CONTENT ANALYSIS: A NEW APPROACH IN THE STUDY OF THE OLD BABYLONIAN FAMILY DIVISION AGREEMENT IN A DECEASED ESTATE

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1 Introduction

The family division agreement in a deceased estate in ancient Mesopotamia, more specifically in old Babylonian Nippur, Larsa and Sippar, is identified in the legal cuneiform corpus as an agreement between beneficiaries of an estate. This agreement

- The scope of this article permits the study of the agreement in a specific period only. and its focus is limited to some chosen family division agreements from certain old Babylonian city-states of Larsa, Nippur and Sippar. In SJ Claassens Family Deceased Division Agreements from Old Babylonian Larsa, Nippur and Sippar (DLitt et Phil, University of South Africa, 2012) vols 1 and 2 passim the Babylonian family deceased division agreements of the old Babylonian city-states Nippur, Sippar and Larsa were studied and this article is based on some of the findings of that work. In this article, the Sumerian terms are denoted in bold font format, while the Akkadian and Latin terms are given in italics font format.
- 2 Ancient Mesopotamia is identified as the area between the Tigris and Euphrates rivers and is a popular subject for study by ancient Near Eastern scholars. See M van de Mieroop King Hammurabi of Babylon A Bibliography (Malden, 2005) at 1-3. The old Babylonian period is the period that ancient Near Eastern scholars recognise as the Mesopotamian period of around 2000-1600 BCE. In SJ van Wyk "Old Babylonian family division agreement from a deceased estate - analysis of its practical and theoretical mechanisms" (2013) 19(1) Fundamina 146-171 at 151-152 the old Babylonian family deceased division agreement is explained by means of an example. Three sons are the beneficiaries of their deceased father's estate, consisting of fields (farm), implements, stock, and slaves. One son wants to farm, while the other two brothers/beneficiaries have no intention of farming. In these circumstances, the beneficiaries have to manage co-ownership of the fields. One solution is that they can sell the asset/s and divide the proceeds into one-third shares, which will result in the alienation of the corpus of the asset/s. Alternatively they can lease the assets and thus retain ownership and share in the proceeds of the rental income. As a third option, the brothers/co-owners can decide by means of a division agreement to award the fields and implements to the youngest beneficiary who wishes to continue farming, with the same applying to the implements and slaves. If they decide to award the farm, the other two brothers can then either receive other estate asset/s in sole ownership, equal to the monetary value of the farm, which constitutes an exchange, or they can donate the farm to the youngest sibling. As a third alternative method of division, the youngest son can "pay his brothers a sum of money to the value of the amount by which he has been enriched. The assets in the estate are thus reshuffled by means of a sale, a donation and/or an exchange" (idem at 152).
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may prima facie appear uncomplicated, but many of its components, mechanisms and details can unfortunately easily escape us. A specific methodology is required if we wish to understand this legal notion.

The author has developed a methodology approach,³ termed the analysis model, to study the old Babylonian family deceased division agreement in a deceased estate.⁴ This article introduces the specification structure of the methodology approach in the analysis of the content of the said type of agreement.⁵ It is shown that the division agreement can be systematically categorised, outlined and studied within a framework of essential elements, together with two other categories of elements, namely natural and incidental ones, reflecting new perspectives on the agreement's meaning, purpose and spirit.

These components and details of the agreement are so categorised because of the practical and logical consequences of the agreement in accordance with legal practices and scribal traditions.

Firstly, the methodology of a family deceased division agreement is explained by a descriptive example of a "house", which is illustrated. In addition, the analysis model's elements and their subcategories are outlined in tabular format. Following the illustrative discussion of the analysis model, a prototypical family division agreement is given. The prototype derives from sections of three division agreements of old Babylonian

- When this agreement is studied on the basis of the analysis method, the agreements may be typologically compared with each other. The scope of this article does not, however, allow for a detailed discussion of the typological comparison method. In Claassens (n 1) passim forty-six chosen division agreements of three city-states of Larsa, Nippur and Sippar were investigated. These agreements were firstly studied on the basis of the analysis model and then typologically compared with each other. See discussions by M Malul *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (Neukirchener, 1990) at 14-15 on typological comparisons applied to societies that are geographically and chronologically distant from each other, lacking historical connection (idem at 14). In a typological comparison, the different forms of society are studied in order to create a theoretical model for the study of universal human social phenomena (idem at 15).
- Claassens (n 1) passim states that forty-six chosen division agreements of Larsa, Nippur and Sippar originate from the following old Babylonian time-periods: Larsa consists of a total of ten division agreements from the Larsa Dynasty from the reigns of Rīm-Sîn I and Rīm-Sîn II until the First Dynasty of Babylon during the reigns of Ḥammu-rāpi and Samsu-iluna. Nippur's ten division agreements date from the First Dynasty of Isin under the reign of Damiq-ilīšu, the Larsa Dynasty from Sin-iqišham, Rīm-Sîn I, Rīm-Sîn II and the First Dynasty of Babylon during the reign of Samsu-iluna. Twenty-six division agreements deriving from old Babylonian Sippar are discussed in the thesis and include the period of the Larsa Dynasty during the reign of Sîn-iddinam and most of the texts dating from the First Dynasty of Babylon during the reigns of Apīl-Sîn, Sîn-muballit, Ḥammu-rāpi, Samsu-iluna and Ammī-ṣaduqa. Some findings and new perspectives on these agreements were outlined in the thesis.
- 5 See also Van Wyk (n 2) *passim* where an example was given of what a family division agreement from a deceased estate entails, as well as its evolutionary phases and the mechanisms of the legal notion.

Larsa,⁶ Nippur⁷ and Sippar.⁸ In tabular format, the prototype agreement's elements and subcategories are outlined according to the analysis model.

Finally, the analysis model's elements are discussed. The group structures used in the analysis of old Babylonian division agreements are categorised, and the synoptic details and reasons why different categories of elements are present in an oral and recorded agreement, are explained. By means of the analysis model, the contents of a division agreement are divided into two main groups, namely the essential and natural elements reflecting the oral agreement between the parties, and the incidental elements found in the written division agreement because of scribal traditions.

The analysis model is an attempt to provide a better understanding of the division agreement and examines its legal structure as well as the influences of scribal school traditions.

- Larsa was an ancient site covered by the ruins of Senkara, in the southern part of the land, first known as Sumer and later as Babylonia. It was one of the important cities in southern Mesopotamia. The city's area consisted of about 190 hectares at the beginning of King Ḥammu-rāpi's reign. See H Crawford Architecture in the Old Babylonian Period (New York, 2007) at 82. As with other old Babylonian city-states, relations between the town and the countryside were close. Many inhabitants worked on the outskirts of their settlements (*ibid*). There were cultivated gardens, orchards and plantations. The roads united religious and administrative areas, including the main temple of Ebabbar and a ziggurat (temple) (*idem* at 83).
- Nippur, an ancient city now called Niffer, lies near the city of Diwaniyah. To reach Nippur in the 1880s, it was necessary to travel by boat. In the Mesopotamian period, however, the city was situated next to the Euphrates River, and linked with Sippar in the north and Shuruppak in the south. See G Leick *Mesopotamia The Invention of the City* (London, 2001) at 141-143, esp 141. When archaeologists excavated the mounds, the residential quarters of the Old Babylonian period "clearly showed the fluctuation of wealth and population density" (*idem* at 143). The named "scribal quarter" delivered tablets of high quality from private houses. Numerous tablets dating back to the kings of the old Babylonian period were discovered. See EC Stone *Nippur Neighbourhoods* (Chicago, 1987) at 25. Although Nippur "never possessed a ruling dynasty of its own", the city state managed to maintain "political neutrality, while acting as a religious centre to which other cities and rulers turned". See S Bertman *Handbook to Life in Ancient Mesopotamia* (New York, 2003) at 27. Amongst scholars Nippur is even known as "a town of academics, a Mesopotamian Oxford or Cambridge" and Leick (*supra*) stated that it had a "reputation as much for intellectual snobbery as for erudition in obscure disciplines".
- Sippar was divided into two cities, and is sometimes referred to as the twin cities. One is called Sippar and the other, close by, Sippar-Amnānum (today Tell ed-Der), whose inhabitants worshipped the goddess Annunitum. Sippar, the other twin city, was known for the worship of the sun god Utu, so named in Sumerian; in Akkadian, the god is named Šamaš. See R Harris Ancient Sippar A Demographic Study of an Old-Babylonian City, 1894-1595 BC (Istanbul, 1975) at 10. The nadītum, a certain priestess group, and other priestesses made an important contribution to the legal documents. Many of the old Babylonian documents from Sippar were compiled by wealthy family members of the nadītum and other priestess classes. See A Goddeeris Economy and Society in Northern Babylonia in the Early Old Babylonian Period (ca 2000-1800 BC) (Leuven, 2002) passim; M Tanret The Seal of the Sanga on the Old Babylonian Sangas of Šamaš of Sippar-Jahrūrum and Sippar-Amnānum (Leyden, 2010) at 40-42. The priestess groups were in a unique position in old Babylonian society. They were part of the temple, and to a certain extent, part of the economic section of society (idem at 227).

2 Analysis method illustratively explained

2 1 Introduction

Old Babylonian society was predominantly an oral society. Oral and recorded division agreements differ in that writing and recording did not have the same value as they have today. We are limited to a few cuneiform division agreement texts, in which we can prima facie recognise beneficiaries of different status in the kinship group, who as co-owners orally agreed to a complete or partial division of a late family benefactor's assets, in order to secure sole ownership of certain communally shared inherited assets.

