marriage and the material arrangements connected with it. New material, published by B. Kramer in *CPR XVIII*, corroborates this view.

In 1991 B. Kramer published a roll containing extracts of *syngraphophylax* documents from late third century Theogenis in the Fayum. Among these extracts, no less than seven²⁰ attest the delivery of a dowry and anticipate the composition of a future document. Best exemplifying the purpose of the composition of the second document is *CPR XVIII* 8 (Samaria, 231 BC): Diagoras acknowledges to his wife Nikopole the receipt of a dowry and obligates himself to draw up for her a further marriage document in the future.²¹

— *BGU VI* 1283 (Oxyrhynchites, 216/5 BC), 1463 (Elephantine, 147/6 BC), *P. Hib.* II 208 (Hibeh, 265-50 BC) and *SB XII* 11053 (Tholtis, 267 BC [?]) — are highly damaged. One — *P. Eleph.* 1 — records the act of *ekdosis* and the delivery of the dowry, and enumerates the obligations of the partners. *BGU VI* 1463 relates to a future marriage, and does not conform with any known formulary. *BGU VI* 1283 and *P. Hib.* II 208 record the delivery of the dowry alone, yet *BGU VI* 1283 is only partially preserved and we cannot rule out that it contained other provisions as well.

It is however the fifth document, *SB XII* 11053, which speaks most decisively against WOLFF's theory. This papyrus, which was published by F. Uebel long after the publication of H. J. WOLFF's theory ("*Jenaer Kleruchenurkunden*", *ArchPF* 22-23 (1974) 89-114 at 90-97), is dated to 267/6 BC (or perhaps 10 years earlier — see *ibid.* 93-94). According to Uebel's sound restoration, the document is formulated as a dowry receipt, but contains also formulas typical to a regular marriage document. According to Wolff's theory, we would expect this type of document no earlier than the beginning of the second century BC.

¹⁹ J. J. PARTSCH, *op. cit.* (n. 1), 19; W. KUNKEL, review of J. J. PARTSCH (ed.), *P. Freib.* III, *Gnomon* 4 (1928) 659-669 at 666; V. ARANGIO-RUIZ, *op. cit.* (n. 1), 70-71; E. SCHÖNBAUER, *op. cit.* (n. 3), 57-59. VIAL & VÉRILHAC think that the composition of the second document was supposed to take place before "*un bureau officiel, spécialisé dans les affaires matrimoniales et qui a certainement reçu cette mission des autorités.*" (26) The two French scholars rely here on the designation of the persons who are responsible for the deposition of the document as οἱ πραγματευόμενοι τὰς γαμικὰς συγγραφάς. At the same time, one may object that the δημόσιον was not specialized in recording marriage documents (see *CPR XVIII* 11, 25 — registration of conveyance of land, *P. Petr.*² 14 — a registration of debt or of enslavement). Why should dotal arrangements receive a special treatment in comparison to other types of transactions? Perhaps the term οἱ πραγματευόμενοι τὰς γαμικὰς συγγραφάς, of which we know practically nothing, referred to any official who could draw up a marriage document rather than to a specific type of functionaries.

²⁰ *CPR XVIII* 6 (Theogenis, 231 BC); 8 (Samaria, 232 BC); 12 and 13 (Oxyrhyncha, 232 and 231 BC); 17 (Kallphanous, 231 BC); 20 (Dikaiou Nesos, 231 BC); 28 (Arsinoites, 232/1 BC). Also in the document on the return of the dowry after divorce *CPR XVIII* 9 (Samaria, 232 BC).

²¹ Similar formulation appears also in *CPR XVIII* 6.

θέσθω δὲ Διαγόρας Νικοπόλῃ συγ[γρα]φὴν συνοικεσίου χαλκοῦ (δραχμῶν) ἑξακοσίων | . . . κοντα εἰς τὸ δημόσιον ἀφ' ἧς ἂν ἡμέρας προεἴπη Νικοπόλῃ ἐν ἡμέραις δέκα. | τὰ δ' ἀνηλώματα τὰ εἰς τὴν τοῦ συνοικεσίου συγγραφήν δότωσαν κοινήι.

