Demotic Egyptian Instruments of Transfer as Evidence for Private Ownership of Real Property

J.G. Manning

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Recommended Citation

Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol71/iss1/10
DEMOTIC EGYPTIAN INSTRUMENTS OF TRANSFER
AS EVIDENCE FOR PRIVATE OWNERSHIP
OF REAL PROPERTY*

J.G. MANNING**

"The Ptolemaic law of things is dominated by
the distinction between possession and
ownership. This distinction has found
expression in the terminology: κυριεία καὶ
κράτησις denoting, in this connection,
possession and ownership. The corresponding
terms are κυριεύειν καὶ κρατεῖν. Sometimes,
however, they are used interchangeably ...."

Raphael Taubenschlag, The Law of Greco-
Roman Egypt in the Light of the Papyri, p. 173.

r-iny ḫḏ r ms.t ḫwy r š.t
"Borrow money at interest, invest it in land."
A demotic wisdom text (P. BM 10508, 16/9).

INTRODUCTION

There is no better place to turn for the study of ancient legal sys-
tems than ancient Egypt because the scholar is provided with a rich
and detailed array of primary sources which document the practice of
both public and private law.1 Among papyri written in the language
known as demotic, a language developed for the rapid writing of legal
and business documents after 650 B.C., those concerned with land ten-
ure comprise the single largest corpus.2 Indeed, disputes over prop-
erty can be documented from the Third Dynasty (2700-2625 B.C.)
onward. To some degree at least, and perhaps to a larger degree than one would prefer, discussion of the land tenure system in Egypt must be limited by location and by historical period. The physical geography varies considerably in Egypt and periods marked by strong central governmental control certainly altered the ability of individuals and groups to assert claims to land. The Ptolemaic period (332-30 B.C.) is the most well-documented period in the legal history of ancient Egypt because large numbers of public administrative texts and private business agreements have survived. This Article is therefore devoted to the Ptolemaic period.

THE PTOLEMAIC PERIOD

In his recent history of land tenure, John Powelson characterizes the land tenure regime in Hellenistic Egypt as a centrally controlled, highly regulated system, marked by even tighter control of land by the government than the pharaohs had. Powelson argues that the Ptolemites were the “sole landowner[s],” dictating which crops were to be grown, making the best land “royal land” and thus the private domain of the kings, and seizing land on which to settle their soldiers.3 Greek immigrant soldiers were a privileged class. He goes on to claim that the Ptolemaic kings asserted even more control over temple estates than the pharaohs had since they demanded rent on such land. As the dynasty went on, the Ptolemies lost control of the country and more land “fell into private hands.”4

I will argue in this Article that the theory of Ptolemaic centralized control of Egypt and its resources, developed by the historian Michael Rostovtzeff sixty years ago and oft-repeated, can now be shown to be inaccurate. Despite the recent claims of many authors, the Ptolemies never seized large tracts of land; absolute control of the soil was theoretical at best and, in practice, geographically limited. The land on which the Ptolemies could collect rent was limited to a special class.5 In addition, large estates were given not only to Greeks but also to Egyptians and the latest survey indicates that Egyptian large estate holders outnumbered Greeks.6 The temples managed their large es-

4. Ibid., p. 21.
tates, which were not in fact donated to them by the Ptolemies, but were “donated” much earlier and then re-donated by the Ptolemies. Many Egyptians took on sub-leases of land that were nominally in the hands of Greek reserve soldiers known as Cleruchs. Rather than positing an erosion of tight centralized control, I argue that the Ptolemies altered the pre-existing system in Egypt as little as possible. This complex and diverse regime allowed for considerable privately-held land, the legal ownership of which may have been enhanced or reinforced by the increased prominence of the written legal instrument of conveyance.

**Evolution of Rights**

In his study of privately-held land in Hellenistic and Roman Egypt, Arno Stollwerck develops an argument, based on demotic Egyptian conveyances of land, that there had been an erosion (“Aushöhlung”) of property rights claimed by the king as theoretical owner of all land from the third to the second and first centuries B.C. In so doing, Stollwerck asserts the commonly held notion that the pharaohs (or, later, the Ptolemaic kings and the Roman emperors) “owned” all land in the country and ceded rights to parcels. While the notion of the pharaoh “owning” all of the land in Egypt is still commonly held by Egyptologists, it was, at most, a “propriété théorique.” This limited cession of land in turn effected a “slow and partial development” of private property in the Ptolemaic period. Stollwerck’s argument of the erosion of such strict control is based on the absence in Ptolemaic demotic conveyances of any overt reference to the king’s “Obereigentum.” However, the first text that he uses to support his thesis, *P. Hauswaldt 1*, is dated 265 B.C., so one must posit a rapid deterioration in royal control from 305 B.C., the year in which Ptolemy I proclaimed himself king. But even pre-Ptolemaic

texts make no reference to the royal “Obereigentum.” One of the earliest demotic conveyances of land, P. BM 10117 (Thebes, ca. 541 B.C. [reign of Amasis]), makes no explicit mention of royal control of temple land. Indeed, the demotic documents never make reference to royal control, and texts from the Ptolemaic period cannot prove an erosion of such royal authority. Within the private Egyptian context there was no need to assert a royal “Obereigentum” because this was implicit in the system. Even in Greek conveyances the royal right to the land is not mentioned. It is important to note that there is no change in the demotic material that suggests an “evolution” (or devolution) into private property and no indication of a concept of eminent domain, a linchpin in any theory of absolute ownership.

Even the so-called evolution of the rights on Cleruchic land may be understood as an adaptation to Egyptian custom that had long recognized the right of the holder of land, through the possession of an office, to pass the property along to his children. In both Egyptian and Greek examples from the Hellenistic period, long-term possession led to the ability to transfer the land to one’s heirs. Over time, children and women could inherit Cleruchic land. In one Greek document from the third century Zenon archive, even at a time when a Cleruch was still a life tenure, a father associated his son as a “co-Cleruch” (συγκλήρους). As Napthali Lewis observed, it is interesting to note that such Cleruchic transfers were termed “cessions” not “sales.”

Egyptian documentation from Upper Egypt shows that temple estates continued to administer large estates on which priests and

15. So also the Ramesside “inscription of Mes,” in which is recorded a family dispute over control of a plot of land originally given to a “ship-master” in the time of Ahmose I after the expulsion of the Hyksos from Egypt. On this inscription, see the comments of Sally L.D. Katary, Land Tenure in the Ramesside Period (London: Kegan Paul International, 1989), pp. 220–22.
other parties having status on the temple estate were given access to land that they could freely buy, sell, lease, and give in inheritance. It is important to remember that each temple had an infrastructure for the maintenance of land in its possession. Each temple would have had a survey of its estate land and the support staff necessary to maintain it. The uncertain political situation during the Ptolemaic period may have led one temple (the temple of Horus of Edfu) to show to the world the exact amount of land in its control by inscribing on the outer retaining wall of the temple a cadastral survey, plot by plot, of its land, as well as other temples', in each of the three southernmost nomes (administrative districts, in this case covering the area roughly from Aswan to Dendera) of Egypt.\textsuperscript{19} Land was donated by the king on behalf of the god of each temple in order to maintain the cult as well as the priests and dependents. A large part of priestly income would have been derived from leasing out such land. In addition, plots of temple land were traditionally exchanged for service to the temple estate and they were certainly treated as private land by those who held them because they were passed on to their heirs.