Moreover, the division agreement texts are only three-dimensional recordings: "snapshots" of some oral agreements, with a scribe having decided which details to include. 11

An analysis method is designed to overcome interpretational problems and identify the categories and sub-categories of certain pre-requisites, legal practices and scribal school practices, as well as the intrinsic details of the agreement.

In the analysis model, a house is used as an example representing a division agreement. It is described and illustrated. Next, a table reflects the abridged schematic ordering of the

- Although Mesopotamia was predominantly a preliterate society, there is evidence of a good "record-keeping system" to support the temple business and other commercial business activities, which became more complex as the population grew. Thousands of so-called commercial records were excavated, including receipts, disbursements, inventories, loans, division agreements, leases, partnership agreements, dissolutions and guarantees. See OR Keister "Commercial record-keeping in ancient Mesopotamia" (1963) 38 The Accounting Review 371-376 at 371-372. Keister examined these so-called commercial records found in temples and the sites of private businesses. He made special reference to debt records, rentals or leases and expenditure accounts and showed that even in their variety the clay tablets contain very similar information (idem at 372-376). See M Malul Knowledge, Control and Sex Studies in Biblical Thought, Culture, and Worldview (Tel Aviv-Jaffa, 2002) at 1-53 who discusses the function of the written word in the ancient Near East. Malul (idem at 46) contends that it does not have the same meaning for us. The seals, for instance, were an object and not an object "outside themselves", and have a magical effect (idem at 47). He warns that "thinking in the framework of a writing mindset, we apply our set of codes and cues and sift the ancient evidence through it, thus ultimately seeing our own reflection rather than that of the ancient and alien culture" (idem at 53). However, D Charpin Reading and Writing in Babylon (London, 2010) at 176 states that "it came to be recognised that not only did the written document serve to transmit information through space, it could also allow the spoken word to survive the person who uttered it".
- Malul (n 9) at 36 observes that today "language has become a conceptual abstract tool for articulating thought, and in certain contexts the call for extreme objectivity seems to have drained it of its performance qualities. In short, language has become a medium of reflection rather than a reflection of action". See, also, Claassens' discussion (n 1) vol 1 at 79-104 of the role of writing and scribal schools in family deceased division agreements.
- See discussion by PS Vermaak "The relevance of administrative documents for writing ancient Mesopotamian history" (1991) 3(1) *J for Semitics* at 85-104, esp at 86, where he advocates that the ancient texts should be interpreted within their "own contexts, genres and purposes". He discusses the importance of administration documents in the Ur III period (older period than the old Babylonian period) of Mesopotamia. See D Charpin *Writing, Law, and Kingship in Old Babylonian Mesopotamia* (Chicago, 2010) *passim* for a discussion of writing, law, and kingship in old Babylonian Mesopotamia, in which he gives new perspectives on the relationships of cuneiform writing in ancient old Babylonian society.

analysis model's groups of elements, and their sub-categories. In addition, a prototypical division agreement from three old Babylonian division agreements is described, which reflects the elements and some of the subcategories of the analysis model.

2 2 Illustrative example of a division agreement: A "house" as a division agreement

The specification structure of the content analysis of the said type of agreement is illustrated by the following example, with reference to the schematic presentation and outline of the example infra.¹²

Consider such an agreement as a "house". It needs essential building materials (elements) to qualify as a house. These essential elements are present in an oral agreement and are subsequently reflected in the recorded agreement. When the basic building materials (elements) are all present, the "house" or agreement is completed.



Figure 1: Schematic explanation of family deceased division agreement elements as a house

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However, not every house, nor in this instance every division agreement, is the same. The structure of the "house" or agreement may differ in accordance with legal practices and the preferences of contractual parties regarding agreed terms and conditions of the agreement. For instance, the house can have a patio, or be a double storey or have a garage attached to it. These are termed the natural elements, which are the legal practices governing the agreement of the contractual parties and/or city-state.

Finally, in the recording of an oral agreement by a scribe, the agreement is "decorated", as the interior and exterior of a house is; these are called the incidental elements. The house decorations may include the choice of type of windows, the colour of the paint, and so forth. In a family deceased division agreement, the scribe, in accordance with the scribal tradition in a given city and possibly a given period, uses different techniques and styles ("decorations") to capture on a clay tablet the orally agreed division agreement.

2 3 Specification structure of the analysis-method in a table format

A holistic schematic ordering of the family division agreement's pre-requisite requirements, legal practices and scribe school traditions is outlined in table format infra.¹³

The type of agreement is divided in two main groups, the oral and written. An oral agreement's concepts are classed as essential and natural elements, while in a written agreement incidental elements are identified.

For an agreement to qualify as a family division agreement from a deceased estate, essential elements or basic requirements must be present.

Natural elements are chosen by the contracting parties according to tradition and practice. They are decided orally and recorded in writing, and reflect the social and unique practices of contractual parties at a particular time and in a particular city-state.

The incidental elements encompass unique scribal practices and the quality of the clay tablets. Some incidental practices may have been included in oral division agreements, such as the presence of witnesses and an oath-taking procedure, although the majority of the incidental elements are in written division agreements, reflecting scribal school traditions.

The schematic ordering is outlined and fully discussed by Claassens (n 1) vol 1 at 123-124. Using the methodology and tabular outline may assist in the interpretation of other types of agreements such as sales, exchanges, donations, adoptions, etc. In this approach, the unique elements of the particular agreement are classified into different groups, with the overall understanding that certain elements must be present in a particular agreement.

Table 1 Outline of the classification of the elements of a family deceased division agreement

Oral division agreement reflected in recording on tablet		Recorded division agreement
Essential elements (basic requirements /"to be a house")	Natural elements (law tradition practices/"type of structure of house")	Incidental elements (written formalities of the agreements and qualities of the texts/"decorations of house")
E 1 Family connection: beneficiaries	Nat 1 adoption/support	Written formalities of agreements I 1 Names of contractual parties, rank
E 2 Deceased Estate owner	Nat 2 bringing in	I 2 Birth order of brothers
E 3 Estate assets	Nat 3 division by lots/in good will	I 3 Description of awards/assets
E 4 Mutual consent	Nat 4 heart is satisfied	I 4 Special terms
E 5 Raison d'être	Nat 5 as much as there is/ completely divided/from straw to gold	I 5 Oath-clause (king/god) I 6 Witnesses' names, rank/family standing
	Nat 6 no claim Nat 7 oath in temple and/or oath	Qualities of texts
	Nat 8 preference portion	I 7 Language
	Nat 9 shares: equal-clause	I 8 Location
	Nat 10 trust (trustee)	I 9 Tablet's condition
	Nat 11 usufruct	I 10 How many copies are there?
	Nat 12 witnesses	I 11 Date formula
		I 12 Seals impressions
		I 13 Rhythm sequence/special style reflecting scribal schoo tradition within a certain city
		state

2 4 Prototype of an Old Babylonian division agreement with the analysis model's elements

Some sections from three division texts are used to illustrate the practical application of the analysis method. These texts are from Old Babylonian Larsa, ¹⁴ Nippur¹⁵ and Sippar. ¹⁶ The different categories of elements present in the division agreement are reflected in this prototype: in the left column is the prototype agreement, derived from sections of the three texts; and in the next column are references to the different categories of element/s in accordance with the analysis model.

The prototype agreement below reflects the categories of elements found in a family division agreement. In each division agreement, the obligatory essential elements will be present, but the natural elements and incidental elements will vary depending on the family circumstances, legal practices and influences of the scribal school traditions.

- The museum number is BM 33201 and the catalogue number is TS 18. See D Charpin *Archives familiales et propriete privee en Babylonie ancienne etudes des documents de Tell Sifr* (Genéve, 1980) at 212 (transcription) and 73 (French translation). The text TS 18a (BM 33201a) is a variant of it. The text is translated into English by Claassens (n 1) vol 2 at 31-38, following Charpin's transcription and French text. This is a division agreement of an unnamed paternal estate between two brothers Bêlessunu and Hiššâtum regarding the awarded divided assets of both brothers, recorded in the Rīm-Sîn-period.
- See discussions of the text by Claassens (n 1) vol 2 at 119-126. The tablet belongs to the Collection of JB Nies, NBC 8935 and is owned by Yale University. See RT O'Callaghan "A new inheritance contract from Nippur" (1954) 8(4) *J of Cuneiform Studies* 137-143, who transcribed and translated the tablet, and called it "a new inheritance contract from Nippur", following it with some of his commentaries. This is a division agreement between three brothers: "Sîn-imguranni (the eldest), Tarîbum and Anu-pî"Ilabrat, in which they divided by mutual agreement (in line 12) their communal inheritance, inherited from their deceased father's estate, "Sîn-îriš. The agreement is recorded in the fifty-sixth year of King Rīm-Sîn's reign (*idem* at 137, 139).
- See M Schorr *Urkunden des altbabylonische Zivil-und Prozessrechts* (Leipzig, 1913) at 258-260, who transcribed and translated the text into German under number 187 from VS IX 130 (VAT 762A). Claassens (n 1) vol 2 at 343-350 translated the text into English. The text was recorded during the thirty-fifth reign of Ḥammu-rāpi. It is a recorded division agreement of the deceased paternal estate of Gaz-Ištar, and living sister's estate Iltâni, Šamaš priestess: between the sister Iltâni, Šamaš priestess and brothers Warad-ilišu and Sinatum. The awarded assets of Warad-ilišu, son of the Gaz-Ištar, are registered by custom. The one brother Warad-ilišu, son of the Gaz-Ištar, received by division a house, and it is also part of the deduction of Iltâni's assets.