Let Diagoras deposit for Nikopole a συγγραφή συνοικεσίου of six hundred and [--] drachmas in the public archive within 10 days of the day in which Nikopole will give him notice. The future expenses for the συγγραφή συνοικεσίου they will give jointly.

In the early Ptolemaic period partners took different measures to preserve evidence of their marital arrangements. In the case of *P. Eleph.* 1 two exemplars were issued, each in the form of a *Doppelurkunde*. Witnesses were present at the act of marriage. In the course of the third century the marriage documents were deposited with a *syngraphophylax*. As we learn from the aforesaid provision, this was not enough. In late third century Theogenis husbands were required to compose for their wives a new document,²² which would be deposited²³ in the δημόσιον — the public archive,²⁴ a document which, as the clause which anticipates and requires its composition (henceforth: “anticipatory clause”) shows, should record the dowry.²⁵

Husbands acknowledging the receipt of a dowry would become liable for its return after the marriage was dissolved.²⁶ It was therefore only husbands who could deposit a document which preserves evidence of their liability in the δημόσιον. It is clear, for the same reason, that the wife and her relatives,

²² In *CPR XVIII 9*, a document recording the return of the dowry after the dissolution of marriage, the public document and the one deposited with the *syngraphophylax* are referred to as two different instruments.

²³ The construction τίθημι + εἰς δημόσιον or ἐν δημοσίῳ, as it appears in other Theogenis extracts, suggests “to deposit” rather than “to compose” as an adequate translation. Compare F. PREISIGKE, *WB* s.v. τίθημι (1).

²⁴ Little is known of the nature of this δημόσιον. U. WILCKEN, *op. cit.* (n. 1), p. 64, followed by H. J. WOLFF, *Das Recht der Griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats*, II, München 1978, 34, suggests that the entire roll was handed over to this public archive and that this was the very purpose for which the roll was put together at the first place. This view is based, however, on the anticipatory clause in the marriage documents. In my view, the deposit of the documents in the δημόσιον was an alternative way of rendering publicity to transactions to that offered by recording them in the rolls, and was finally made obsolete by it.

²⁵ It is most likely, however, that the partners could incorporate in this document any type of marital settlement that they wished: *CPR XVIII 20* deals with the second marriage of a woman who already has an adult son from earlier marriage. A reference is made in the damaged anticipatory clause to the fact that this is her second marriage (γάμος ὕστερον [?]), probably in order to guard the hereditary rights of the son. B. KRAMER's assertion, that “hier wird deutlich, daß die eigentliche Hochzeit erst später stattfinden soll” (p. 186 ad ll. 416-17) is not well founded.

²⁶ That is, unless they could prove that the marriage was dissolved due to the misconduct of the wife — in a procedure anticipated in *P. Eleph.* 1 and in the marriage *synchoreseis* from Alexandria.

who hoped to convey maximal security to the dowry, would be the ones most interested in the archiving. The depositing procedure as described in the clause cited above, was meant to serve the needs of both parties. The wife and the person who delivered the dowry set the procedure in motion (προείπη), while only the husband could actually deposit the document — he was obliged to do so within a set period of time after being asked.²⁷

Since the δημόσιον document bore evidence of the liability of the husband, it is clear that in case of a dissolution of the marriage only the creditors, that is the wife and her family, could remove the document from the public archive: in CPR XVIII 9, the only extract of a deed of divorce incorporated in the roll from Theogenis, it is the mother of the wife, presumably the same person who originally delivered the dowry, who is entitled to remove the document from the public archive. The husband should supervise this act.²⁸