One unique demotic text might show that, in at least one location, there were restrictions on the permanent transfer of temple property. P. Warsaw 148.288\textsuperscript{20} (Thebes, 119 B.C.) is a document called a shn, normally translated "lease" but here probably best translated "temporary transfer." It is witnessed by twelve men instead of the normal sixteen for real conveyances, which conforms to the expected number of witnesses for leases.\textsuperscript{21} No compensation is recorded as having been received by the vendor. The parties were both priests, the vendor a high-ranking member of several temples at Thebes, the purchaser a caretaker of the dead known as a "pastophoros," a class of mortuary priest, and the vacant building plot (wrḥ) of six land cubits (= 1/16 aroura; 1 aroura = .66 acres) was within the "divine endowment" (hti-pntr) of Amun (of Djeme on the west bank of Luxor). The receiver of the land was permitted to build a house on the plot. The unusual stipulation is that the transfer, written out in the text, was to last for ninety-nine years or 1,204 1/2 months. On the same day, the priest transferred by the same means another six land cubits of empty land


\textsuperscript{21} On the number of witnesses, see Erwin Seidl, \textit{Demotische Urkundenlehre nach den fruhptolemäischen Texten} (Munich: C.H. Beck'sche Verlagsbuchhandlung, 1937), p. 11 n. 5.  

in the divine endowment of Amun (of Djeme) to another pastophoros-priest. These texts do not specify what would happen after this time but, as Pestman noted, the length of time is sufficiently long enough to make the specification nearly meaningless. This type of transfer is highly unusual, and may reflect an illegal transfer of some kind. Given the type of land involved in this transfer, it may be compared with the transfer of "heritable building rights," an "intermediate form between sale and lease," which often had a ninety-nine year term. Such a theoretically temporary transfer might also serve to prevent the fragmentation of temple estate property. Temple property, then, may have been transferred by right of the priests’ office and not by right of a personal holding of land that the priest would have been able to cede, presumably, permanently. This distinction between land held by right of office and personal land is an old distinction in Egypt.

**Private Ownership of Land**

If rights in real property were slowly evolving during the Ptolemaic period, garden and house plots, on the other hand, had arguably always been in private control in ancient Egypt. This type of land was often termed κτήμα in the Greek papyri of the Ptolemaic period, a term otherwise used to refer to ownership of slaves. Indeed, the Ptolemaic demotic land transfer documents bear out this thesis, since the majority of texts that specify the size and type of plot indicate that the land involved is either an “empty plot” (wrḥ) or a “garden” (km). These types of land belonged to individuals “en toute propriété.” In contrast, most scholars have maintained that arable land was, directly or indirectly, under royal control:

22. P. BM 10782 (published by Carol A.R. Andrews, *Catalogue of Demotic Papyri in the British Museum*, vol. 4, *Ptolemaic Legal Texts from the Theban Area* (London: British Museum Publications, 1990), text 22). The witness list has preserved ten names and traces of an eleventh. It is interesting to note that the witness lists of both texts have few names in common. Perhaps the purchaser in each case was responsible for bringing his own witnesses rather than the temple supplying them. In the latter case, for both transactions, we might expect the same people to act as witnesses.
25. Ibid.
The generally accepted theory is that private property of land was not featured in Ptolemaic law and that all land was divided into two categories, the βασιλική γῆ, which was under the direct administration of the king and γῆ ἐν ἄφεσει, which the crown leased to other people yet fully protecting the king's right to it.29

There is nothing to suggest that the king "leased" all remaining land in the country on short-term leases. Although possession of arable land is not well-documented, there is evidence that it could be leased and purchased and it appears that access to it may have depended on local traditions rather than royal edict.30 Even Rostovtzeff, otherwise a harsh critic of Egyptian society during the Ptolemaic period, concluded that there was no doubt about the existence of private land and that in certain areas of the country, notably Upper Egypt, farmland was "freely sold, bought, mortgaged, bequeathed, etc."31

The demotic conveyances of land differ in no way from sales of other types of property such as houses. Because this conclusion is based on demotic documents which reflect well-established Egyptian traditions, land in other areas of the country might have been more widely available than has previously been argued. The latter category of land "in release" (ἡ ἐν ἄφεσει γῆ) is not a fiscal or juridical one, but refers in general to land not directly managed by the crown.32 Most of the demotic sale texts further specified that the land, including garden and building plots, was within the royal or temple domain, a traditional means of indicating the location of the land. Ultimately, then, the land was conceived as under the control of an institution, either as land of the pharaoh (ophysical βασιλική γῆ) or endowment land of a god (ἱπτ-ντρ γον ἄρα γῆ). Some texts from one location (Pathyris) often do not indicate an "owning institution," but simply state that the land is "in the northern quarter of Pathyris,"33 or is "ag-

30. At Gebelein, ἡ μαντῆς = γῆ αἰτοφόρους ("gain-bearing land") was certainly in private hands. The disputed land in the Asyut case was termed in one of the leases (P. BM 10597, 5) ἡ ntr ἐπὶ "land which produces emmer." For the correct reading of this phrase, see S.P. Vleeming, "Notes on the Artabe in Pathyris," Enchoria 9 (1979): 95. In the Hermias dispute, we hear of a priest of Ammon at Thebes who complained "about twenty arouras of grain-producing land, which he stated that Apollonios the son of Damon had sold illegally to Harmais although they were his own ancestral property." For the translation, see Roger S. Bagnall and Peter Derow, Greek Historical Documents: The Hellenistic Period (Chico, Ca.: Scholars Press, 1981), p. 183.
The legal status of such land is unclear and one wonders whether it was new land (and therefore without prior claims by a temple or king) claimed by the Ptolemaic government on behalf of the garrison which was set up there.

Demotic private texts raise questions about the nature of “ownership” of the transferred property and the role of private land ownership in the economy. There has been considerable debate about the existence of private property, both in the pharaonic period and later. Some scholars have argued for private ownership forcefully:

It is well known that private individuals could own farm land at all periods of ancient Egyptian history. L’existence propriété privée sous l’Ancien Empire ne fait aucun doute.

In the temple territories private ownership of land by members of the temple community was a well-known institution in Saite and Persian times.

Others, including Wolfgang Helck, I.A. Stuchevsky and, for the Ptolemaic period, Stefan Grunert, argue that there was, properly speaking, only institutional ownership of land. As Ward noted, it is seemingly difficult to reconcile the two theories. It is also exceedingly diffic-

cult to determine any meaningful definition that covers the whole of Egyptian history. However, if the difference in genre of surviving documentation is taken into account, the diverging theories may be explained, if not reconciled. The public sources, such as the cadastral survey contained in the famous Wilbour Papyrus, or, for the Ptolemaic period, the Karnak ostracon that records a royally-imposed "census of Egypt—field by field," represent the fiscal concerns of the king.\(^{40}\) This was diametrically opposed to the purpose of private transactions recorded on tomb walls and in private legal documents.\(^{41}\) Using these texts, Théodoridès concluded that:

From the evidence of documents of legal practice, so often damaged and handed down in an incomplete form in funerary inscriptions, it thus appears that private property did indeed exist, that it was transferrable, . . . .\(^{42}\)

Many scholars have assumed that the existence of private documents of land conveyance implies that private ownership of land existed. Before the rise of the demotic language, real conveyances outside of the family were rare. The rise in the importance of the written document no doubt increased a sense of sanctioned private possession in the later periods of Egyptian history.\(^{43}\) It must be stressed that the demotic documents should be used with caution when attempting to define an "Egyptian" concept of ownership, since demonstrably real transfers of land outside of the family were still limited in number.

**TOWARD A DEFINITION OF OWNERSHIP**

Most legal historians define ownership as the right to exclusive enjoyment of a thing. An owner is:

he who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he is prevented by some agreement or covenant which restrains him.\(^{44}\)

\(^{40}\) A translation of the Karnak ostracon is given in Stanley M. Burstein, *The Hellenistic Age from the Battle of Ipsos to the Death of Kleopatra VII* (Cambridge: Cambridge University Press, 1985), pp. 122-23.