Table 2 Prototype family division agreement from a deceased estate

The division agreement from the deceased estate of the late Sîn-îriš between the brothers Sîn-imguranni and Tarîbum and their sister		
30 sar of orchard of palm trees;	←Barter. Essential element (E 5): a mechanism to divide the communally shared inheritance. Incidental element (I 3): description of awarded asset.	
1 iku and 10 sar of fields of the Gula region neighbouring lengthwise on the field of Imgur- ^d Sîn;	←Donation. Essential element (E 5): a mechanism to divide the communally shared inheritance. Incidental element (I 3): description of awarded asset.	
10 sar of fields of the Gula region neighbouring lengthwise on the field of Tarîbum is the privileged portion by right of primogeniture (preference share);	←Preference share. Natural element (Nat 8): as an additional condition and provision to the agreement.	
1 dibba door,- whose value is 5/6 of a silver shekel, he paid in balance to his brothers-	←Bringing-in: Essential element (E 5): a mechanism to divide the communally shared inheritance. Natural element (Nat 2).	
is the inheritance portion of Sîn- imguranni, the oldest brother.	Essential element (E 3): contractual party and family member's agreed portion. Incidental element (I 1, I 2): name of contractual party and birth order.	
30 sar of orchard of palm trees;	←Barter. Essential element (E 5): one mechanism to divide the communally shared inheritance.	
$^{5}/_{6}$ sar and $4^{1}/_{6}$ gin of improved real estate, beside the house of Basa and Nur-ilishu–	←Donation. Essential element (E 5): one mechanism to divide the communally shared inheritance.	
is the inheritance portion of Tarîbum, his brother.	←Essential element (E 3): contractual party and family member's agreed portion. Incidental element (I 1): name of party.	
All of the father's house and the house of Iltâni, priestess of the Šamaš, their sister, have been divided;	←Natural element: additional condition and provision to the agreement: trustee (Nat 10) and usufruct (Nat 11).	
which after they had declared it with the emblem of Sin and the land register of Šamaš.	←Oath and oath ceremonial clause. Natural (Nat 7). Incidental element (I 5): formalities, implementation and enforcement of the agreement.	

The division agreement from the deceased estate of the late Sîn-îriš between the brothers Sîn-imguranni and Tarîbum and their sister		
Their hearts are satisfied;	←Natural element (Nat 4): symbolic expression.	
From straw up to gold;	←Natural element (Nat 5): symbolic expression.	
orchard, field, house as much as there were, which belonged to their father, Sîn-îriš.	←Natural element (Nat 5): symbolic expression. ←Essential element (E 2): deceased estate family owner. Incidental element (I 1): name of party.	
They all agree in mutual agreement to the division.	←Essential element (E 4): they are in mutual agreement.	
They all agree to divide the inheritance by lot,	←Natural element (Nat 3): practical procedure to manage a division.	
into equal shares.	←Natural element (Nat 9): additional condition and provision to the agreement.	
In the future one brother against the other shall not raise any claims against another.	←Natural element (Nat 6): formalities, implementation and enforcement of the agreement.	
They swore by the king and gods.	←Natural (Nat 7) and Incidental element (I 5): formalities, implementation and enforcement of the agreement.	
Before ^d Sîn-eribam, the son of Silli- Ninurta; Before Ili-idinnam, his brother; Before Ibqatum, the son of Aba-Enlil-gim.	←Natural (Nat 12) and Incidental element (I 6): formalities, implementation and enforcement of the agreement – witnesses.	
In the month of Tebetum, the 26th year since ${}^{d}R\overline{\imath}m$ - ${}^{d}S\widehat{\imath}n$, the king captured Isin.	←Incidental element (I 11): date formula.	
——————————————————————————————————————	←Incidental element (I 12): seal impressions.	

3 Analysis method

3 1 Introduction

The division agreement is a complex legal notion: potentially, beneficiaries may in one agreement choose at least one or some of all three legal acts: namely, a sale, exchange or donation. These different acts show that each agreement is unique, and give some indication of the special circumstances of each family involved. These aspects and differences will be better understood if the basic requirements of a division agreement are first outlined by means of an analysis model. A category of such requirements is created, named the essential elements.

However, after it is established that the agreement constitutes a family division agreement from a deceased estate, other details of the oral and written agreement present an interpretative challenge, as when different assets are awarded to different contractual parties subject to certain conditions, when there are different solutions and special conditions, terminology, and so forth.

The division agreements from old Babylonian Larsa, Nippur and Sippar show that there were different legal practices and scribal traditions in each city-state and to a lesser extent at different times, which makes a comparative study difficult. There are, in one city-state alone, various legal practices concerning a division agreement, which can only be identified by analysing and categorising the details of each agreement.¹⁷

If we therefore only read each agreement, without identifying and analysing its different components, the dissimilar legal practices, choices made by the contractual parties and scribal school practices in each agreement may elude us.

The analysis model is used in the interpretation of the division agreement. In this section, we outline and synoptically discuss the analysis model's obligatory essential elements: natural elements concerning legal practices; and incidental elements reflecting the scribe's style and scribal traditions, as well as the quality of the tablet itself. The outline is based on the study and conclusions drawn in the author's submitted doctoral thesis on the study of forty-six division agreements from old Babylonian Nippur, Larsa and Sippar.¹⁸

- In the schematic outlines in Claassens (n 1) vol 1 at 378, 402 it is shown that in old Babylonian Larsa, Sippar and Nippur, each city state has a unique philosophy in its approach to the division of an inheritance and management of division by the scribal school tradition/s. In conclusion, the people of Larsa are named the practical idealists, those of Nippur the traditionalists and those of Sippar the innovators in their different approaches to philosophy and management of division of the inheritance.
- See Claassens (n 1) vol 1 "Final Conclusions" ch 9 at 387-409 on the summary of the differences and similarities in the chosen forty-six division agreements from old Babylonian Nippur, Sippar and Larsa.

3 2 Essential elements¹⁹

The contractual parties choose to create certain obligations: every kind of contract contains typical elements that establish it as being of a certain type. These are called its essential elements.²⁰ The elements that must be present in a division agreement are the following: a family connection of the beneficiaries, a deceased estate owner, estate assets, consent and a raison d'être for the agreement.

3 2 1 E 1 Family connection of beneficiaries

The beneficiaries inherit as co-beneficiaries and become co-owners of the communally held inheritance property. At a certain stage, which may be days, months, or even years later, the co-owners decide to divide all or some of the communally held assets into certain portions, so that each co-owner/beneficiary now becomes a contracting party who negotiates the division and finally becomes the sole owner of specific portion/s.

The beneficiaries or co-owners are related to each other and are the appointed beneficiaries of the estate owner's assets. The contractual parties were the intestate (family members) or testate (appointed by will) beneficiaries of the deceased estate owner's estate. These contractual parties are usually brothers, ²¹ sometimes sisters who are usually priestesses, ²² while in a few texts they are nephews

- 19 Abbreviated as "E" in numerical sequence of equal value to each other.
- In this regard, the phrase "the essential elements" refers to the specific elements needed to qualify the agreement as a division agreement in order to prevent confusion with other agreements that appear prima facie also to be division agreements but have different results and mechanisms. See JC de Wet & AH van Wyk Die Suid-Afrikaanse Kontraktereg en Handelsreg (Durban, 1992) at 129 regarding South African law.
- 21 In six of the ten texts of Larsa, brothers are the only contracting parties mentioned: see Charpin (n 14) at 30, 34, 68, 73, 204-205, 212, 215-216, 231-232; WF Leemans Legal and Economic Records from the Kingdom of Larsa (Leyden, 1954) passim esp at 34-38. In six of the ten texts of Nippur: O'Callaghan (n 15) at 137; HV Hilprecht The Babylonian Expedition of the University of Pennsylvania Series A Cuneiform Texts vol 6 part 2 (Philadelphia, 1909) passim, esp at 20-21, 23; E Stone & DI Owen Adoption in Old Babylonian Nippur and the Archive of Mannum-mešu-liššur (Winona Lake, 1991) passim, esp at 56-59, 65-67, 87-89. In Sippar's twenty-six texts only the following: Schorr (n 16) at 195, 197, 249-250, 255-256, 271-273; L Dekiere Old Babylonian Real Estate Documents from Sippar in the British Museum/Pre-Ḥammu-rāpi Documents (Ghent, 1994) (hereafter Dekiere Pre-Ḥammurāpi Documents) passim, esp at 103-104, 163; L Dekiere Old Babylonian Real Estate Documents/ Post-Samsu-Iluna Documents (Ghent, 1995) (hereafter Dekiere Post-Samsu-Iluna Documents) passim, esp at 115-117, 148-149; TG Pinches Inscribed Babylonian Tablets in the Possession of Sir Henry Peek (London, 1888) passim, esp at 59-61. Thus, in sixty per cent of the Larsa and Nippur texts and in forty six per cent of the Sippar texts the brothers were the only contractual parties of the agreement. See also table-outline by Claassens (n 1) vol 2 at 447.
- Sisters acting as contracting parties with their brothers are found in three of the ten texts of Larsa: Charpin (n 14) at 212-213, 240-241, 252-253. In ten texts of Nippur: none (except for a daughter (adoptee and natural daughter in Hilprecht (n 21) at 20-21). In nine of Sippar's twenty-six texts, sisters and brothers acted as contracting parties: Dekiere (n 21) at 108-110; A Goetze "Old Babylonian documents from Sippar in the collection of the Catholic University of America" (1957) 11(1) *J of Cuneiform Studies* at 15-40; Schorr (n 16) at 252-260; Dekiere *Pre-Hammu-rāpi Documents* (n 21) at 166-167. However, in Sippar, in three of the twenty six texts only sisters are mentioned as contracting parties: see Schorr (n 16) at 252-253; Dekiere (n 21) at 164-165; 173-175.

and uncles; one text referred to a step father who had adopted his step-daughter. $^{\rm 23}$

3 2 2 E 2 Deceased estate owner

The deceased estate owner is most frequently the father,²⁴ sometimes the mother²⁵ or both parents.²⁶ The deceased estate owner's relationship to beneficiaries is at least that of kinship. Consequently, the family assets are bequeathed to family members, either biological or adoptive.

