

CONTRACTUAL MAINTENANCE SUPPORT OF A PRIESTESS-SISTER IN THREE OLD BABYLONIAN SIPPAR DIVISION AGREEMENTS¹

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ABSTRACT

Generally, the family members conclude a division agreement of their inheritance received from a parental deceased estate to escape the perils of their shared inheritance by dividing it into portions of unburdened sole ownership. However, in some Old Babylonian Sippar division agreements, the family members devised and agreed to burden an elected inheritance property with a *sui generis* usufruct. This entails that they contractually agreed to share or appropriate to a family member the responsibility to manage the burdened property and use of its proceeds, for the maintenance and support of their priestess-sister. Only in the event of the priestess-sister's death is the burdened property restored from the restraints of the usufruct. In the article, I have applied my developed analysis method to the study of three Old Babylonian Sippar division agreements which consist of a usufruct-clause. First, I outline the prerequisite elements of the analysis method, which identify the three texts as a family division agreement from a deceased estate. Then follows a discussion of the legal practices found in the three texts of which the usufruct as a chosen legal practice receives special attention. The aim of the article is to show that family members can decide to utilise the *sui generis* usufruct in the division agreement for the maintenance and support of their priestess-sister, imposing on themselves lifelong personal and financial consequences, while ensuring that the family retain their property on the death of the priestess-sister.

¹ The Sumerian terms are in bold font. The Akkadian terms and any other foreign language terms are in italics font. Abbreviations given in this article are: OB (Old Babylonia/Babylonian), ANE (ancient Near East/Eastern), PSD (Pennsylvania Sumerian Dictionary), CAD (Chicago Assyrian Dictionary), AHw (*Akkadisches Handwörterbuch*), CDA (A Concise Dictionary of Akkadian), LH (Laws of/Law Collection of/Lax Code of Hammurabi) and LL (Laws of/ Law Collection of/Lax Code of Lipit-Ištar).

INTRODUCTION

The consensual contractual provision of a “usufruct”² is introduced, which appears in three elective OB Sippar family division agreements from a deceased estate.³ This type of division agreement is concluded between family contractual parties: a priestess-sister and her male family members.

As a rule, the main intention of the family division agreement was to create a new beginning (*tabula rasa*) where a family member acquired an inheritance as a sole owner (Claassens 2012/1:367).⁴ Sometimes in OB Sippar division agreements, the family members may decide to burden an elected inheritance property with a usufruct. This limits the right and use of the property, as the owner (bare-dominium owner)⁵ of the property agreed in the responsibility to appropriately manage the property and

² The term “usufruct” is, for the purpose of this article, a *sui generis* or freestanding usufruct. I explain the term under the heading “Terminology of the usufruct”. However, for abbreviation purposes, the *sui generis* usufruct in the article is abbreviated as “usufruct”.

³ The article is a revised and updated version of my paper delivered at the joint conference of academic societies in the fields of religion and theology held at the University of Kwazulu Natal, South Africa on 19 June 2012. Furthermore, the article is an adaptation of OB Sippar usufructs found in three Sippar texts from my unpublished doctoral thesis (Claassens 2012). I discussed the details of the three texts and the application of the usufruct in Volume 1 pages 131, 202-204, 314-315, 366, 385, 398; and also outlined the texts in Volume 2, under the assigned number S5 from pages 237-242, S17 from pages 321-327 and S19 from pages 335-342. In this article, I am elaborating on the legal concept of the usufruct as a freestanding usufruct regarding its application in the OB Sippar family division agreement from a deceased estate, as well as the personal and financial consequences that this type of usufruct held for the family members.

⁴ Cf. my discussion of the practical application of the division agreement, wherein I explained the different stages in the conclusion of the type of division agreement (van Wyk 2013a:152-154; Claassens 2012/1:117-120).

⁵ Today the term “bare-dominium owner” or “nude owner” is used in a usufruct construction, which derives originally from Roman law. The “bare-dominium owner” is a person who has limited rights to his or her ownership. However, after the usufruct lapses, the bare-dominium owner becomes the ultimate owner of the property, free from any limitations of ownership (Verbeke, Verdickt & Maasland 2012:38; Meyerowitz 1976:24.20). See Figure 4 and my explanation of the OB Sippar division usufruct and the bare-dominium owner’s rights and obligations under the heading “Usufruct: Additional condition and provision as a legal practice”.

provide maintenance support to the priestess-sister (usufructuary)⁶ from its proceeds. Only on the sister's death, after a lifetime of maintenance compliance, will the owner receive the burdened property free from restraints of maintenance obligations. Furthermore, with the usufruct practice, the priestess-sister receives certain lifelong maintenance rights and some financial security.