\(^{42}\) Théodoridès, "The Concept of Law in Ancient Egypt," p. 292.


But attendant on this definition is the notion of a public recognition of rights in land or of rights of usufruct of the land. There was no such legal recognition in pharaonic Egypt; we might be seeing an inchoative recognition in the Ptolemaic period. In pharaonic Egypt, the bulk of the land was divided nominally into land of the pharaoh and land of the temple with the king maintaining theoretical interest in temple land by virtue of his divine status, which gave him primacy in all local cults. This "ownership" of the land by virtue of divine status was, at times, formally expressed in a group of hieroglyphic texts known as land donation stela that, at the top of the inscription, depict the king offering land to a divinity; at the same time, the actual donation recorded in the text was by an individual to a local temple. Thus, we can see two operative levels of Egyptian property theory. On one level is the king, the theological head of every cult and divine representative on earth; on the other level is the practical day-to-day working of the land with individual holders of the land. Thus, a land-owning institution placed small plots of land at the disposal of individuals for their use without losing control of the land. There was a constant struggle between private and royal/temple interests. Both private parties and temples held claims on the same land. Also, the pharaoh retained both a theoretical interest and a real one, since taxes were collected on all land. If surveys recorded only institutional land, the surviving written records may be missing large bodies of data. Privately-held land may not have appeared in the official registers because it was, "par nature, étrangère[s] à la fiscalité foncière."

The terms "ownership" and "possession" as applied to landholding in Egypt have occasioned much discussion as indeed they have in

other societies. The difficulty arises because of the vagueness of the two terms in pre-Roman Egypt: along the property continuum it is virtually impossible to pinpoint, or to distinguish between, absolute ownership, limited ownership, and simple possession.\(^5\) The perspective of the text with which one is dealing makes a considerable difference. If we use Hohfeld’s system of analysis, we may conceive of property as a relationship between parties.\(^5\) To speak of “ownership” or “property” in land is to say that a party has a bundle of rights, privileges, powers, and immunities relative to the land. A man has a “claim,” or a “privilege” in the land, and, at the same time, another party, who stands in some relationship to party A, has a “duty” not to interfere. It is determining the relationship that is key. The situation in pharaonic Egypt, as in other cultures, was such that many parties maintained, concurrently, an interest in a plot of land.\(^5\) Historians must be careful, then, in simply referring to ownership, or the lack thereof, of land. The two basic sets of relationships that the Egyptian documents evidence are set out in Figure 1.

<table>
<thead>
<tr>
<th>Public Records</th>
<th>Private Legal Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Hierarchical”</td>
<td>“Horizontal”</td>
</tr>
<tr>
<td>multiple interests</td>
<td>single exclusionary interest</td>
</tr>
</tbody>
</table>

**Pharaoh, as divine representative on earth**

↑

**Royal land** × **temple land**

agents of the king ←→ priests

↑

small farmers

**Figure 1.** The two fundamental types of relationships in Egyptian documents.


In public records such as cadastral surveys, one will readily observe a hierarchical structure of interdependent institutions and people, with the king at the top having theoretically absolute control over all land. There were royal officials having authority over (r bt) large tracts of land that were given in smaller plots to local officials to administer. The land was "in the possession of" (m-dr.t lit. "in the hand of") the official.54

In private conveyances of real property, a horizontal relationship between two parties is established between vendor and purchaser. The texts were intended to cede interest in the property by one party and thereby guarantee exclusive control to the other party. These private documents, which occur as early as the Old Kingdom (ca. 2600 B.C.), reflect careful distinctions between privately- or publicly-held land.55 High officials such as Metjen in the Fourth Dynasty, or Apollonios in the third century B.C., controlled large estates in land consisting of both types.56 In both of these cases the tenure was precarious.57

The rise of the demotic legal instrument in the seventh century B.C. may have influenced the legal conception of ownership. Demotic terminology, to be sure, suggests a well-developed sense of private ownership. Whether or not it was required at all times to transfer property by legal instrument, we cannot argue on the basis of surviving textual evidence that land in private hands was limited. Each so-called family archive that has come down to us is limited in scope and centered around a particular theme. No one archive was concerned with the total wealth of an individual. The practice of fragmenting personal holdings in real property as a risk-reduction strategy, a practice still very much in evidence in modern Egypt, makes the picture even more complicated.58

54. For the terminology, see Katary, Land Tenure, p. 188. For the phrase m-dr.t, see Aristide Théodoridès, "La notion égyptienne de possession exprimé par la locution prépositive m-dr.t," RD E 22 (1970): 139-54.
DEMOTIC PRIVATE INSTRUMENTS OF CONVEYANCE

The demotic papyri that concern the transfer of land are predominantly transfers of temple land in Upper Egypt by Egyptians, or by individuals with status designations that bind them in some way to the temples.\textsuperscript{59} Therefore, the picture of landholding patterns that one can reconstruct from documents from Upper Egypt differs markedly from that of the Fayum region.\textsuperscript{60} Since so much of the land in the Fayum was administered directly by the crown, it follows that most farmers were directly attached to the crown through leases of crown land or through sub-leases (via Cleruchs who leased out their land to Egyptian cultivators) of crown land.\textsuperscript{61} By contrast, the economic influence of temples in Upper Egypt, which controlled vast tracts of the land in the Nile valley, meant that individuals were only indirectly tied to the crown. The demotic documents underscore that the Ptolemaic economic system was not uniform throughout the country, and that older, pre-Ptolemaic traditions continued in the Egyptian countryside, at least to some extent, after the introduction of the "royal" economy of the early Ptolemies.\textsuperscript{62} Therefore, within the context of temple property, a different mode of land tenure prevailed that was not substantially altered by the Ptolemies.

The subject of landholding and agriculture is a predominant one in Egyptian non-literary texts, but recorded transfers of land in Egyptian history are rare even in the later periods when more documentation is available. Therefore, while the number of demotic documents that concern agriculture or land use is large (in the form of leases, tax receipts, petitions concerning disputes . . .), the number of conveyances is small. However, the movement of property across generations of the same family was quite common in all periods of Egyptian history, and may have been effected by means other than written contract. As a result, the number of demotic conveyances that have sur-

\textsuperscript{59} See the table listing the holders of temple land and royal land in the third century B.C. and the second/first centuries B.C. in W. Peremans, "Égyptiens et étrangers dans l'agriculture," p. 128.


vived may not be indicative of the actual frequency of property transfer.

The paucity of demotic land conveyance instruments has raised questions about the importance of private land holding in the overall native economy of Ptolemaic Egypt. Although agricultural wealth was the economic engine in Egypt, the importance of private landholding was downplayed by Janet Johnson, who concluded that "landed property represented a relatively small percentage of the wealth which Egyptians possessed." The small number of land conveyance documents that survive tends to support this suggestion (I count seventy-nine for the three hundred years of the Ptolemaic period). An argument *ex silentio* can be tendentious, but I would argue that the transfer of land outside of the family by document may have been rare since the possession of land was so basic to one's livelihood. Certainly intra-family transfer was effected by other forms of transfer such as the division document. The documents that have been preserved, rather than reflecting the normal mode of transfer, might in fact record unusual circumstances.

The corpus of demotic land transfer texts is in fact a heterogeneous collection of documents recording many different types of legal transactions. Therefore, economic trends should not be culled from them. For example, the number of demotic land transfer texts is not sufficient to make statistically valid conclusions. Taken as a group, they tend to contradict the conclusions reached by Tony Reekmans (based on the Greek papyri alone?) that an increase of land sale activities in the second and first centuries B.C. resulted from the economic conditions at the end of the third century B.C. The number of third century demotic conveyances cannot be interpreted as resulting from economic duress.