3 2 3 E 3 Estate assets

The deceased estate owner left an estate to his or her beneficiaries, consisting of different assets, in most cases immovable property. The agreement deals fully or partly with these assets. A contractual party may bring in his or her assets to equalise the division of the inheritance.

However, the old Babylonian division agreement is a recording of the oral agreement and unfortunately certain texts mention only that the estate is divided among the beneficiaries. The limitations of a recorded agreement make it uncertain whether the whole of the estate or only certain assets were included in the division.²⁷ Fortunately, in

- He adopted his stepdaughter after the death of his wife in a division agreement with his stepdaughter. In this division of property the stepfather "adopted" his stepdaughter as his daughter and thus by implication she will be the heir of his estate at the time of his death. Nephews and/or uncles as one or more of the contractual parties are mentioned in one of the ten texts of Larsa together with the brothers (sons of the deceased owner): J Andersson "Some cuneiform texts from the Haldar Collection: Two old Babylonian contracts" (2008) 8 *Orientalia Suecana* at 13-22. Further in three of the ten texts of Nippur: E Chiera *Old Babylonian Contracts* (Pennsylvania, 1922) at 51-54; Hilprecht (n 21) at 25-27; Stone & Owen (n 21) at 60-63. Also in three of Sippar's twenty-six texts, they acted as contracting parties together with the brothers (sons of the deceased owner): Dekiere *Post-Samsu-Iluna Documents* (n 21) at 82-83, 173-174; Schorr (n 16) at 269-271.
- A deceased father who is the only estate owner is alluded to in eight of the ten texts from Larsa: Charpin (n 14) at 34, 204-205, 212-213, 215-216 and translation at 30, 73; see, too, translation into French at 68 and transliteration at 231-232; Leemans (n 21) at 34-38; Andersson (n 23) at 13-20. In the ten texts from Nippur, the deceased father is mentioned in nine: O'Callaghan (n 15) at 137; Chiera (n 23) at 15-16; Hilprecht (n 21) at 20-21, 23, 150; Stone & Owen (n 21) at 56-63, 65-67, 87-89. In twenty-one of Sippar's twenty-six texts: Schorr (n 16) at 197, 249-250, 253-261, 269-273; Dekiere *Pre-Hammu-rāpi Documents* (n 21) at 103-104, 163, 165-167, 173-174, 195; Goetze (n 22) at 15-16; Dekiere *Post-Samsu-Iluna Documents* (n 21) at 82-83, 115-117, 148-149; Pinches (n 21) at 59-61.
- A deceased mother as the only estate owner is mentioned in none of the ten texts from Larsa and in one text from Nippur: Hilprecht (n 21) at 20-21. She is mentioned in four of Sippar's twenty-six texts: Dekiere *Pre-Hammu-rāpi Documents* (n 21) at 108-110, 164-165, 173-175; Schorr (n 16) at 252-253.
- A deceased father and a deceased mother who are estate owners are to be found in two of Larsa's ten chosen texts: Charpin (n 14) at 252-253 and Andersson (n 23) at 6-7, 13-20. None of the ten Nippur texts reflect both parents as estate owners; however in one of Sippar's twenty-six texts both parents are mentioned, namely in Schorr (n 16) at 260-261.
- 27 It should be noted that as compared with the present-day division agreement, on the written clay record many details of and background information on the negotiations and circumstances that led to the agreement are omitted.

some of the old Babylonian Larsa, Nippur and Sippar texts, different terms translated as meaning the whole of the estate, for example "as much as there is", "the division is finished" and "from straw to gold", could lead to the interpretation that all the communally-held inheritance property was divided between the beneficiaries.²⁸

3 2 4 E 4 Consent

The beneficiaries agree to the terms of the agreement by means of symbolic expressions, oaths and the presence of witnesses in order to emphasise the seriousness and binding consequences of its terms. Different terms are found in Larsa, Sippar and Nippur.²⁹

3 2 5 E 5 Raison d'être

In the old Babylonian period, there were three main methods of dissolving co-ownership of the common property, namely a typical sale, donation and exchange.³⁰ To a certain extent, there is a modification of the original instructions or will of the benefactor, since instead of sharing an asset or assets proportionately, the beneficiaries, now the co-owners, agree to transfer asset/assets to only one beneficiary. Some reshuffling of assets has taken place. In other words, by agreeing to a typical sale, donation or exchange, the co-owners agree to certain beneficiaries' alienating their share of a certain common property so that one of the beneficiaries acquires all the shares in the property and enjoys the fruits of sole ownership of asset/assets.

- This is discussed under the natural elements Nat 2.
- The agreement clauses, expressed in different terms, in different city-states, **ba** (Sumerian), *zâzu* and *še-ga-ne-ne-ta* (Akkadian terms), are reflected in the beneficiaries' agreement to divide or share. See Claassens (n 1) vol 1 at 345, 356-357.
- 30 In modern Western legal systems, the same methods are used. In Klerck v Registrar of Deeds 1950 (1) SA 626 (T) at 629 Clayden J concurred that in every redistribution (division) agreement there is a sale, exchange or donation between the heirs; however, this does not mean that a sale between heirs necessarily constitutes a redistribution (division). Although in Old Babylonian legal traditions and Western legal systems, the same mechanism is used to dissolve co-ownership, it is important to note that the so-called natural elements (law practices) differ, so that one cannot compare the western with the Babylonian division agreement. In Western legal systems, such agreements are only reached in respect of deceased estates, and usually parties to such an agreement will ensure that there is some advantage in it for them. However, when we look at the old Babylonian division agreements of the ancient Near East, WF Leemans "The family in the economic life of the old Babylonian period" (1986) 5 Oikumene 15-22 argues that old Babylonian families did not function as an economic unit in the sense of an "organizational framework". Each family member contracted freely and was not subject to obligations. This is a radical statement, deriving from an analysis of a few division agreements, that does not take into account the greater corpus of Babylonian legal documents. He argues that there is no trace of liabilities between members of the family, in the fulfilment of customs such as the firstborn share (idem at 18).

In order to dissolve co-ownership, innovative solutions are required. The special nature of the assets being re-allocated, the bringing in of goods or cash,³¹ and the equalising of the division of the assets according to the special circumstances of each case require originality in problem-solving.³²

In a few instances where awarded estate assets are described, a distinction may be drawn between estate assets and money or goods brought in.³³ Estate assets are the assets of the owner of the estate. The bringing in of money or goods is a means of administering the estate, for only the assets in the estate of the benefactor are transferred to the rightful beneficiaries of the estate. The bringing in of property or money, however, entails the property of someone other than the owner of the estate, the only aim being to allow the beneficiaries to reach consensus on a more or less equal division of agreed assets so that the beneficiaries can divide ownership more equally.

3 3 Natural elements (law practices) of a written division agreement³⁴

The natural elements of the division contract are natural consequences derived from a division agreement through practice and law. They are not very noticeable and accessible because in Old Babylonia oral, rather than written law was the norm.