In the article, I explain my developed analysis method in the study of three division agreements, which contain the usufruct-clause, originated from the OB city-state of Sippar. With the application of my developed analysis method, the identified prerequisite elements of the specific division agreement show that each of the three texts constitutes a family division agreement from a deceased estate. Thereafter I outline the legal practices present in the three texts. The discussion of the usufruct as a chosen legal practice receives special attention. This includes some background information about the priestess-sister's position in OB Sippar family life and society. Then I explain the term "usufruct" and the characteristics of the specific type of usufruct found in the three elective OB Sippar texts, supported by references from the texts. The aim of the article is to show that family members in a division agreement deviate from the general aim of creating a new beginning of sole-ownership by choosing to burden certain communally-shared inheritance with a *sui generis* usufruct, either as a sole awarded inheritance-share to one family member, or as communally-shared inheritance to all or some family members. The intention of the family members is to assist the priestess-sister with lifelong maintenance support, imposing personal and financial consequences unto themselves, while securing the preservation of the family property.

METHODOLOGICAL APPROACH IN THE STUDY OF THE THREE TEXTS

The familial division agreement from a deceased estate is part of a corpus of division agreements which includes division texts such as *quasi*-adoption agreements, living

⁶ The term "usufructuary", originally from Roman law and used today in a usufruct construction, refers to the person who enjoys the fruits and use of the burdened property, for a certain period or for a lifetime (Verbeke, Verdickt & Maasland 2012:38; Meyerowitz 1976:24.14, 24.15). See Figure 4 and my explanation of the OB Sippar usufruct and the usufructuary's rights under the heading "Usufruct: Additional condition and provision as a legal practice".

estate owners" agreements and dissolution of partnership.⁷ The different types of division agreements share a common element, which entails that the communally-shared property is divided among certain persons who become sole owners of the awarded asset/s, free from any limitations of ownership (van Wyk 2013a:155).

However, on closer analysis of the corpus division agreements, the different types of division agreements have different mechanisms and results in place.⁸ In an attempt to simplify the study of a specific type of division agreement, and assist in the identification and analysis of its components, I have developed an analysis method in the study of each type of division agreement-text.⁹

First, the analysis method entails that each type of division agreement has prerequisite elements – termed the essential elements – which qualify it as a certain type of division agreement. The essential elements are derived from a logical reflection of requirements needed for an agreement to be a specific agreement (van Wyk 2013b:424).

The identified essential elements of a familial division agreement from a deceased estate are the following: family members involved, deceased estate owner, estate assets, mutual consent (expressed with specific term) and *raison d'être*.¹⁰

Then, with the application of the analysis-method, the identification of the legal practices – termed natural elements¹¹ – followed, which are the contractual terms the

⁷ I discussed the reasons for a distinction from other *prima facie* legal notions in my thesis (Claassens 2012/1:120-121) and elaborated on this distinction in my recently-published article (van Wyk 2013a), explaining what a family division agreement entailed and my motivation for the distinction from other seemingly similar types of division agreements.

⁸ Cf. van Wyk (2013a:154-159).

⁹ The analysis method is a content-analysis study of forty-six OB division agreements in my unpublished doctoral thesis (Claassens 2012). In my thesis, I made a content analysis of the division agreement texts and then compared the texts typologically (Claassens 2012/1:107-140). The length of the article does not permit a thorough discussion of the method used, and the section of the article is only for information purposes regarding the approach to the study of the three texts. Cf. my discussions of the analysis method (Claassens 2012/1:107-150; van Wyk 2013b).

¹⁰ Cf. Claassens (2012/1:216-225) and van Wyk (2013b:423-427).