**Real Conveyance**

The type of transfer of possession by demotic instrument existed in two basic forms: permanent (sales, gifts, exchanges, and donations) and temporary (leases). Put another way, demotic instruments of transfer might record either the physical transfer of a piece of prop-

---

tery, the transfer of usufruct, or an agreement to transfer at some future date. This latter type was used to effect loans, or to insure that a desired individual would inherit a specified piece of property. A conveyance required the vendor to write two documents, a sh db³ hd, “document in exchange for money,” and a sh (n) wy, “document of being far,” in favor of the purchaser. In “real” conveyances, both documents were drawn up on the same day by a scribe at the local temple and were accompanied by a list of sixteen names of witnesses on the verso of each document. The documents could be made on separate sheets of papyri or, as in the case of the Hauswaldt papyri, on the same sheet of papyrus. In the latter case, the sh (n) wy was always to the left of the sh db³ hd. There is a tendency in transfers of important property to write the two identically dated documents. It is quite clear that the documents had different functions and that both were needed to record a real transfer.

<table>
<thead>
<tr>
<th>sh db³ hd + sh (n) wy</th>
<th>sh db³ hd</th>
<th>sh dny.t p$</th>
<th>sh (n) wy</th>
<th>gift</th>
<th>swap &amp; other</th>
</tr>
</thead>
<tbody>
<tr>
<td>real conveyance</td>
<td>pledge</td>
<td>family division</td>
<td>cession</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>30</td>
<td>5</td>
<td>10</td>
<td>6</td>
<td>6</td>
</tr>
</tbody>
</table>

Figure 2. Land conveyance documents from Upper Egypt during the Ptolemaic period by class

The sh db³ hd acknowledged the receipt of a sale price (swn n hd) with which the vendor is satisfied (mtr). From the modern legal standpoint, therefore, the demotic instruments were not “contracts” recording an agreement, but, rather, a record of a settled transaction. It is for this reason that the actual price of the sale was normally not recorded; indeed the price was irrelevant to the legal


relationship established by the document between vendor and purchaser. Rather, the import of these documents was that they gave proof of legal title to the property in question. The functional importance of the conveyance clauses was to indicate that a satisfactory compensation was given to the vendor in exchange for the commodity transferred. The documents, no matter in whose name they were originally drawn up, were passed down to the purchaser so that he might prove that the property was validly purchased and that his title was "clear" (\(\aleph \beta \)). In the transfer document, the following phrase shows that earlier documents giving the history of the transmission of the property and the new transfer documents were handed over to the purchaser:

\[
[y]ours is every document which was made concerning it (scil. the property) and every document which was made for me concerning it. Yours are its old documents and its new documents in any house in which they are.
\]

In the absence of this clause, one text explicitly stated:

\[
\text{\`iw\`y ty n\`ilt p\`i\`s sh\`u} \text{\`dib\`\`h d\`p\`\i\`s sh\`u \text{\`ly} \text{\`\`irif n\`y r t\`\`s dny.t p\`\`s.t p\`\`i\`s \`n\`\`h nt \`hr}
\]

68. The sale price is mentioned in sales of land recorded in Greek papyri. See e.g., Elkan Nathan Adler et al., ed., The Adler Papyri (London: Oxford University Press), G1 p. 11., where a sale of seven cubits of land for one talent and 2,000 drachmae of copper coinage is noted.

69. In showing the importance of the written, Dorothy J. Thompson, Memphis Under the Ptolemies (Princeton: Princeton University Press, 1988), pp. 159–60, cited P. Louvre 2414, 5a–6: “Do not disdain your papyrus document, (even) when to have force they are too old.” In contrast, one might cite the rather more cynical passage in P. Onchsheshonqy 18/6: “If you are powerful cast your documents into the river. If you are weak, cast them (there) also.”


71. P. Hauswaldt 1a, 7. The clause is lacking from Lower Egyptian documents. See Karl-Theodor Zauzich, Die ägyptische Schreiber tradition in Aufbau, Sprache und Schrift der demotischen Kaufverträge aus ptolemäischer Zeit, Ägyptologische Abhandlungen (Wiesbaden: Otto Harrassowitz, 1968), p. 141, clause 7a. See the discussion by P.W. Pestman, “Some Aspects of Egyptian Law,” pp. 281–301; Cruz-UrIBE, Cattle Documents, p. 70. The earliest complete attestation of the phrase is contained in P. Louvre E 7128 (510 n.c., Thebes), (published by Michel Malinine, Choix de Textes juridiques, en hiératique anormal et endémotique (xxve - xxviie dynasties) (Paris: Librairie ancienne Honor Champion, 1953), pp. 85–88). One such example of the use of an “old document” is P. Berlin 3114 (published by Stefan Grunert, Thebanische Kaufverträge des 3. und 2. Jahrhunderts v. u. Z. (Berlin: Akademie Verlag, 1981)). Written above and to the left of the witness list on the verso is the phrase: \(\text{p\`i\`s sh\`u is n p\`\`i\`s \`wy nt \`hr}\ (?) “the old document of the above-mentioned (?) house.” This sales document might have been brought as evidence in the famous Hermias dispute.
I will give to you the sale document (and) the cession document which he (scil. the previous vendor) made for me concerning the half share of the land mentioned above.\textsuperscript{72}

In the case of property being split up, a copy of a document proving proper title might be drawn up many years after the original sale. This situation is found in P. Turin 6081,\textsuperscript{73} where a woman divided a plot of land with her brother in the proportion of one-third to two-thirds. When she received her share of the inheritance, probably at the time of her marriage, a \textit{\textit{sh dny.t p}s} "document of division" was drawn up for her by her brother. In turn, she presumably wrote out a division agreement for her brother promising not to interfere with her brother's share. In addition to the division agreement, her brother also made a copy (\textit{h[t]}l) for his sister of the \textit{\textit{sh db}s h\textit{d}} document by which their father had originally obtained the land.\textsuperscript{74} After the stipulation of the regnal year and eponymous priest protocol (placed at the beginning of the text as a means of dating), the \textit{\textit{sh db}s h\textit{d}} document continued with the verb "to say," followed in the so-called "objective style" by the names of both parties:

Vendor [so-and-so son of so-and-so whose mother is so-and-so] has declared to buyer [so-and-so son of so-and-so whose mother is so-and-so] . . . .

On the verso of the document, behind the verb "to say," the witness list was written, thus graphically recording the fact that the witnesses had testified to the words agreed to.\textsuperscript{75} These transactions, then, were publicly recorded as similar agreements were under Roman law.\textsuperscript{76} A description of the property is given, usually specifying the administrative category (\textit{\textit{sh n pr-s3}} or \textit{htp-ntr}) of land, the general location of the plot ("in the field X"), and then the neighbors of the plot, normally given in the sequence South-North-East-West.\textsuperscript{77}


\textsuperscript{73} Giuseppe Botti, \textit{L'Archivio demotico da Deir El-Medineh} (Florence: Felice Le Monnier, 1967), text 4.

\textsuperscript{74} See P.W. Pestman, "Fureter dans les papiers de Totoës: Archives familiales grecques-démotiques de Turin," \textit{PLBat} 23 (1985), 147.


\textsuperscript{77} The traditional order of the cardinal points was S-N-W-E. For general considerations, see Georges Posener, "Sur L'orientation et l'ordre des points cardinaux," \textit{Göttinger Vorträge vom Ägyptologischen Kolloquium der Akademie}, ed. Siegfried Schott, Nachrichten der Akademie der Wissenschaften in Göttingen. Philologisch-Historische Klasse, vol. 1 (Göttingen:
ary descriptions are extremely valuable in studying the change of possession of plots of land in an area. A change in the name of the holder would directly indicate a change in possession. This turnover in possession may have been even greater considering that there was a tendency in Egypt for a plot of land to be called after an old holder of the plot long after title had passed to someone else.