Because of the usual consequences of contractual agreements, such elements can form part of the contractual terms but be excluded expressly or tacitly in the agreement. The terms differ in the three city-states.³⁵

The natural elements, comprising the choices from law and practice in Old Babylonian Larsa, Nippur and Sippar, are identified as follows: Nat 1 Adoption/support; Nat 2 Bringing-in/equal shares; Nat 3 Division by lots/in good will; Nat 4 Heart is satisfied;

- See s 38 of the so-called law collections of Ešnunna in which Leemans (n 21) at 21 translates as follows: "If, in a group of brothers, one will sell his share, and his brother wants to buy it, he (the latter) shall fully pay the average of (what) another (pays)." Leemans (*idem*) at 21 interprets this to mean that this was a transaction between brothers where a brother wanted to sell his share because it was "not big enough for living in": also, because on its own the unit would not "yield a reasonable price". The "law rectifies" this "injustice" and now an average price must be paid. MT Roth *Law Collections from Mesopotamia and Asia Minor* (Atlanta, 1995) at 65 translates this as follows: "If, in a partnership, one intends to sell his share and his partner wishes to buy, he shall match any outside offer." Leemans (n 21) at 16 did not consider the possibility that co-ownership might be problematic. He seems to have thought that in a communally shared inheritance the beneficiaries had the right to lease out their own shares without the consent of the other co-owners.
- 32 It is an open question whether the emphasis on the reason for the change of ownership in old Babylonian agreements was the same as in Western societies of today, which tend to be capitalistic and centred on gaining a bargain as well as on competition.
- The so-called bringing in is classified as a natural element. See Natural element (Nat) 1.
- 34 Abbreviated as "Nat" in numerical sequence of equal value to one another.
- It seems that the inhabitants of any given city-state or -states tend to conclude a contract in a certain manner. For example: (1) bringing in/equal shares at Larsa and Nippur; (2) a preference portion being allocated to the eldest from Nippur (one text from Larsa); (3) the casting of lots at Nippur and Larsa; (4) the whole of the estate indicated in terms such as "as much as there is" in Larsa, and "from straw to gold" and "division is finished" in Sippar; (5) manifestation of an oath in a temple as in an emblem and land register from Sippar. See Claassens (n 1) vol 1 at 403-406 on conclusions reached from the study of the elective division agreements in these city-states.

Nat 5 As much as there is/completely divided/from straw to gold; Nat 6 No claim; Nat 7 Oath in temple/oath; Nat 8 Preference portion; Nat 9 Sanction-clause; Nat 10 Trust (trustee); Nat 11 Usufruct; and Nat 12 Witnesses.

3 3 1 Nat 1 Adoption/support

This legal practice occurs in only one of the forty-six texts in Nippur.³⁶ In general, adoption³⁷ agreements in old Babylonia do contain division clauses, although the purpose of the agreement is not entirely the same as in a family deceased division agreement, namely the change of co-ownership to sole ownership.

3 3 2 Nat 2 Bringing in³⁸

One of the ways in which contractual parties can divide communally held assets is by sale, where one of the parties brings in money or, in other words, "buys" an asset of which he or she becomes the sole owner.³⁹

These bringing in/sales of an asset can include something of monetary value such as silver or a physical asset such as a slave or part of a house. Therefore, the bringing-in legal practice entails something that can be brought into the communally held assets, where the receiver uses his or her own money to purchase a communally held asset.⁴⁰

- 36 Hilprecht (n 21) at 20-21. Migir-Ellil died and her estate devolved on her beneficiaries. Two contractual parties, Narubtum and Ur-Pabilsagga, recorded their oral agreement to divide their coowned inheritance property. It seems that the one contractual party, Narubtum, was the deceased's biological daughter. The relationship of the other party, Ur-Pabilsagga, to the deceased is unknown. Ur-Pabilsagga adopted Narubtum and both of them received an equal one-third portion of Narubtum's deceased mother's estate.
- 37 See PR Obermark *Adoption in the Old Babylonian Period* (D Phil, Hebrew Union College, 1992) passim; Stone & Owen (n 21) passim who discuss various old Babylonian adoption agreements and quasi-adoption contracts. See Van Wyk (n 2) at 154-159 for a discussion of the differences between adoption, quasi-adoption and division agreements.
- AM Kitz "Undivided inheritance and lot casting in the Book of Joshua" (2000) 19(4) *J Biblical Literature* 601-618 investigates the same Akkadian texts and compares them with Joshua chapters 13-19. She contends that "lot-casting legally dissolved the state of undivided inheritance and [that] there are certain similarities between the Mesopotamian texts and procedure of Joshua chapters 13-19, signifying a borrowing and influence towards each other" (at 618).
- See Larsa's three texts: Leemans (n 21) at 34-38; Charpin's transliteration (n 14) at 231-232; and his translation into French (*idem*) at 68. See also Charpin (*idem*) at 240-241, his transcription followed by his translation into French (*idem*) at 64. Nippur's eight texts: O'Callaghan (n 15) at 137; Chiera (n 23) at 51-54; Hilprecht (n 21) at 20-21, 23, 25-27; Stone & Owen (n 21) at 60-63, 65-67; and one text from Sippar: Stone & Owen (*idem*) at 260-261. See discussion by Claassens (n 1) vol 2 at 175, 363.
- The **búr**-clause (Sumerian term) states that one contractual party will pay as much as his brother/s. In Åke W Sjöberg *Sumerian Dictionary Volume 2B* (Philadelphia, 1984) at 191, 193-194, esp at 193 **bur**₂ as a verb under the heading E number four denotes "to pay in exchange; to compensate". In the old Babylonian texts these refer to "Old Babylonian exchange and partition documents" (*ibid*).

3 3 3 Nat 3 Division by lots/in good will

In some of the agreements, especially in Nippur and Larsa, the contractual parties designate different sections of the communally held assets and then by agreement draw or cast lots in order to divide them.⁴¹

3 3 4 Nat 4 Heart is satisfied

In some agreements in Sippar, the parties state, "heart is satisfied", reflecting the symbolism and non-verbal communication in the old Babylonian legal tradition. This clause, read together with the Nat 5 (*infra*) terms, indicates that, with small discrepancies in variants and meanings, agreement has been reached about all the assets involved.⁴²

3 3 5 Nat 5 As much as there is/completely divided/from straw to gold

These terms reflect the totality of the communally held inherited assets, which are divided among co-beneficiaries who, as contracting parties, agree to the total division of the assets. In Larsa, ⁴³ and especially in Sippar, ⁴⁴ different terms are used to reflect the division of the total estate or in other words, the division of all of the assets in the family benefactor's estate.

- Division by lots is denoted by two different terms, namely the Sumerian term giš-šub-ba-ta which generally also coincides with the Akkadian term še-ga-ne-ne-ta (in mutual agreement) and Sumerian term in-ba-eš (to divide). See discussion by Claassens (n 1) vol 1 at 176-179, 363.
- The term "heart is satisfied" sometimes occurs together with the statement in Nat 5 (see par 335) that the division is complete. For instance, the term gamāru, signifying completeness and finality, encompasses all the assets involved and may be found together with the usual clause, "they agree to divide the estate and their hearts are satisfied" (ištu hurāṣum). See sv "gamāru" in AL Oppenheim The Assyrian Dictionary of the Oriental Institute of the University of Chicago G vol 5 (Chicago, 1956) at 24-25; cf discussion by Claassens (n 1) vol 1 at 179-182 & n 44.
- In a Larsa text, see Charpin (n 14) at 212 and his French translation at 73 from lines 18-20: **é** kiri₆ giš kárnì-šu-gal nì-gá-gál-la ša ad-da-ne ì-ba-e-ne which translates as "movable ground, orchard, furniture, goods and liquidities as much as there were, which belonged to their father, and they divided [these]".
- In one Sippar text an example of this term is found in the transliteration of Dekiere *Pre-Ḥammu-rāpi Documents* (n 21) at 173-175 Tablet (BM 92658) = CT 6 42b line 8: *zi-za ga-am-ra iš-tupí-e* and can be translated as "the division is completely finished and their hearts are satisfied". Another Sippar text example is from Dekiere (*idem* at 163). See line 7: *li-ba-šutú-ub*, which is translated by the author as "their hearts are satisfied". The other term found in the majority of the Sippar division agreements is *ištu hurāsim* that translates as "from straw (chaff) to gold". GS Duncan "Babylonian legal and business documents from the first Babylonian dynasty, transliterated, translated and annotated" (1914) 30 *The American J of Semitic Languages and Literatures* 166-195 at 177 discusses the term "from chaff to gold" and transliterated it as *iš-tu bi-e a-di-hurāsim*. According to Duncan (*ibid*), it was previously thought to mean "from mouth to gold"; in other words, through oral agreement the transaction was settled by payment. It now seems that the word *bi-e* is from the word *pū* which does not mean "mouth" but rather "threshed straw" (chaff). The expression "chaff to gold" refers to "from the least valuable to the most valuable"; thus a complete division of all the property has been made.

The co-beneficiaries as co-owners shared all the inherited assets, but at a particular stage decided by consensual agreement to divide the assets so that each had sole ownership of a portion.