The Theogenis extracts thus give full support to the view repeatedly expressed before publication of Wolff's study. The purpose of the composition of a second document was to record in a public archive important marital arrangements. It also corroborates the prevailing view that the second document was called συγγραφή συνοικισίου. At the same time, we have here an important proof that at least in late third century BC Theogenis συγγραφή ὁμολογίας was not a *terminus technicus* for the earlier, *syngraphophylax*-document. In CPR XVIII 9, an extract of a "deed of divorce", Philoumene acknowledges to her ex-son-in-law Menestratos the return of her daughter's dowry which he received as the dowry of her daughter according to the συγγραφή συνοικισίου which is deposited with Dositheos²⁹ — that is, the *syngraphophylax*. Συγγραφή συνοικισίου is used here for the designation of both the document deposited with the *syngraphophylax* and the one stored in the δημόσιον.³⁰

²⁷ According to the Theogenis documents, within 10 days, according to those from Philadelphia within 30, of the day in which he was "given notice" to do so.

²⁸ CPR XVIII 9,181-182: τὴν δ' ἐ[ν] τ[ῷ] δημόσιω κειμένην | ἀράσθω Φιλουμένη συμπαρόντος Μενεστράτου.

²⁹ CPR XVIII 9,176-181: ὁμολογεῖ | ἀπέχειν παρὰ Μενεστράτου τοῦ [Ἰωνα]θοῦ Ἰουλίδαίου τῆς ἐπιγονῆς τὰς πεντακοσίας [. . .]. χαλκο(ῦ) (δραχμάς) ἅς ἔλαβεν | φερνήν τῆς θυγατρὸς αὐτῆς κ[ατὰ] τ[ῆ]ν | συγγραφὴν συνοικισίου τὴν κειμένην παρὰ | Δωσιθέω.

B. KRAMER refrained from restoring the lacuna in line 6. Before the lacuna she considers as possible readings either φ or κ. The latter option makes in her view two emendations possible, one of which is κ[ατὰ] τ[ῆ]ν. This formula, which is widely attested in deeds of divorce from the Ptolemaic and Roman periods, may be restored here as well. Compare especially BGU IV 1103,13-20 (Alexandria, 13 BC).

³⁰ This finding is in full agreement with the rest of the source material: συγγραφή συνοικισίου was the most frequent, and perhaps the only term used for the designation of marriage documents in the third century BC, regardless of their place of composition and deposition. Apart from the Theogenis documents we find συγγραφή συνοικισίου or similar terms in P. Eleph. 1,2 (Elephantine, 311/10 BC); P. Enteux. 91,2-3 (Magdola, 221 BC); P. Tebt. III (1) 815 fr. 4 recto col. 1 ll. 5-6 (Tebtunis, 223/22 BC); SB III 7267,8-9 (Thebaid, 226 BC); SB XII 11053,2 (Tholthis, 267 BC); XVI 12687,5

The Theogenis extracts enable us to reconsider a second group of documents, namely three highly mutilated marriage documents incorporated in a τόμος συγκολλησίμος from 179/8 BC Philadelphia: *P. Freib.* III 26; 29; 30. These documents are not extracts: they contain, even if in peculiar order,³¹ every provision known from other contemporary marriage documents. The documents open with a detailed formula of date and place, and a clause of dowry receipt.³² Next follows the anticipatory clause.

According to the restoration made in *P. Freib.* III 29,8-11 by J. Partsch, the anticipatory clause dealt with two different acts: the registration of the φερνή and the act of marriage in the δημόσιον through the *agoranomoi* on the one hand, and the composition of a second marriage document a συγγραφή περί γάμου before the persons dealing with marriage documents, on the other.³³ Yet if we restore these documents according to the formula of the anticipatory clause, as we now know it from the Theogenis extracts,³⁴ we learn that not two, but one act was anticipated in these lines, namely the deposit of a συγγραφή συνοικισίου in the δημόσιον, a document which would preserve evidence of the delivery of a φερνή³⁵ through the same procedure.³⁶

(Arsinoites, III BC). A different term is used, according to H. J. WOLFF's restoration (*Marriages*, 17-18 n. 52) in *BGU VI 1283,6-7* (Oxyrhynchos, 216/15 BC): συγγραφή ὁμολογίας περί συμβιβάσεως, συγγραφαὶ τῶν γαμούντων in *P. Col.* III 58 (Philadelphia, 248 BC) is not a technical term.