The vendor stated that he has received the complete “price” of the land, that he has no further right to the property, and that he will expel any third party who might lay claim to the property. In the case of a contingent third-party interest, an “assent declaration” (“Beitrittserklärung”) clause was inserted at the end of the sh db² hd and sh (n) w½ documents to guarantee the purchaser that a party who had a prior claim has agreed to the sale. Makers of this declaration of as-

van den Hoeck & Ruprecht, 1965), pp. 69–78. On the administrative practice of surveying S-N-E-W, see Meeks, Donations, p. 139. A text from Edfu, P. Cairo 50150 + 50155, dating from the reign of Nectenebo I, 378–360 B.C., gives the boundaries of a house in the order S-N-W-E. See Eugene Cruz-UrIBE, “A 30th Dynasty Document of Renunciation from Edfu,” Enchoria 13 (1985): 45. Cf. P. Turin 6104, 7 (=Botti, Archivio, text 28), in which the boundaries are given S-N-W (corrected from E)-E. At times, a circular order S-E-N-W was used, e.g. P. BM 10026, in which one of the houses is given boundaries in that order. See S.R.K. Glanville, “Notes on a Demotic Papyrus from Thebes (BM 10026),” in Essays and Studies Presented to Stanley Arthur COOK, ed. D. Winton Thomas (London: Taylor’s Foreign Press, 1950), p. 64. Proof that makers of witness-copies simply copied out what was written by the professional scribe is shown by the fact that all three makers of the copies in this case also gave the boundaries in the unusual order. See Andrews, Catalogue, p. 21 n. 45.

78. Caution is sometimes warranted, however, by the fact that some scribes record boundaries which were decades out of date. See the comments by P.W. Pestman, “Public Protests” in the Demotic Family Archive of Pchorchonsis,” in Miscellània Papirologica Ramon Roca-Puig en el seu vuitantè anniversari, ed. Sebastià Janeras (Barcelona: Fundació Salvador Vives Casajuana, 1987), p. 280 n. 25.


80. The verb used to express the receipt of the full sales price was mh, “to complete, fill.” It is interesting to compare the Sumerian sale documents of the Ur III period which use a similar verb in the same context. See PIOTR STEINKELLER, Sale Documents of the Ur-III-Period (Stuttgart: Franz Steiner Verlag, 1989), p. 13.

81. JOSEF PARTSCH, in KURT SETHE and JOSEF PARTSCH, Demotische Urkunden zum ägyptischen Bürgschaftsrecht, vorzüglich der Ptolemäerzeit, Abhandlungen der Philologisch-Historischen
sent would normally be the wife or co-heir of the vendor. In the case of children being under age, a parent could make the declaration on their behalf.\textsuperscript{82} The form of this clause was normally as follows:

\begin{quote}
so-and-so says: Receive the document (written) above at the request of [the vendor] concerning everything. My heart is satisfied with them. Let me do <their rights>- [i.e. I will not violate the legal rights established for you] on any day without subterfuge.\textsuperscript{83}
\end{quote}

The formula of the \textit{sh (n) wyr} document is similar to the \textit{sh db \textsecondcopy hrd} document, but begins by explicitly stating that the vendor is “far” from the purchaser with regard to the rights of the property being transferred. This document thus served to declare that the vendor quit any future claim to the property and reinforced the purchaser’s rights established by the \textit{sh db \textsecondcopy hrd}. Known as an “anticipatory dispute document,”\textsuperscript{84} it pre-empted a future dispute over the rights being transferred by renouncing any right to sue the new owner over the property, and had nothing at all to do with the transfer of property \textit{per se}. If a dispute arose over a property transfer and the dispute came before a tribunal, a losing party was forced to write out a \textit{sh (n) wyr} ceding any claim to the property. Such a case lies behind P. BM 10380A.\textsuperscript{85} It became an essential element of Ptolemaic sales. However, there are many surviving land transfers that preserve either a \textit{sh db \textsecondcopy hrd} or a \textit{sh (n) wyr} alone. In two unusual cases, because the scribe incorporated clauses of the \textit{sh (n) wyr} into the \textit{sh db \textsecondcopy hrd} document, we may surmise that transfer of the property in question was effected by means of a single document rather than the expected two. This was less the result of a new legal form than a local scribal change due to the political circumstances of the time.\textsuperscript{86} Therefore, \textit{sh db \textsecondcopy hrd} can, at

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{82} Pestman, “Fureter dans les papiers de Totoés,” 148.
\item \textsuperscript{83} P. Hauswaldt 9a, 9–10. The declarer was in this case the husband of the vendor.
\item \textsuperscript{85} The fact that a dispute of some kind was at issue is secured by the losing party in the dispute, \textit{P\textsuperscript{3}-\textsuperscript{5}-r\textsuperscript{2}-r\textsuperscript{3}-mwt}, declaring at the end of the text “these are the neighbors of your land . . . concerning which I have been in dispute with you.” For the translation and the publication of the text, see Andrews, \textit{Catalogue}, text 45.
\item \textsuperscript{86} The texts, P. Carnarvon 1 and 2, date from the reign of Horwennefer, one of the autonomous rulers of Thebes during the years when Thebes broke loose from Alexandrian control. For
\end{itemize}
\end{footnotesize}
times, be used singly to effect a transfer. One such special use of sh db3 ḫd documents was in the context of a family transfer, or perhaps better, a pledge of property to take effect upon the death of the donor. P. Philadelphia 2,87 for example, is a sale of a house by a woman. The penultimate clause in the text, in recapitulating the item being sold, mentions that the sale did not include a small parcel of land, which will be divided between her two children, and “for which she wrote a sh db3 ḫd in regnal year six (of Phillip Arrhidaeus),” that is, five years previously.

There is additional evidence that real transfers could take place by sh db3 ḫd alone. In P. Louvre 9416,88 a woman sold to a Greek man three arouras of land that she had acquired from another Greek seven years earlier by sh db3 ḫd. In the new conveyance likewise, only a sh db3 ḫd was drawn up. A real conveyance had certainly taken place by sh db3 ḫd alone since the woman was now transferring the land herself.

It is clear that the English word “sale” does not cover all of the uses of either the sh db3 ḫd or the sh (n) wy instruments. Therefore, the transaction is more properly referred to as a “conveyance” or a “transfer.”89 The instruments, separately or in tandem, were used for a variety of transactions where property was involved. Some texts that apparently are real transfers of property, which are either sh db3 ḫd or sh (n) wy documents alone, incorporate unusual phraseology in them that might have substituted for the companion document. Just as in the Carnarvon Papyri, P. Rylands 19 + 2490 must be explained in this light. As Pierce91 reconstructed the events, two men drew up a sh db3 ḫd and a sh (n) wy document in 118 B.C. concerning a “one third share of high land in the high land . . . which reached us in the name of PN, our father” of which only the sh db3 ḫd survives (P. Rylands 19). Five years later, a sale tax was paid on the property, which was recorded at the foot of P. Rylands 19, and the two sisters of the brothers re-confirm the conveyance in P. Rylands 24.92 This second text is

87. El-Amir, Family Archive, pp. 7–12.
89. Cf. Smith, “Another Witness-Copy Document from the Fayyûm,” 87 n. 3. In this I am in complete agreement with Steinkeller, Sale Documents of the Ur-III-Period, p. 140 n. 402.
90. Griffith, Prylands, vol. 3, pp. 147, 276, 153, 281 respectively.
92. This text, having only eight witnesses on the verso, was written by the same scribe who wrote P. Rylands 19.
merely a confirmation, perhaps the functional equivalent of the "as-
sent declaration" clause sometimes recorded at the end of \( sh \ dbz \ hld \) documents.\(^93\) Although these instruments of conveyance, then, demonstrate a strong Egyptian sense of ownership, the actual vocabulary used was not a specialized legal kind.