3 3 6 Nat 6 No claim

This is one of the more frequently encountered terms and reflects the only kind of enforceable term in the family deceased division contract.⁴⁵

Consequently, in the majority of the texts, we find that the contractual parties who are also family members confirm that they will not lodge a complaint in the future.⁴⁶

3 3 7 Nat 7 Oath in temple and/or oath

In the division agreements there are two different oath clauses.⁴⁷ The one oath clause is a general one occurring in the majority of the texts, in which the contractual parties swear an oath naming a god and/or king or city-state. In this legal practice, different gods are

- In old Babylonian Tell Harmal only two texts were found containing a sanction containing also a sanction clause reading together with a no claim clause. MdJ Ellis "The division of property at Tell Harmal" (1974) 26 *J of Cuneiform Studies* 133-153 at 136-140 translates and briefly discusses discrepancies and differences in this agreement as part of her discussion of five texts, of which this one is indicated as "Text B". It was a division agreement dating to the reign of Ibalpiel II year ten, between Ipiq-Amurru and Ana-Šamaš-balaţi. In line nineteen of the text the contractual parties stated "should a claimant arise, he shall pay two minas of silver" (2 ma-nakù-babbar ì-lal-e). The other case is also a text from old Babylonian Tell Harmal in which Ellis (*idem*) at 140-142 translates and briefly discusses discrepancies and differences in this agreement as part of her discussion of five texts, this one being indicated as "Text D". It is a division agreement between Nanna-mansum, Warhum-magir and Imgil-Sin. Also in line nineteen of the text (4 ma-nakù-babbar ì-lal-e) "Should a claimant raise a claim, he will pay four minas of silver". See discussions by Claassens (n 1) vol 1 at 182-184, 364.
- See a Larsa text regarding its transcriptions by Charpin (n 14) at 204-205 and translation by Charpin (idem at 34). The transliteration of TS 6 (BM 33159), line 16, of the Sumerian clause is u₄-kúr-šè šeš šeš-ra inim-ma nu-gá-gá which may be translated as "brother against brother will not lodge a claim against another". Some other variants are inim nu-um-gá-gá-a (shall not raise any claim); and šeš-a-ne-ne ba-ani-ib-ge₄-ge₄-ne (his brothers shall not raise claims against him). For Nippur texts, see O'Callaghan (n 15) at 137; Hilprecht (n 21) at 20-21, 25-27; Stone & Owen (n 21) at 56-59, 60-63: šeš-a-ne-ne ba-ani-ib-ge₄-ge₄-ne (his brothers shall not raise claims against him). For texts from Sippar, see Dekiere Pre-Hammu-rāpi Documents (n 21) at 103-104 in line eight: zi-zu a-na a-hu-la-ap -dutu ú-uli-ra-ga/-mu at a future time one brother against the other shall not make a claim. See discussions by Claassens (n 1) vol 1 at 184-186, 365, 373.
- DL Magnetti "Oath functions' and the 'oath process' in the civil and criminal law of the ancient Near East" (1979) 5(1) *Brooklyn J of International Law* 1-28 esp at 8 believes that the philosophical outlook of the people of the ancient Near East was influenced by beliefs in the supernatural, so that religion became "an important aid in the administration of justice". A further addition to the oath is the "promissory oath" made by witnesses. The aim according to Magnetti at 23 was either to reassert that the truth had been told or to "strengthen a statement previously made". Oaths were considered part of the "normal contract procedure" and occur in several legal texts throughout the ancient Near East. They seem not to occur in all contracts and the assumption is that this supernatural control is not necessary over all "actions of men". When used, it was to furnish an "added assurance" in the conditions of agreement (*idem* at 28).

named in the oaths, especially in the Larsa⁴⁸ and Nippur⁴⁹ deceased division agreement, but are sometimes omitted in the Nippur texts. In Sippar, the city was mentioned.⁵⁰

Apart from the normal oath, there are additional provisions in some of the Sippar agreements, showing a symbolic multi-sensory act in which contractual parties actively involved themselves to emphasise and conclude the division agreement.⁵¹

The role of the gods and their ability to ensure that contracts are enforced may, to some extent, reflect the purpose of an oath and the overall meaning of the supernatural role in inheritance-law traditions and agreements.

3 3 8 Nat 8 Preference portion

In respect of the natural element, the contractual parties as co-owners of the inherited, communally-shared properties agree that their sibling receives as a preferential share more than they do, and after this portion is allocated to the sibling (generally, the eldest brother) the other parties each acquire sole ownership of a portion of the property.⁵²

3 3 9 Nat 9 Shares equal: mi-it-ha-ri-iš

This natural element shows that the contractual parties agree to divide the communally shared assets into "equal parts". Usually, this is accompanied by the provision that the portion is divided by a drawing of lots.⁵³

- Charpin (n 14) at 212-213, line 19-20: mu dnannadutu ù ri-im-dEN-ZU lugal-e in-pàd-meš they have sworn by Sîn, Šamaš and king Rîm-Sîn; Charpin (idem) 204-205) and translation at 34, TS 6 (BM 33159) mu lugal-bi in-pàd they swore by the king; see also Charpin (n 14) at 252-253), transcription and translation (idem at 66 in French line 27-28): mu sa-am-su-i-lu-na lugal-e in-pàd-meš they swore by the king Samsuilina.
- 49 See, for a Nippur text, Hilprecht (n 21) at 20-21 from line 16: **mu lugal-bi in-pá(d)-dé-eš** which is translated as "by the name of the king they have sworn".
- See a Sippar text (Text CT VIII 50) by Schorr (n 16) at 253-254 which is translated from the German translation as "sworn by the gods Marduk, Samas and Annunitum and also the city of Sippar".
- For instance, see in this regard a Sippar text of Schorr (n 16) at 269-271. At 269-270 he opines that the text is a recorded division agreement of a deceased estate of Awîl-Adad betweenWarad-Sin, Sinidinnam, Ilî-bani and their nephew, Ina-Êulmaš-zêr, son of their late brother Ilî-bani, during the reign of King Ammī-šaduga. In the presence of the co-beneficiaries the oldest beneficiary has performed the manifestation oath with the emblem of the Ellil. In the text some of the ceremonial rituals were mentioned, including: "Warad-Sin, compared with Sin-idinnam [and Ina-Êulmaš-zêr], the children of the Awîl-Adad the emblem of the Ellil, in the sanctum of the god, and have cleaned themselves". In yet another Sippar text a similar ceremony occurred: (idem) at 271-273.
- This legal practice is normally accompanied by the Akkadian terms gisbanšur zà-gu-la. The term zà-gu-la denotes a table and gisbanšur as a first-born share or preference share or primogeniture rule. See from Nippur: O'Callaghan (n 15) at 137; Chiera (n 23) at 51-54; Hilprecht (n 21) at 23; Stone & Owen (n 21) at 60-63, 65-67, 87-89; and from Larsa the text of Charpin (n 14) at 204. See discussions by Claassens (n 1) vol 1 at 186-191.
- 53 See, eg, for Nippur: O'Callaghan (n 15) at 137 reverse line 13: gisšub-ba-ta in-ba-eš they have divided by lot. See discussions by Claassens (n 1) vol 1 at 191-192 regarding the "equal shares" division.

3 3 10 Nat 10 Trust (trustee)

A clause mentioning a trustee can be found in a Sippar division text.⁵⁴ The contractual parties agree that they will administer certain inherited property together for the benefit of another sibling; and closer inspection may lead one to conclude that this is a trustee-construction.

3 3 11 Nat 11 Usufruct

A usufruct is established by the provision that the primary owners, usually the brothers or son of the usufructuary, have the obligation to support a female family member (usufructuary) out of some or all of the assets.⁵⁵ This places an extra financial and personal burden on the owners. By practical implication, the primary owners not only have to maintain the property, but also make it sufficiently profitable so that they can support the usufructuary in accordance with the agreement.

3 3 12 Nat 12 Witnesses

In almost all the forty-six division agreement texts, a witnesses' clause is present.⁵⁶ Where it is not, it is because the tablet is damaged. In these clauses, witnesses, together with the parties, testify to the details of the agreement.⁵⁷ Thus their presence and names are of the utmost importance. If a dispute occurs later, these witnesses must testify to the details.⁵⁸ Their function is much wider than that of attestation; they are actively involved in the application of the legal procedure relating to the division of the assets.

3 4 Incidental elements (scribal practices)⁵⁹

That different scribal practices were unique is evident in the written division agreement; however, parties can choose to include these incidental elements (scribal practices) in the contract. None of these elements/scribal practices forms part of the basic requirements of a division agreement.

A written, recorded division agreement was not a prerequisite in this respect. In the old Babylonian period a recorded agreement did not have the same value as the

- 54 Schorr (n 16) at 269-271. See discussions by Claassens (n 1) vol 1 at 201 regarding the trustconstruction.
- See two old Babylonian Sippar texts cited by Schorr (n 16) at 255-257 and one old Babylonian Sippar text cited by Goetze (n 22) at 15. Further discussions by Claassens (n 1) vol 1 at 202-203.
- Claassens (n 1) vol 1 at 367 notes that in Larsa, in all the texts, there are witnesses present using the Sumerian variant **igi**, meaning in the presence of the witnesses. In Nippur, in all ten texts, the witnesses are recorded with the term **igi**. In all the Sippar texts the witnesses present use the Akkadian variant of *maḥar* and Sumerian variant of **igi**. See discussions by Claassens (n 1) vol 1 at 192-193.
- K Veenhof "Before Ḥammu-rāpi of Babylon: Law and laws in early Mesopotamia" in FJM Feldbrugge (ed) The Law's Beginnings (Leyden, 2003) at 147.
- 58 Ellis (n 45) at 148-149.
- 59 Abbreviated as "I" in numerical sequence of equal value to one another.

oral agreement, which is also why witnesses were present. Documentary evidence was not necessary, for there was the oral agreement between the contracting parties, and witnesses to corroborate the details of the oral agreement. In most cases in the recorded agreement, the property was not described precisely, and sometimes there was only a synoptic reference to household goods, a field, a house, etcetera. In a few instances, excellent detailed descriptions of movables, slaves and/or of houses in situ are recorded in the agreement.

Usually the services of a scribe were obtained, although in a very few texts one of the contractual parties wrote down or summarised the oral agreement. In such cases, the form and details of the written agreement differed from those in agreements recorded by the different scribal schools. Where an individual was not part of a formal scribal school, the written agreement was more direct and informal. Thus, incidental elements are the formalities and qualities of written division agreements recorded by scribal school practices and influenced by region, language differences and social, economic and architectural conditions.

Incidental elements include written formalities of the agreements and the qualities of the texts.