¹¹ In my thesis (Claassens 2012/1:346-347), I gave an abridged comparison table of the so-called natural elements or legal practices of the three OB city-states division

family members as contractual parties expressly or tacitly decide to exclude or include in the agreement. The choice of the legal practices depends on the family members' personal circumstances, architectural and agricultural factors, and city-state philosophies (Claassens 2012/1:127).¹² The legal practices, as they appear in one or more of the three discussed texts, are:

- 1) Symbolic expressions: "completely divided", "the division is finished", "from straw to gold" and/or "heart is satisfied" clauses.
- 2) Formalities, implementation and enforcement of the agreement: "no claim", "oath" and "witnesses" clauses.
- 3) Additional conditions and provisions: "usufruct" clause.¹³

THREE CASE STUDIES FROM OB SIPPAR

Text sources

All three texts from the city-state of Sippar were recorded in the First Dynasty of Babylon: Text 1 was recorded during the reign of Apīl-Sîn (1830-1813 B.C.E.), and Text 2 and 3 during the reign of Hammurabi (1792-1712).¹⁴

Text 1 is from the Catholic University of America in Washington DC, which was previously in the possession of the late Professor H Hyvernat. It is categorised as Text CUA 22 and Goetze (1957:15-16) named the text a "division of an estate" under the

agreements Larsa, Nippur and Sippar, which is a holistic impression of the differences and similarities of the legal practices in the agreements.

¹² In my thesis (Claassens 2012/1:52-62), I have discussed the influence of OB city life and landscape elements on the division of the property. I have also outlined text examples of what practical implications and challenges the family members could have taken into account and their possibly ingenious attempts to overcome problems in dividing the communally-shared inheritance into portions of sole-ownership. Agricultural and architectural factors, together with the unique situation of a family, obliged the family members to foresee and overcome practical implications; and they had to have "good-cooperation" and "mindfulness" during the dividing-up of the communally-shared inheritance (Claassens 2012/1:61, 389).

¹³ I discussed the clause in a separate heading: see *infra* in this article.

¹⁴ The First Dynasty of Babylon kings and their dates are as follows: Apīl-Sîn (1830-1813), Sîn-muballiṭ (1812-1793), Hammurabi (1792-1712), Samsu-iluna (1749-1712), Ammī-ṣaduqa (1646-1626). Cf. dates and lists from van de Mierop (2007) and Brinkman's list in Oppenheim (1964).

heading “contracts”. The text is undated; however, in line 12 of the text, the oath clause includes the name of king Apīl-Sīn. For ease of reference, Table 1 shows the transliteration and translation of Goetze (1957:15-16).

Text 2 is from Schorr (1913:260-261) in his “*Urkunde*”, assigned under number VAB 5, 188. The agreement was recorded during the twenty-fourth year of the reign of Hammurabi.¹⁵ For ease of reference, Table 2 outlines the transcription and translation by Schorr (1913:260-261) in German, with my translation in English.

Schorr (1913:256-257) indexed Text 3 as number VAB 5, 186, and TD 98-99 (AO 1648 a-b). The division agreement text can be read together with another division agreement from the same family, indexed by Schorr (1913:255-256) under number VAB 5, 185. Both texts reflect the recorded awarded share of one of the siblings, Lipit-Ištar, as part of a family division agreement. According to the date formula of the first division agreement – Text number 185 – the family members contracted the agreement during the thirtieth year of the reign of Hammurabi. Later, as indicated in the date formula of Text 3¹⁶ in the thirty-fifth year of the reign of Hammurabi, the family members agreed to a second division agreement for the maintenance support of their priestess-sister by means of a usufruct. For ease of reference, Table 3 shows the transliteration and translation of Schorr (1913:256-257), as well as my translation into English.

Essential elements or prerequisite requirements¹⁷

Family members involved

There existed a kinship connection between the deceased estate owner and the family contractual parties, who were generally siblings or at least family members such as

¹⁵ Lines 31 & 32 of Text 2 (*infra*): translates as “the year of the channel Tisīt-Ellil” (Sigirst & Damerouw n.d.). The year formula is during Hammurabi’s twenty-fourthth regal year and the formula reads “Year the canal of Enlil (was dug)”. Cf. discussions by Cohen (1993) regarding the year names.