**DEMOTIC TERMS FOR POSSESSION**

There was little technical legal terminology regarding rights in land or indeed other types of property. Often, land was simply termed “in the possession of” someone (\( hr \) lit. "under").\(^94\) In Egyptian terms, property rights were based upon control of the property—one “exercised control” (\( lr \ shy \)) over property to the exclusion of others.\(^95\) In demotic marriage agreements, the husband had the rights of use (\( syhfl \)) over property brought into the household by the wife, while the wife maintained a right of future disposal (\( sy \) lit. “fate”) over that property.\(^96\) There are frequent attestations of children having possession of their father’s land.\(^97\) The Hermopolis “code” frequently used the term \( nb \ shy \) “possessor of field” when referring to the possessor of land,\(^98\) but although the term does refer to a private person, the modern term “owner” (“Eigentümer”) may not be appropriate.\(^99\) Greek terminology for possession/use and ownership were often in-

---

\(^93\) For another example of \( sh \ (n) \ wyt \) document used to confirm a prior transfer, see the remarks by H.S. Smith concerning P. BM 10616 & 10750 in “Another Witness-Copy Document from the Fayyûm,” 88-89.

\(^94\) For the phrase \( nt \ hr \), “in the possession of,” “genutzt durch,” see Grunert, “Erscheinnungsformen,” 68; E. Boswinkel and P.W. Pestman, Textes Grecs, Démotiques et Bilingues, PLBat 19 (Leiden: E.J. Brill, 1978), p. 203, who equated the term with the Greek \( kptev \), suggest that the demotic term designated possession rather than “ownership.” It seems that heirs were often given property this way during the life of the testator.

\(^95\) For the term, see Cruz-Urube, Cattle Documents, pp. 56-57; P. HLC, 9/31.


\(^97\) \( \tilde{a}h \) \( NN \ nt \ hr \ n\tilde{a}y=f \ hr=t.w \) “the field of so-and-so which is in the possession of his children.” See Katary, Land Tenure, p. 16.

\(^98\) Girgis Matthia, The Demotic Legal Code of Hermopolis West, BdE, vol. 45 (Cairo: Institut français d’archéologie orientale, 1975), p. 138. Cf. the phrase \( p\tilde{s} \ smw \ n \ nb \ shy \) “The crop of plot holder.” \( nb \ shy \) is otherwise used to translate the technical term for the holder of a military plot of land: \( \tilde{k}t\tilde{a}tkos \).

\(^99\) Erwin Seidl, Bodennutzung und Bodenpacht nach den demotischen Texten der Ptolemäerzeit (Vienna: Verlag der österreichischen Akademie der Wissenschaften, 1973), pp. 14-16. A different interpretation has been suggested by Bernadette Menu, Recherches, p. 104, who claims that the term \( nb \ shy \) in the code might refer to the king himself or his agents.
terchanged, indicating that ancient legal terms do not fit neatly into our modern juridical ones.¹⁰⁰

Land transfer papyri from the Ptolemaic period unequivocally demonstrate the movement of property within the family. The desire of the ancient Egyptians to see property passed down to the rightful heirs in an orderly manner is a common theme in literary texts.¹⁰¹ If a rightful heir was not able to succeed to the possession of land, another member inherited. P. Carnarvon 1 and 2 demonstrate the movement of small parcels of land within the family.¹⁰² In the first document, Senobastis sold to her cousin Psenes a 1/64 aroura empty plot around her house that she had inherited from her father. Psenes already held land with his brother Paos III to the north. The situation in the second text reflects a transfer of land when the rightful heir of Paos the elder, Pa-neit, died before a settlement was made. The property therefore is divided between Pachnumis, the other son of Paos the elder, Pa-neit's brother, and the grandson of Paos, Paos III. The plot “reached him in the name of his father Pa-neit.”¹⁰³ Paos III already held land to the north of this plot. An assent declaration was made by the two sons of Pachnumis, declining any future claim that they might have had to some of the land through their father. We thus see in these two texts that the families of two brothers, who lived in close proximity, and at least three of whom bore the title “herdsman, servant of Amun,” made settlements with each other over land that originally belonged to Paos I the elder.


¹⁰¹ A. Leahy, R/73 34 (1982–83): 89; M. Smith, PBM 10507, p. 64 with bibliography.

¹⁰² The texts were found by Howard Carter in a sealed jar in a vaulted tomb dating to the Ptolemaic period at Gurna, western Thebes. For a report of the find, see Wilhelm Spiegelberg in the Earl of Carnarvon and Howard Carter, Five Years' Explorations at Thebes: A Record of Work Done 1907–1911 (London: Oxford University Press, 1912), pp. 46–47. The texts were subsequently published by Spiegelberg in “Zwei Kaufverträge aus der Zeit des Königs Harmachis (Papyrus Carnarvon I und II),” R/73 Tr. 35 (1913): 150–61.

¹⁰³ P. Carnarvon 2, 7.
It was an expected right ("Anwartschaftrecht") that parents' property would pass to their children, either during the parents' lifetime, or upon their death. At times, the mother of a man's children would receive property in trust in order to maintain her until the children were of legal age to claim the property. Occasionally, however, the property descended to a collateral heir of the same generation, or to the next generation (i.e., grandchildren) as P. Hauswaldt 5.104 This occurred most often when a rightful heir passed away before inheriting.

As we saw in the above example, property "reached" (ρη) a rightful heir105 "in the name of" (ν η ν) a deceased person, or "from" (ν or ιν) his property.106 The so-called legal code of Hermopolis (P. HLC) specifies that it was the eldest son, or the child who acted as eldest son, who held special privilege in inheriting the choicest part of his father's estate in lands, gardens, or houses.107 The privileged position of the eldest son derives from the fact that he was legally responsible for both the burial costs and the ritual of burying his parents.108 Although each child received a "share" of the estate, land in particular was no doubt exploited jointly by the family, thus keeping land
together and dividing profit derived from its yearly rental. Several papyri mention that land that was inherited by more than one member of the family was jointly held ("without division" [\(w\$ \rho\$\)])\(^{109}\). This may reflect a preferred manner of holding the land, or the condition in which it was inherited. To be sure, family land could be split with the consent of the heirs.

In the Totoes archive from Thebes, for example, Pikos and his sister Tatehathyris inherited a plot of land from their father consisting of twenty-one arouras in two locations. The land was shared between them, and was perhaps administered by Pikos while his sister received a share of the income derived from the plots. But on 8 May 109 B.C. a division agreement was drawn up by Pikos promising to cede the seven and one-half arouras of land that rightfully belonged to Tatehathyris. It is thought that leaving the family, i.e., her marriage, precipitated the need to divide the land in a real way.\(^{110}\)

Can we argue that landholding was an important feature of Hellenistic Egyptian society? In attempting to explain the small number of preserved conveyances, it might well be asked whether Ptolemaic society was characterized by a hesitancy to sell off family land. This is a notable feature of other "peasant societies."\(^{111}\) The primary mode of the transfer of possession was no doubt through inheritance rather than sale.\(^{112}\) In light of this fact, it is worth asking if many transfers between generations were effected without written documentation at all, by simply associating one’s children on the land, just as in the case of a Fayum military plot (Cleruchy), where a father associated his son as a \(\sigma\upsilon\gamma\kappa\lambda\nu\rho\omicron\omicron\).\(^{113}\) There are many references in the demotic papyri to "the land of so-and-so, being in the possession of his children" (\(\theta\rho\ n\exists\gamma\tilde{\iota}f \ \theta\rho\kappa\widehat{\omega}w\)). Thus, children may have been established on the land as heirs of the father in an informal way leading to the conclusion that at

---

109. For a similar situation in Roman Egypt, see the remarks by Jane Rowlandson, "Sales of Land in their Social Context," in Proceedings of the Sixteenth International Congress of Papyrology (Chico, Ca.: Scholars Press, 1981), p. 371. The demotic phrase, according to Reymond, Catalogue of Demotic Papyri in the Ashmolean Museum, p. 105 n. 17, was a late Ptolemaic phenomenon attempting to translate the Greek \(\kappa\alpha\iota\nu\omicron\nu\ \kappa\alpha\iota \delta\alpha\delta\alpha\pi\epsilon\tau\omicron\nu\). Other texts, such as P. Rylands 15 (Griffith, P\(\)Rylands, vol. 3, pp. 132, 166) show that non-related partners could share plots of land.