In respect of written formalities the following aspects are investigated, namely the names of contractual parties; birth order; the description of assets (full, value); special terms; sanction-clause (type); oath-clause (regarding specific king/god); and witnesses (regarding names, rank/family standing).

As regards division texts, the following qualities were emphasised: language; location of text; tablet's condition; copies; date formula; impressions of seals; and the rhythmic sequence/special style reflecting a scribal school tradition within a certain city-state.

3 4 1 Written formalities of division agreements

(i) I 1 Names of contractual parties, rank

In the written agreement, the names of the parties, their relationship to each other and their standing within their family, for example son or daughter of X, are usually stated. The names may suggest whether they were Semitic, Sumerian or Akkadian.

(ii) I 2 Birth order of brothers (implicit)

Sometimes the ranking order in the family is given.⁶¹ In most of the texts, this occurs for a reason, for example in the preference-share clause which gives the oldest son a

- In today's legal practices, the drafter painstakingly notes that the description of the properties has evidential value. See R Stone *The Modern Law of Contract* (New York, 2008) at 249; A Epstein *Contract Law Fundamentals* (Ohio, 2008) at 225-227, 249, esp at 225. Today the contractual parties will record all the details of the agreement (*idem* at 249). It is advisable to use proper and plain language and avoid ambiguity (*idem* at 226-227).
- 61 See Claassens (n 1) vol 1 at 371.

preferential portion of the deceased parent's estate; but sometimes even though there is a preferential share, the ranking is not given.⁶²

(iii) I 3 Description of assets: fully, value

In the texts depending on the scribal tradition, the description of the assets differs. Particularly in certain texts in the city-states of Nippur, as well as Sippar and Larsa, the property is described in detail.⁶³ In most of the texts, only the more valuable items are mentioned, such as immovable property and slaves.

In the Sippar texts,⁶⁴ the majority of the estates were fully divided, as shown by the use of the typical terms "from straw to gold" and the "division is finished". In Larsa,⁶⁵ there is an "as much as there is" clause, which may reflect a total division of the whole of the communal estate.

(iv) I 4 Special legal terms

Certain terminologies or phrases usually form part of the natural elements and written requirements of the agreement. Particular phrases are unique to the agreement and make it easy for a reader of cuneiform texts to distinguish the agreement from other texts, while regional differences occur. In some of the written agreements, we come across symbolic gestures. These are commonly found in other types of agreement and in social, economic and business situations and transactions. Unfortunately, we only find some glimpses of these practices in the written sources. In each text, special terminology and phrases are used, ensuring that the contract is legally binding, which is substantiated and validated by certain factors and formalities in the form of symbolic terms and gestures.

The following are examples of some special terms in the city-states. In Larsa the significant special legal terms that are the different legal practices' unique terms and applicable to each agreement are: ha-la—the inheritance share of X; ì-ba-e-ne ori-zu-zu—they divided; u4-kúr-šè šeš šeš-ra inim-ma nu-gá-gá—brother against brother will not lodge a claim against another; and mu—an oath clause.⁶⁶

In Nippur the key special legal terms are: še-ga-ne-ne-ta – in mutual agreement; ḫa-la-la – the inheritance share of X; búr – in balance; mu-nam-šeš-gal-šè – right of primogeniture; mu lugal-bi in-pá; ŭ-kúr-šúlù-ù-ra nu-gí-gí-dé – in future neither shall have power to revoke the agreement; ni-ba-e-ne-they shall divide into equal parts; síb-ta garzá a-na-me-bi – the preference portion of whatever temple offices there are; and ibila – beneficiaries (heirs) of X.⁶⁷

Specific legal terms particularly used in Sippar are the two symbolic expressions: "heart is satisfied" and "from straw to gold". Terms usually present in the Sippar texts

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62 Idem at 371-372.
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⁶³ Idem at 371.

⁶⁴ *Idem* at 307-310.

⁶⁵ Idem at 228.

⁶⁶ *Idem* at 372, table outline (at 348-349) and schematic overview (at 381).

⁶⁷ Ibid.

are i-zu-zu-šu-um zi-zu ga-am-ru – they have shared, they are finished; li-ba-šu-nu tâbab – their hearts are satisfied; ú-uli-ta-ar-ma – they will not complain and come back; iš-tupí-e a-di guškin – "from straw to gold"; ga-am-ru – the division is finished; and ha-la0 or zitti – inheritance share of X.

(v) I 5 Oath-clause (king/god)

Oaths, considered part of "normal contractual procedure" found in several legal texts throughout the ancient Near East, were present in most division agreements.⁶⁹

In most division texts the contracting parties swore an oath; and the oath-clause usually occupies a special position in the text, appearing after the sanction and provision clauses and before the date-clause and that relating to witnesses.

The details of the oath are indicative of the time and place of the agreement, for the parties swear by the name of the reigning king, city itself and/or the gods of the city. In some instances where the king is deified, only his name is used. In most cases, the parties will swear only to certain gods. In some agreements, copies are made for the same contractual parties pertaining only to their agreed division of the property; each agreement will refer to its own different gods, by whom the parties swear. Each city-state's scribal school uses its own formula or specific wording.

(vi) I 6 The names, rank/family standing of witnesses

There are normally witnesses present; their names and seals are mentioned.⁷³ They witness the division agreement and their presence is verified by noting on the document their names and usually also their rank or status. In some texts the professions of some witnesses such as the dub-sar (writer) and bur-sal's (seal-engraver) are stated, probably

- 68 Ibid.
- In a private document the oath usually consists only of an oath sworn before a god or, in exceptional cases in Sippar, in the temple. In this regard, see texts from Schorr (n 16) at 269-271, 271-273. In the so-called political documents or treatises, the oath also refers to loyalty to the king, an obligation to act against rebels and a curse upon treaty breakers: see M Weinfeld "Loyalty oath in the ancient Near East" (1976) 8 Ugarit Forschungen 379-414 esp at 380. Weinfeld undertook an in-depth investigation of these oaths and asserts that there are similarities between the treaties and loyalty oaths of the ancient Near East. Oaths are also found in many of the named collections such as collections of Ur-Nammu (LU), of Ešnunna (LE), of Lipit Ištar (LL), of Ḥammu-rāpi (LH) and the Assyrian law collection (Magnetti (n 47) at 2). See SJ Claassens "The so-called Mesopotamian law codes: What is in a name?" (2010) 19(2) J for Semitics 461-478 on the position and study of these collections, referred to by some scholars as "law codes", "law collections" or "cuneiform collections".
- 70 See Claassens (n 1) vol 1 at 350 for a tabular outline of the similarities and differences between the different gods, kings and cities mentioned in the normal oath-clause in the Sippar division agreements.
- 71 For three Sippar division texts, see discussion by Claassens (n 1) vol 1 at 350; Schorr (n 16) at 249-250; and Duncan (n 44) at 176-177.
- 72 See Claassens (n 1) vol 1 at 350.
- In contrast with ancient Mesopotamia, in contemporary law the contractual party's signature is only an authentication of the signature and identity of the signatory. See R Sharrock *Business Transactions Law* 7 ed (Cape Town, 2007) at 112. See Claassens (n 1) vol 1 at 367.

to indicate that these were the scribe and seal maker of the recorded agreement. In some Nippur texts, there is reference to the professions of priest, soldier and overseer. In Larsa texts, there were references to professions such as merchant, surveyor and builder, while in Sippar professions such as priestess (lukur) and law commissioner were noted. The names of witnesses appear at the end of the recorded agreement, before the date formula.

3 4 2 Qualities of cuneiform division texts

(i) I 7 Language

Akkadian and/or Sumerian were used, depending on the scribal traditions of Larsa, Sippar and Nippur.⁷⁸ In the Nippur texts, Sumerian was employed. In Sippar, Akkadian is generally used, with some Sumerian words and terms. In Larsa, the tablets are usually in Akkadian. Thus analysis of the languages can help identify the terms used by the different city-states.

- In Nippur, there are witnesses whose profession/status of priest, soldier or overseer is mentioned together with that of the **dub-sar** (a scribe) and **bur-gal** (a seal engraver). See the texts from O'Callaghan (n 15) at 137; Stone & Owen (n 21) at 56-63, 65-67, 87-89.
- Also in Larsa, the name of the witness and his status (son of X), the scribe's name and profession (dub-sar) are mentioned. On the professions named in the witness clause, see the texts in Charpin (n 14) at 212-213; Leemans (n 21) at 34-38; Andersson (n 23) at 13-20; Charpin (n 14) at 204, 231-232, 240-241.
- Also in the Sippar texts are names of witnesses without status, the name of the scribe (*tupšarrum*), the names of witnesses with status (son (**dumu**) of X) only, the names of witnesses with status (son (**dumu**) of X) together with that of a scribe (**dub-sar**) and witnesses with their names and status (son (**mâr**) of X and daughter). See texts from Dekiere *Pre-Ḥammu-rāpi Documents* (n 21) at 108-110, 163, 173-175; Schorr (n 16) at 197.
- 77 The words **igi** and *maḥar* are used before the name, birth order, ranking and sometimes even profession of each witness. See discussion by Claassens (n 1) vol 1 at 367.
- There is speculation and debate amongst scholars about the beginning and ending of Sumerian and the co-existence of Sumerian with Akkadian languages. P Michalowksi "The lives of the Sumerian language" in SL Sanders (ed) *Margins of Writing, Origins of Cultures* (Chicago, 2006) 159-184 at 171, 177-178 argues that Sumerian as a language did not have one life, but several lives and several endings. According to him there is nothing but speculation on the origins of the Sumerian people, their language and the death of the Sumerian language. He also contends that it is problematic to associate languages with different groupings, and thus "create labels" and "mentally constructed nations"; for these do not exist in the earlier recorded Mesopotamian history (*idem* at 159). Sumerian had a "long and complex life as a literary vehicle" (*idem* at 160). He opposes comparisons of Sumerian with the use of Latin in the European Middle Ages, which he considers "too simplistic and often misleading". Michalowkski (at 171) contends that "[i]f we accept a historical chasm between the written language, with its own complex history, and whatever vernaculars were once used in the land, the issue of the death of Sumerian has to be seen in a new light, since we must ask ourselves what exactly died and when".