³¹ While in other marriage documents the obligations of the husband are enumerated before those of the wife, in *P. Freib.* III 30 the order is reversed.

³² J. PARTSCH, *op. cit.* (n. 1), 23, F. BOZZA, *op. cit.* (n. 1), 227, and A.-M. VIAL & CL. VÉRILHAC, *op. cit.* (n. 1), 25 n. 25, in *P. Freib.* III 29,6 suppose a clause recording the formation of marriage. The text does not support this view.

³³ II 7-11: τὴν δὲ ἐγγύησιν | [καὶ τὴν φερνὴν ἀπογραψάσθωσαν διὰ τοῦ ἀγορανόμου (?) εἰς τὸ δημόσιον ἐν Κροκ[οδῖλων πόλει. θέσθωσαν δὲ καὶ] | [τὴν περὶ γάμου συγγραφήν, ἀφ' ἧς ἂν ἡμέρας αὐ]τῶι προείπηι Ἰσιδώρα, ἐν ἡμέραις χρηματιζούσαις πέντε] | [ἐγγράφοντες τε τὴν φερνὴν καὶ τὰ ἄλλα τὰ ἐν ἔθει ἐπὶ τῶν πραγμα]τευομένων τὰς γαμικὰς συγγραφάς, ὡς ἂν ἐπὶ τοῦ καιροῦ κοινῶς] | [κρίνωσιν.

³⁴ According to the date and place formula as restored by Partsch, we assume a lacuna of approximately 80 letters in each line. In accordance, we restore lines 8-10 as follows: θέσθω δὲ | [Ἄδραστος τῆ Ἰσιδώρα τὴν συγγραφήν συνοικεσίου εἰς τὸ δημόσιον ἐν Κροκ[οδῖλων πόλει τοῦ Ἀρσινοίτου νομοῦ] | [- - ca. 30 letters - - ἀφ' ἧς ἂν αὐ]τῶι προείπηι Ἰσιδώρα, ἐν ἡμέραις - -] | [- - ἐπὶ τῶν ἀρχαίων τῶν πραγμα]τευομένων τὰς γαμικὰς συγγραφάς - -].

The same clause is extant in *P. Freib.* III 26 and 30 as well. In *P. Freib.* III 26,10-12 we restore: [- - θέσθω ὁ δεῖνα τῆ δεῖνι τὴν συνοικεσίου συγγραφήν εἰς τὸν δημόσιον ἐν Κροκοδῖλων πόλει τοῦ Ἀρσινοίτου νομ[οῦ]. | [- - ἀφ' ἧς ἂν αὐ]τῶι προείπηι ἡ δεῖνα ἐν ἡμέραις τριάκον[τα ἐπὶ] τῶν πραγμα- | [τευομένων τὰς γαμικὰς συγγραφάς - -]σαφ. [.]α ὡς εἴθισται.

In *P. Freib.* III 30,1-3: [- -]. [.] θέσθω δὲ [ὁ Μένων Εἰρήνη τὴν συνοικεσίου συγγραφήν εἰς τὸ δημόσιον] | [ἐν Κροκοδῖλων πόλει τοῦ Ἀρσινοίτου νομοῦ, ἐν ἡμέραις] χρηματιζούσαις τριάκοντα ἀφ' ἧς προείπηι Εἰρήνη ἐπὶ τῶν πραγματευομένων] | [τὰς γαμικὰς συγγραφάς, καθ' ἣν ἐγγραψόμενος τὴν φερνήν - -].

³⁵ *P. Freib.* III 30,3.

³⁶ The only difference is that in Theogenis the husband was ordered to deposit the document within 10 days, of the day in which he was asked to do so by the wife or her relatives, in Philadelphia within 30.