110. See Boswinkel and Pestman, Textes Grecs, p. 13.

111. For Roman Egypt, see Rowlandson, "Sales of Land in their Social Context," p. 372. Cf. the remarks of Steinkeller, Sale Documents of the UR-III-Period, p. 144, who noted that these Sumerian texts indicate a reluctance to sell family land and that such sales were "achieved only with the greatest difficulty and usually under economic distress."


113. See n. 16.
times the transfer of control of property within a family may have taken place without the formality of written texts. Such a method of informal transfer may have obviated the necessity of paying the transfer tax (εγκύκλιον) and other fees such as that required by the scribe to draw up the legal instrument. If this “peasant” model of Hellenistic Egypt is correct, it would be paralleled by the later practice of athariyya in the nineteenth century, an institution that provided the right of the peasant to convey his land to his heirs as long as taxes were paid.\textsuperscript{114}

Although the origins of the famous demotic legal “code” predate the Ptolemaic period by at least several centuries, the legal practice in the so-called legal code found “in a partially broken jar in the debris of a ruined building”\textsuperscript{115} at Hermopolis (the building may well have been the temple archive) may or may not reflect the actual practice of law during the Ptolemaic period.\textsuperscript{116} It is perhaps of some importance that it is difficult to connect the rules in the text with the practice of the surviving papyri.\textsuperscript{117} Nevertheless, the document is important in the development of legal thought in the later periods of Egypt’s history for it has also come down to us in a Greek translation dated to the Roman period.\textsuperscript{118} Much of the surviving “code” is concerned with the leasing of property and rules of inheritance. The rights of lessor and lessee are described in detail as are the methods of gaining rightful control over property. Such a notion of exclusive control over property strongly suggests a legal conception of ownership, a conception that is supported by documents such as the main court transcript of the family inheritance dispute known as the “Asyut archive.” Therein, one of the two contesting parties received a “restraining order” to prevent the plaintiff from approaching the disputed land.\textsuperscript{119}


\textsuperscript{115} Mattha, \textit{The Demotic Legal Code of Hermopolis West}, p. 1.


\textsuperscript{117} For one such connection, however, see Pestman, “’Public Protests’ in the Demotic Family Archive of Pchorchonsis,” pp. 271–81. General connections between this “code” and the practice of the documents are discussed by Stefan Grunert, \textit{Der Kodex Hermopolis und Ausgewählte private Rechtsurkunden aus dem ptolemäischen Ägypten} (Leipzig: Verlag Phillip Reclam jun., 1982). A re-edition with commentary of the code has been published by K. Donker van Heel, \textit{The Legal Manual of Hermopolis} (Leiden: Papyrologisch Instituut, 1990).


\textsuperscript{119} P. BM 10591 (Thompson, \textit{A Family Archive from Siut}, p. 4); 2/7-8: iw/h nby n/h bp-wl ty ir/s n/h gm n hshy r-rw “he taking protection against me, while he did not allow that I be able to approach them.”
Interestingly, and perhaps importantly, transfers of land are not a major concern of the "code."

If a dispute over ownership between two parties arose, there was a clearly defined legal method by which one exerted a rightful claim to the property. This method, known as "making a public protest" (lr ʂ-r), is described in some detail in the "code." The protest was made by a party who claimed an interest in property, either in the presence of (lit. "in the face of") the party illegally holding the property or in his absence, and had to be done three times in three successive years in order to fulfill the requirements associated with the protest. If a party leased land for three successive years without a "public protest," the lands were considered free and clear for him. This practice clearly demonstrates that the Egyptian law recognized private rights in real property and had a legal remedy by which to assert the claim.121

In addition to the demotic legal contract that formalized the concept of private possession, there are some other indications that the Ptolemies themselves officially recognized private possession. If there was an "evolution des droits du roi sur la terre" stimulated by the increasing weakness of the kings caused by internecine dynastic battles, costly foreign wars, and much domestic unrest throughout the country in the last two centuries of Ptolemaic rule, it might have contributed to the category of land called γῆ ἱδιόκτητος ("private land"). Although references to it are few in the Ptolemaic period, it becomes a clearly defined category of private land in the Roman period and may in fact have had an antecedent in the land retained by private individuals on temple estates and gradually on Cleruchic land.124 This type of land is common in Roman period Egypt and is

121. In the Asyut dispute, the woman who protested the transfer of land to her brother-in-law made three "protests" in the name of her husband. For the process, see P. BM 10591, 1/21, 2/24, 4/20, 5/16, and 10/10.
122. On the importance of the written document as proof of ownership, see, e.g. the trial record from the "Hermias dispute," over the ownership of a house on the Theban west bank. See Ulrich Wilcken, Urkunden der Ptolemäerzeit (ältere Funde), vol. 2 (Berlin: Walter de Gruyter, 1927), text 162, where both parties produce an abundance of written evidence. The case turned, however, on the fact that the plaintiff, a Greek soldier of some standing, had not lived in the disputed property. For a translation of this text, see Bagnall and Derow, Greek Historical Documents, text 110.
124. Modrzejewski, "Regime foncier," argued that on the basis of the use in the Greek papyri of καταγραφή-deeds for this type of land, and the term κτήμα, there is sufficient grounds for calling this land "private" in the Ptolemaic period. See further Taubenschlag, The Law of Greco-
the result of the fact that "full rights of private property were recognized." But the Roman recognition of private property was the end result of an evolution begun in the late Ptolemaic period whose roots go even further back. After the civil war between Ptolemy VIII, Euergetes II, and Cleopatra II and III, a decree was issued in which possession of land was guaranteed to those who held it. Such a decree was issued at a time when a weak government was trying to restore order. The beginning of the "evolution" may be observed in a document of the third century B.C. (P. Elephantine 14), which was concerned with a public auction procedure. This papyrus records a royal ordinance that guaranteed that those who purchased land at auction held the land in the same way as the former owners. This implies a varied regime of landholding and that the government was not interested in disturbing the pre-existing land regime. The fact that unused or derelict land was declared "ownerless" is another indication that a concept of private ownership may have emerged in the Ptolemaic period.

**Joint Ownership of Land**

Property in ancient Egypt, particularly real property, was corporately conceived. Other property was also conceived of as an undivided whole from which one took "shares" at the time of


130. The whole of a temple's property was conceived in terms of shares which were then divided up among the priests. In the Fayum, the priests of Soknebtunis worked the land "together," κοινόνη. See *P. Tebt.*, vol. 4, p. 13.
inheritance. Therefore, a certain tension existed between the family or temple "corporate" interest in property and individualized property rights. It is not always certain that a real division or a share (dny.t) in the interest in the property was transferred. In the case of the transfer of a 1/35th share of a house, we can be certain that only a joint interest in the house was transferred. The evidence for the joint control of land between two or more parties is abundant. It is significant, for example, that in a priest's gift to his son of his lands, none of the land was held solely by him, but, rather, it was shared by the priest and a distant cousin.