(ii) I 8 Location

In most cases, the location of the text can be established with reference to the language, terms, date formula and archaeological evidence together.

(iii) I 9 Tablet's condition

The quality of the discussed text largely depends on whether it is in good condition and not damaged. If damaged, it is necessary to assess to what degree, for this may seriously affect the quality of the text captured on the tablet and hinder proper interpretation.

In addition, the physical characteristics of the tablet indicate a scribal school tradition in respect of certain types of documents or contracts. For instance, writing on the reverse and obverse, any free spaces and whether the tablet is slender; and may include other aspects such as the tablet's width and height (ratio), whether the tablet was sealed and whether it had an envelope.

(iv) I 10 Number of copies

In some of the texts of Sippar,⁷⁹ each contractual party receives his or her own copy of the agreement in respect of his or her agreed portion of the parental estate. In Larsa and Nippur, all the awarded divided assets of the contractual parties are mentioned on a clay tablet.⁸⁰

(v) I 11 Date formula

In some scribal practices, especially in Nippur and Sippar, a date formula is found, which usually relates to a significant event in the king's regal year and helps determine the chronology of the text . For example, in Nippur there are certain small discrepancies relating to the period between the Larsa Dynasty and the First Dynasty; and these help establish the chronology of the text and the scribal tradition of the city-state.⁸¹

According to Horsnell documents are dated by either numbers or names.⁸² Dating by names is possible with reference to either the name of a high official or the mention of

Claassens (n 1) vol 1 at 350. In sixty-five per cent of the texts, they were recorded on one copy, except for texts from Dekiere *Pre-Hammu-rāpi Documents* (n 21) at 82-83, 148-149, 163-167; Schorr (n 16) at 253-254; Duncan (n 44) at 176-177.

⁸⁰ Claassens (n 1) vol 1 at 350.

⁸¹ Claassens (n 1) vol 2 at 419-427.

MJA Horsnell "The grammar and syntax of the year-names of the First Dynasty of Babylon" (1977) 36 J of Near Eastern Studies 277-285; Claassens (n 1) vol 2 passim regarding the forty-six division agreements. See ME Cohen The Cultic Calendars of the Ancient Near East (Michigan, 1993) passim.

an event. In division agreements, it is the latter. This is termed a year-name system, the sentence being the "name" (mu) of the year, and is usually written in Sumerian.⁸³

(vi) I 12 Seal impressions

In some texts, there were seal impressions. Werr analysed Old Babylonian cylinder seal designs from old Babylonia Sippar and studied their impressions on dated tablets from archives or from sites with stratified levels, the city of Sippar in Babylonia, and Tell Harmal and Tell el-Dhibai in the Diyala region northeast of Babylonia. He states that "well-carved and beautifully-executed seals" belong to the old Babylonian period. He states that "well-carved" and beautifully-executed seals" belong to the old Babylonian period.

From old Babylonian Nippur⁸⁶ comes an example of a special seal made for the conclusion of the written division agreement. Sometimes the seal impressions were made on the side of the tablet and at other times underneath the text.

Malul⁸⁷ believes that seals serve to identify "instruments of their owners" and were considered "magical instruments attesting to the veracity of the document and to the binding of the person to its contents". Other features of the seals are that documents in ANE "were sealed before being written"; seals were not personal and were commonly borrowed and exchanged, since the names on the sealed tablet do not necessarily match the seal impressions. Malul contends that for that reason the "seal owner was not important" and notes that substitutes for seals could include fingernails and the hem of a garment.⁸⁸ This may be indicative of the "basically magical nature of the act of sealing".⁸⁹

- Horsnell (n 82) at 283 investigates the grammar and syntax of year-names and concludes that with very few exceptions the year-names must be translated actively. He states that they "were originally promulgated to commemorate the actions of the king". The king is the cause of the event described and is therefore the grammatical subject of the year-name statement. Consequently, the year-names on the promulgation tablets and their secondary copies commence **mu RN lugal-e** with the agentive -e and have clear transitive-preterit forms of the verbs. Variants necessitating a transitive-active interpretation can be found for the majority of the year-names of the dynasty (*idem* at 283-284). The year-name statement is therefore best translated as follows: "The year: RN did such-and-such" (*idem* at 285).
- LG Werr "The Sippar workshop of seal engraving" (1986) 90(4) *American J of Archaeology* 461-463, esp at 462 expresses the opinion that the manner of engraving the seals from old Babylonian Sippar, and especially the stylisation of the garments, suggest that two workshops were active in the town. In Workshop 1, each of the flounces consists of triple undulating lines. Wider lines separate the flounces from each other. In Workshop 2, the flounces are indicated by straight vertical lines separated into registers by unbroken horizontal lines (*idem* at 463).
- 85 *Idem* at 462.
- 86 O'Callaghan (n 15) at 137.
- 87 Malul (n 9) at 47.
- 88 Ibid. See, also, M Malul Studies in Mesopotamian Legal Symbolism (Neukirchener, 1988) at 291-309, 451.
- 89 Malul (n 9) at 47.

(vii) I 13 Rhythm sequence/special style reflecting scribal school tradition within a certain city-state

The sequence in which essential and natural elements appear differs from one city-state to another, and is chosen by the scribe who inscribed the oral agreement on the clay tablet. In this respect specific scribal schools had their own stylistic patterns, with some exceptions.⁹⁰

4 Summary

An old Babylonian family deceased division agreement is a consensual family agreement between close members in a kinship group. In this agreement, they agree to the change from co-ownership to sole ownership of the estate assets. Mechanisms such as sale (bringing in of assets), donation and exchange were used to distribute the bequeathed assets among the co-beneficiaries/owners. Upon the conclusion of the agreement, each became sole owner of an agreed portion or assets of the once-held communal estate assets.

In order to study the details of family deceased division agreements it was necessary to choose or devise a specific methodological approach. This systematically divided the agreement into groups within a framework of obligatory, essential elements.

An analysis model was designed for the purpose of interpreting the details of the division agreement text. It identified the categories and sub-categories of certain prerequisites, legal practices and scribal school practices, as well as the intrinsic details of the agreement, without getting lost in its details and interpretations.

To explain this analysis model, a concrete example was devised, namely that of a house. For it to be identified as such, certain qualities had to be present, such as the walls, roof, door and windows. With regard to the family deceased agreements, these pre-requisite qualities are named essential elements.

Next are the so-called natural elements. Just as not all houses look the same, for example some houses may have a patio, or be a double storey; neither do the natural elements of the family deceased division agreements. The status and the obligations of the beneficiaries and consequently the terms of the agreement as incorporated in the different legal practices in Old Babylonian Larsa, Nippur and Sippar, make each division agreement unique in a given city-state and family circumstances.

Finally, there are the incidental elements. These consist of different scribal practices, which include certain written formalities and qualities of the recorded division agreement. In the example of the house, various interior and exterior decorations may be added to it, for instance a particular type of window, the colour of the paint, etcetera.

A schematic outline of the analysis model, together with a prototype of the agreement extracted from three different old Babylonian city-states, gives a holistic view of the

⁹⁰ The rhythm sequence was discussed in outline table format in Claassens (n 1) vol 2 at 429-446. The scope of this article does not permit the comparison study of the division agreement from the three city-states.

different categories and subcategories of elements and demonstrates their practical application, in the prototype agreement.

The aim of the synoptic discussion, with reference to the analysis model, of the elements and subcategories was to reflect on the interpretation of old Babylonian division agreements so that new perspectives on the meaning, consequences and spirit of those agreements in old Babylonian city-states might emerge in further studies. The core of a division agreement is that it is a practical solution to the undesirable consequences for beneficiaries of co-ownership in the common bequeathed property.

Abstract

The recorded family division agreement in a deceased estate encompasses a variety of components, mechanisms and details ranging from elementary to lengthy and complex ones. Moreover, the agreement is drafted in accordance with the contractual parties' particular oral agreement and the scribe's idiosyncratic inclusion of some of the detail of the oral agreement. A specific methodology is devised in order to analyse the content of the family deceased division agreements. Thus the aim and purpose of this content analysis methodology is to simplify the analysis of old Babylonian division agreements. In this article, special attention is accorded to the creation of a methodology, termed the analysis model, for the analysis and study of the content of family deceased division agreements. Within this framework, firstly the obligatory essential elements of a family deceased division agreement are identified and then other aspects and elements of the agreement are identified and studied in different groups, named the natural and incidental elements, to reflect new perspectives on the division agreement's meaning, purpose and spirit in ancient Babylonian urban life.