The Philadelphia documents also convey new information which was left out of the Theogenis extracts: the δημόσιον is located in Crocodilopolis — the metropolis of the Arsinoite district,³⁷ and the deposition would be supervised by οἱ πραγματευόμενοι τὰς γαμικὰς συγγραφάς.³⁸

Furthermore, in all three documents the anticipatory clause is followed by the death clause — a clause dealing with the disposition of the family property after the death of one of the spouses in case they have common children, and with the return of the dowry to the wife or her relatives in case no common children are alive.³⁹ In *P. Freib.* III 30, the only document which was preserved past the death clause, it is followed by a second anticipatory clause, very similar, as far as we can tell, to the one located before it.⁴⁰ Partsch concluded that these were the words which closed the clause anticipating the content of the future document, and in consequence, that the death clause was supposed to be embedded in it.⁴¹ I believe that this is the most reasonable explanation for the peculiar structure of this document.

It is thus very likely, that in early second century BC Philadelphia hereditary provisions were considered to be a natural element of the public document, just as they were in Augustan Alexandria.⁴² At the same time, rather than stating the intention to incorporate the death clause in the future document,⁴³ the authors of the earlier document give a detailed account of its content.

In one important respect the Philadelphia documents differ from their counterparts from Theogenis. While in Theogenis both documents, the private and the public, are termed συγγραφή συνοικισίου, in Philadelphia this term is kept for the public document.⁴⁴ The private one is designated συγγραφή ὁμολο-

³⁷ *P. Freib.* III 26,10; 29,8.

³⁸ "the ones dealing with marriage documents." *P. Freib.* III 26,11-12; 29,10. See also n. 19.

³⁹ *P. Freib.* III 26,13-14; 29,11-19; 30,6-16.

⁴⁰ *P. Freib.* III 30,17: --]ν (?) εἰς τὸ δημόσιον ἐν.

⁴¹ J. PARTSCH, *op. cit.* (n. 1), 20.

⁴² U. YIFTACH, "The Role of the *Syngraphe* 'compiled through the *Hierothyti*' — A Reconsideration of W. Schubart's Theory in Light of a recently published Alexandrian Marriage Contract (*P. Berol. inv.* 25423)", *ZPE* 115 (1997) 178-182. E. SCHÖNBAUER, *op. cit.* (n. 3), 59 assumed as early in 1939 that hereditary provisions could only be drawn up in the public document. Compare also *P. Gen.* IV 126 and 127 (Herakleopolites, II BC). This may be connected with the general tendency to draw up wills through a public organ (H. KRELLER, *Erbrechtliche Untersuchungen auf Grund der gräko-ägyptischen Papyrusurkunden*, Leipzig 1919, 318ff.).

⁴³ As in BGU IV 1050,28-30 = *MChr* 286 = *Jur. Pap.* 19 = *Papyrological Primer*⁴ 26 (Alexandria, Augustan period).

⁴⁴ This should not imply, that συγγραφή συνοικισίου could not signify at this period any marriage document: *SB* VI 8974 — one of the two documents which bear this designation in the later Ptolemaic period, was drawn before six witnesses by an *agoranomos*, exactly as the contemporary *P. Tebt.* I 104, which is designated ὁμολογία γάμου. The circumstances in which *P. Gen.* 21, the other later Ptolemaic marriage document which bears this designation, was composed, are obscure.

γίας⁴⁵ — an abbreviation of συγγραφή ὁμολογίας γάμου, the most popular designation of marriage documents in the Roman period.⁴⁶

The distinction between συγγραφή ὁμολογίας as a term for the private document, on the one hand, and συγγραφή συνοικισίου as a designation of the public document, on the other, is also manifested 22 years later in the petition *P. Par.* 13 discussed above (p. 137). In this petition, Ptolemaios appeals for the retrieval of his mother's dowry. Yet the detailed account which he gives of the συγγραφή ὁμολογίας drawn up on the occasion of his mother's marriage to Isidoros, of the clause anticipating the composition of a συγγραφή συνοικισίου and especially of the fact that this document was not eventually drawn up before the partners' premature death, show that the very fact that this document was not composed impeded Ptolemaios in some way from retrieving his mother's dowry.⁴⁷

In consequence, Ptolemaios, in an attempt to substantiate his claims, made every effort to prove that the union between his mother and Isidoros was a lawful marriage: the husband declares to his wife, according to Ptolemaios' account, that they will "live together as husband and wife",⁴⁸ the dowry is termed φερνή, and Asclepias is in command of the family property together with her husband,⁴⁹ as wives usually were in Ptolemaic Egypt.