In addition to family plots held in common, texts from the Ptolemaic period show that groups associated by profession with status titles like "herdsmen of Horus of Edfu" or "Royal Farmers" jointly held plots of land. In at least some cases the joint purchase of land gave the group a certain immunity from government interference. One such group purchase is documented in a demotic text of 221/220 B.C. (P. Hauswaldt 16) in which a group of eleven men and women entered into an agreement to jointly purchase with five others a plot of land measuring forty-five arouras at public auction. Such group holding of land may have been a strategy for obtaining personal protection from taxation, corrupt officials, and in the case of royal land at least, corvée labor. Group holding of land would have reduced the risk inherent in individual holding and may have been encouraged in Egypt by the basin irrigation system, which dictated that plots of arable land be situated in large basins irrigated by canals from the Nile itself.


132. In Archaic Greece, such family joint-ownership was only gradually replaced by individual ownership by the head of the household. See M.M. Austin and P. Vidal-Naquet, Economic and Social History of Ancient Greece: An Introduction (Berkeley: University of California Press, 1977), p. 74 n. 19; Burford, Land and Labor, pp. 49-55.


135. Spiegelberg, PHauswaldt, pp. 51-54; Manning, The Conveyance of Real Property, 128-32.

Disputes Over Property

Egyptian marriage and inheritance patterns that preferred portable inheritance of family property would have predisposed families to dispute property.\textsuperscript{137} For this reason, family property was often worked jointly with profits divided up. In particular, disinherited children, either because of divorce or some other reason, would have caused problems for the smooth passing of property between generations.\textsuperscript{138} Clauses that stipulate the way in which the property is to be disposed are occasionally preserved in the papyri. In P. Hauswaldt 13, for example, a gift of an empty plot and appurtenances from a father to his daughter, states that:

\begin{quote}
the son, (or) the daughter, (or) the brother, (or) the sister, (or) anyone at all who will come against you concerning them (scil. the property), he shall give to you ten silver deben . . . If you want to sell your empty plot along with your $\text{\textit{Rkn}}$ which is on it, you will not be able to sell it to anyone at all except my children, and they shall give you the money which is owing for it.\textsuperscript{139}
\end{quote}

The clause thus prohibited any illegal appropriation by a relative, but also required that the property remain in the family if the woman wished to sell it. This type of provision should be understood both as a device against family property being sold off to persons unrelated to the family, and as a means to preclude disputes with co-heirs. In a sense, then, the clause acted as an anticipatory division by which the heir is guaranteed by the testator that no other sibling who might otherwise have a claim may come against her without her consent, and without just compensation. Given the problems of the fragmentation of family property, it is perhaps surprising that such penalty provisions did not occur more frequently.

To avoid disputes between generations caused by divorce and second marriages, some contracts specifically provide that the property is to be passed along to the children while at the same time providing a "usufructuary right" by virtue of the sale made to the wife until the children were of age:

\textsuperscript{137} For a modern example, see Hamed Ammar, \textit{Growing Up in an Egyptian Village; Silwa, Province of Aswan} (London: Routledge and Kegan Paul Ltd., 1954), pp. 17-25.


\textsuperscript{139} P. Hauswaldt 13, 2-3.
You will not be able to give it to anybody else in the world than to the children which you have borne me and which you will bear me.140

Despite such caution, the combination of dividing shares of property among all heirs and remarrying caused many problems in sorting out the orderly movement of property across generations.

In case persons could not solve disputes over rightful possession of property, relief could be sought from local courts (the so-called laocritai), normally composed of priests of the local temple.141 A connection was certainly made between the location of the proper "court" and the temple of the god in whose domain the property lay. At the end of such dispute resolutions, the losing party was forced to make a special type of cession document ceding the rights to the property in dispute. These documents are characterized by the introductory formula qd n qnb.t lrm/k "I have complained against you."142 Such a document is P. Berlin 3113 (Thebes, 141 B.C.), part of the famous Theban Choachyte archive known as the Hermias dispute.143 It is important to note that demotic contracts normally provided a clause at the end whereby the vendor promised the purchaser not to "cite any legal complaint against him" (qd qnb.t nb n p 3 2 lrm/k) concerning the transferred property.144

The Asyut family dispute illustrates the difficulties of sharing a plot of land among several people. As was mentioned above, many texts speak of land jointly held by two or more persons. The preference for keeping land together in part stems from practical reasons. For example, the Asyut priests’ land was ten arouras divided into two separate plots and then shared between the two half brothers. The crop from the year’s harvest would have been shared out at a fixed rate between the holders of the land based on their percent interests in the land. After Tuot made a division agreement with his brother,

140. Translation of P. Turin 6074A, 11 (Botti, Archivio, text 7) by Pestman, "‘Inheriting’ in the Archive of the Theban Choachytes," p. 60.
144. The clause occurred in "normal" sales documents (sh 3 h 3 h) from Upper Egypt at the very end of the text. See Zauzich, Schreibertradition, pp. 148–49. Cf. the translation of Andrews, Catalogue, p. 19 "without alleging any title" with Zauzich, Schreibertradition, p. 12 "ohne irgendeinen Prozess (in) irgendeiner Sache auf Erden mit dir führen."
the land was farmed by both of them, with the crop being split in the proportion of their inheritance, two-thirds to the eldest, one-third to the youngest son. The younger brother had asked for a real division of the land because he was being "defrauded" by his older brother. The nature of the fraud is not spelled out, but there may have been some dispute over the size of each brother's holding.

CONCLUSION

The demotic documentation from the Ptolemaic period demonstrates the complex situation of private property in this era. Transfer of land could be permanent or temporary. The Hermopolis "code" reveals a well-developed sense of private ownership. It is interesting to note that real conveyance of land is not covered in the surviving document. Positivist arguments about the paucity of transfers, absolute ownership, and strict control by the king underestimate the fundamental importance of small landholding in Egypt, which served both institutions and individual holders. As I have argued, conceptions and terminology in the private documentation suggest very clearly defined concepts of private ownership. Private texts may have influenced and reinforced traditional legal conceptions of possession and right to convey. Whether there was legally defined private ownership before the Romans or not, there was much land in private hands that individual holders treated as their own and transferred to their heirs. We must surely be right in agreeing with Ellickson against Moses Finley, whose famous dictum "the normal purchase of land in antiquity . . . was windfall purchase" does not hold for Hellenistic Egypt or elsewhere in the ancient world. We are hampered by the fact that in most cases the origin of family property in land is unknown, but those who held land run the gamut of the social hierarchy. In the final analysis, possession of land in Ptolemaic Egypt, in the

145. The receipt for the year's division is probably that contained in PBM 10601. See Shore and Smith, JEA 45 (1959): 60.

146. Thus in 170 B.C. Tefhape petitioned the epistates that the scribes who measured his plot found an excess amount of land which belonged to him rather than Tuot. For the document, P. BM 10598, see Thompson, A Family Archive from Siut, pp. 77–78; Karl-Theodor Zauzich, "Die Bruchzahlen des Pap. Brit. Mus. 10598," Enchoria 2 (1972): 145–47.

147. We may thus push back the date when private ownership of land (defined by Cuno as the "exclusive control of land by individuals") emerges in Egypt considerably before the eighteenth century as was recently asserted by Kenneth M. Cuno, "The Origins of Private Ownership of Land in Egypt: A Reappraisal," in The Modern Middle East: A Reader, ed. Albert Hourani et al. (London: I.B. Tauris & Co. Ltd., 1993), p. 195.

words of Lord Mansfield, really was "rather more than nine points of the law." 149