But what kind of impediment was Ptolemaios facing? The Philadelphia documents show that the public instrument was the framework in which death clauses were expected to be incorporated — including a provision dealing with the death of the wife without common children — as in the present case. Yet a

⁴⁵ *P. Freib.* III 29a,17.

⁴⁶ U. WILCKEN, *UPZ* p. 582 ad l. 6 of no. 123. The critic made by Vial & Vêrilhac against the interpretation of this designation as a terminus technicus (25 n. 24) is not justified. See several occurrences of this term in the Roman period: *P. Laur.* I 8 (Arsinoites, II AD); *P. Lips.* I 27 = *MChr* 293 = *Papyrological Primer*⁴ 27 (Tebtunis, AD 123); *P. Mil. Vogl.* III 184 (Tebtunis, AD 41-54); 185 (Tebtunis, AD 139); *SB XII* 10924 (Philadelphia, AD 114).

⁴⁷ *P. Par.* 13,7-15: τῆς μητρός μου Ἀσκληπιάδος συνούσης | Ἰσιδώρῳ τινὶ τῶν ἐκ Πίτου, καθ' ἣν ἔθετο | αὐ[τῆ] συγγραφῆν ὁμολογίας, δι' ἣς | διομολογεῖται ἄλλα τε καὶ ἔχειν | πα[ρ'] αὐτῆς ἣν προσενήνεκτο φερνήν | χαλκοῦ (ταλάντων) β καὶ περὶ τοῦ θήσεσθαι αὐτῆ | ἐν ἐνιαυτῷ συνοικισίου, μέχρι δὲ τούτου | συνεῖναι αὐτοῖς ὡς ἀνὴρ καὶ γυνή, | κυρ[ι]ευούσης κοινῆ τῶν ὑπαρχόντων, | ἐὰν δὲ μὴ ποιῆ | καθότι γέγραπται, | ἀποτίνειν αὐτὸν τὴν φερνήν παραχρῆμα | σὺν τῇ ἡμιολίᾳ.

⁴⁸ συνεῖναι ἀλλήλοις ὡς ἀνὴρ καὶ γυνή. In this translation we follow the interpretation of F. MAROI, *op. cit.* (n. 1), 116-117; J. PARTSCH, *op. cit.* (n. 1) 20 n. 1; and F. BOZZA, *op. cit.* (n. 1), 225 of this highly controversial phrase. Other scholars — L. MITTEIS, *Grundzüge*, 207, U. WILCKEN, *UPZ*, p. 582, S. G. HUWARDAS, *op. cit.* (n. 1), 24 and W. ERDMANN, *op. cit.* (n. 1), 224-40 at 225 n. 4 — translate this expression as "living together as if they were husband and wife" meaning, according to their explanation, that the union was not a real marriage. The context of this document as a petition speaks against this interpretation: if this had been the meaning of this formula, mentioning it would have been contra-productive from the point of view of Ptolemaios for whom proving the matrimonial character of the union was essential.

⁴⁹ *P. Freib.* III 30,18 (Philadelphia, 179/8 BC); *P. Giss.* 2,16-17 (Crocodilopolis, 173 BC); *P. Tebt.* I 104,15 (Tebtunis, 92 BC); III 974,2 (Tebtunis, II BC).

closer look at the routine formula of a contemporary “death clause” shows that in Ptolemaios’ case it would be of little help. If the wife died first, the husband was liable for the return of the dowry in person. The relatives of the late wife were offered no effective means of dealing with the event that he would die before returning it.⁵⁰ For this reason I believe that Ptolemaios’ problem was not the absence of the death clause, but rather the lack of enhanced security which the deposit of the *συγγραφή συνοικισίου* in the public archive would have accorded his mother’s dowry.

As we saw earlier, in *CPR XVIII 9*, a document recording the return of the dowry, the mother of the wife was ordered to remove the public document from the *δημόσιον* in order to prevent her from raising a second (false) claim for the dowry by virtue of this document after the dowry was already returned (cf. *supra*, p. 142). In *P. Par. 13* we face the opposite situation: the dowry was still in the hands of the husband’s heirs, but the son of the wife was devoid of a crucial means of proving it, since the dowry was never registered in the public archive.

This petition is the latest piece of evidence which attests the double documentation of marriages in the chora. The absence of any later testimony of this practice may be attributed to the general paucity of sources on marital affairs in the later Ptolemaic period. We may, however, consider a different explanation.

The formation of marriage called forth various financial arrangements. A dowry was delivered. Hereditary provisions were made by the partners for the benefit of each other and the of joint children. In order to accord these arrangements maximal security they were made in the presence of witnesses⁵¹, the document recording them was composed as *Doppelurkunde*⁵² and, finally, various exemplars were issued.⁵³ It is understandable, that once a public archive was established, partners would turn to it also for the registration of these arrangements. The earliest (unfortunately mutilated) document which may contain this anticipatory clause — *P. Hib. II 208* (Hibeh, 265-50 BC) — may indicate that this practice goes back to the first half of the third century BC.⁵⁴

⁵⁰ *P. Gen. 21 = MChr 284 = P. Mon. III 62,19-21* (unknown provenance, II BC): ἐὰν μὲν Ἀρσινόη προτέρα τι πάθῃ, ἀποδότω Μενεκράτης τὴν φερνὴν πᾶσαν ἢ Ὀλυμπι[ά]δι τῆι μητρὶ αὐτῆς, ἐὰν ζῆι, εἰ δὲ μὴ, τοῖς ἔγγιστα γένει οὖσι αὐτῆς Ἀρσινόης ἢ [- - c. 25 lett. - -] . . . []ε[.], ἐὰν δὲ μὴ ἀποδῶι, ἀποτεισάτω παραχρημα ἢ [- - c. 27 lett. - -]. According to H. KRELLER (*supra*, n. 43) 36-37, the heirs were legally liable for the return of the dowry by virtue of their seizure of the inheritance. See also an interesting provision in *SB VI 8974 frg. III 11-17* anticipating the event that the husband would die before returning the dowry after a divorce.

⁵¹ *P. Eleph. 1; P. Giss. 2; P. Tebt. I 104; SB VI 8974.*

⁵² *P. Eleph. 1; P. Tebt. I 104.* Possibly also *P. Giss. 2.*

⁵³ *P. Eleph. 1.*

⁵⁴ If it is the same procedure referred to in the later documents. See lines 9-12: [- -] ψασθαί Νικαρέτηι ἢ μὴ θῆται αὐτὴν κυριῶν τὴν φερνὴν - -] ἢ [- - ἀποτινέτω ἢν ἔπλαβεν ἡμίλιον καὶ ἡ πρᾶξις ἔστω

By the end of the third century BC this procedure was largely made dispensable. In Theogenis, the most important material arrangements connected with the marriage were already recorded in a χρηματισμὸς συναλλαγμάτων composed in a *grapheion*.⁵⁵ Half a century later the Philadelphia marriage documents were composed, according to one theory, by an *agoranomos*. According to another they were private documents kept in an official archive.⁵⁶ According to both theories the goal for which, in my opinion, the δημόσιον document was to be composed, was already achieved by virtue of the registration of the private marriage document by a public organ.

As we saw earlier, the anticipatory clause frequently gave account of the provisions, which were supposed to be incorporated in the public document. The authors of the marriage documents from Philadelphia were not content with this, and set in advance the exact wording of future provisions regarding the death of the partners. Although the mutilation of the papyrus does not make an affirmative conclusion possible, the most likely explanation is that these provisions were meant to be applicable immediately after the private document was composed.

If this explanation is correct, we trace here an infiltration of provisions, which were originally regarded as a natural element of the δημόσιον document, into the private one. This phenomenon is explicable in terms of the degeneration process which the public document underwent in this period: partners who decided to dispense with the public document, would most naturally turn to incorporate in the private one provisions which were originally embedded in the public document.⁵⁷

By the beginning of the first century BC the process had been completed. *P. Tebt.* I 104 (Tebtunis, 92 BC) is called ὁμολογία γάμου — the term applied a century earlier for the designation of the “private” marriage document. Yet in this particular case the “private” document provided the partners with every means of security possible. It was a *Doppelurkunde*, composed in the presence

Ἐβρῶζε[μ]ι καὶ ἀλλ[ω]ι ὑπὲρ αὐτοῦ | [- -]ατρικοῦ σταθμοῦ ἀπὸ ἀπηλίωτου τοῦ π[.]ητ[.]]τε[- -] | [- -] τὸ δὲ ἀνάλωμα τῆς συγγραφῆς δότωσαν ἑκάτερος τὸ ἥ[μ]ι[σ]υ - -] .

⁵⁵ B. KRAMER, *op. cit.* (n. 1), 27 believes that it was later transferred to the “*Gauverwaltung*”. H.-A. RUPPRECHT, “Sechs-Zeugenurkunde und Registrierung”, *Aegyptus* 75 (1995) 37-53 at 38, is more cautious. He does believe however (48) that a copy of the document was stored in the *grapheion*.

⁵⁶ J. PARTSCH believes (*op. cit.* [n. 1], pp. 4-5) that it consists of copies of *syngraphophylax* documents. U. WILCKEN (*op. cit.* [n. 1], 47 ff.) that these documents were composed in an *agoranomeion* in Philadelphia. The question was recently discussed by B. KRAMER, *op. cit.* (n. 1), 19 and H.-A. RUPPRECHT, *op. cit.* (n. 57), 42.

⁵⁷ To be sure, not every “private” marriage document underwent similar “publication” to that of the Theogenis extracts and the Philadelphia marriage documents. The difficulties which Ptolemaios faces in retrieving his dowry suggest that he did not benefit of the means of proving the delivery of the dowry provided by any kind of public document.

of witnesses by a public organ. It was deposited with a *syngraphophylax* and underwent an *anagraphē*. In accordance, the public document became dispensable and the clause anticipating its composition was left out of the earlier document altogether.

In the Roman period the anticipatory clause was generally left out of marriage documents. Yet rather than seeking the reason for its omission in the alleged degeneration of the *ekdosis* as an act of marriage⁵⁸ as Wolff proposed, I believe that it was the result of the frequent composition in this period of marriage documents by public or semi-public organs.⁵⁹ In complete accord with our observation as to the Ptolemaic period, the anticipatory clause appears in the Roman period only in the rare cases that the earlier document was a private document (ιδιόγραφος συγγραφή), and the composition of an additional marriage document διὰ τοῦ δημοσίου⁶⁰ was still felt to be required.

Uri Yiftach

22 Refidim st.
69982 Tel-Aviv
ISRAEL

e-mail: uiftach@post.tau.ac.il

⁵⁸ I deal with this question in "The Role of the *Ekdōsis* in the Greek Law of the Roman Period in Light of Second Century Marriage Documents from the Judaean Desert", in R. KATZOFF & D. SCHAPS (eds.), *Law in the Documents of the Judaean Desert* (forthcoming).

⁵⁹ H. J. WOLFF, *RGP* II (n. 24), 136 n. 2

⁶⁰ *P. Oxy.* III 607,5-6 *descriptum* (Oxyrhynchus, AD 110-11). I thank Alfred Mueller from the Beinecke Library in Yale for providing me with a photograph of this document. See also *P. Lund.* VI 3 = *SB* VI 9353 (unknown provenance, AD 140).