¹⁶ Lines 30-34 from Text 3 (*infra*) translates as “in month Abum, the twenty-second day, in the year in which the walls of Mari and Malgûm were destroyed” (Sigirst & Damerouw n.d.). The year formula is from Hammurabi’s thirty-fifthth regal year and it reads “year in which Hammurabi the king by the orders of An and Enlil destroyed the city walls of Mari and Malgium”. Cf. discussions by Cohen (1993).

¹⁷ Cf. my discussion (Claassens 2012/1:216-222, 395-396) regarding the essential elements: I based this section of the article on these findings.

nephews and uncles.¹⁸ Their status and contractual ability was the barometer of their position and influence pertaining to the terms of the contract.¹⁹

Text 1 is an agreement between the brothers Iddin-Adad, Adayatum and unnamed sister (a *kulmašītum* priestess). Figure 1 (*infra*) shows the outline of this family.

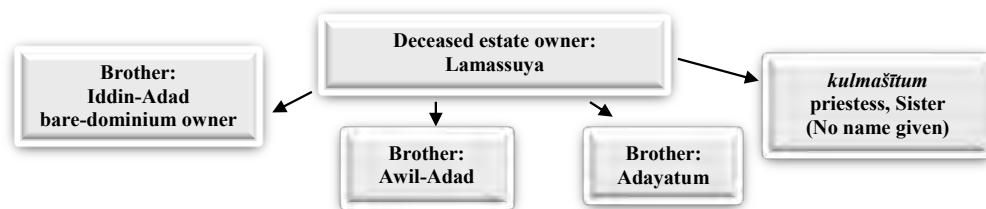


Figure 1 Schematic outline of the family of Text 1

Text 2 is an agreement between the brothers Mâr-iršitim, Budium, Ilušu-ellâzu and sister Awât-Aja, (*sal-me/nadītu*) priestess of Šamaš. Figure 2 (*infra*) reflects the outline of the family in this text.

¹⁸ Cf. my thesis (Claassens 2012/1:345) where I have given an abridged table outline of the essential elements of Sippar, Larsa and Nippur reflecting the differences and similarities of the presence of family members in the agreements. In OB Sippar, in eleven of the twenty-six agreements the sisters are contractual parties to the division. The following categories of sisters were represented in the OB Sippar texts: in S3, a *nadītu* priestess of Šamaš, see Dekiere (1994:108-110), S5 discussed in this article as Text 1 *kulmašītum* priestess, see Goetze (1957:15-16), S6 a *kađištīm* priestess, see Schorr (1913:252-253), S7 a *qadištu*, priestess, see Dekiere (1994:173-175), S9 a sister, see Dekiere (1994a: 165-167), S10 a *kađištīm*- and a Šamaš priestess, see Dekiere (1994:164-165), S15 a *zērmašītu* priestess, see Schorr (1913:253-254), S16 a sister, see Schorr (1913:254-255), S17 discussed in this article as Text 2, a *sal-me/nadītu* priestess of Šamaš, see Schorr (1913:260-261), S19 discussed in this article as Text 3, a *sal-me/nadītu* priestess of Šamaš, see Schorr (1913:256-257) and S20 a *sal-me* priestess of Šamaš, see Schorr (1913:258-260). These women, owing to their specific role and status, inherited and concluded an agreement with their brothers and/or sons.

¹⁹ Cf. the notes in my thesis (Claassens 2012/1) at pages 165-175, 402-406 regarding the family members' status and roles, as well as the influence of those status roles in the conclusion of the agreement. See *infra* under the discussion of the "Background notes regarding the priestess position in OB family and society".

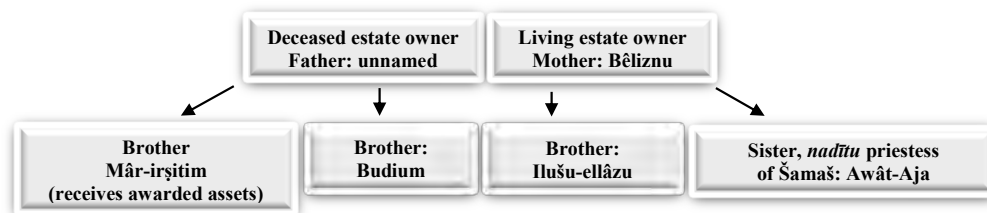


Figure 2 Schematic outline of the family of Text 2

Text 3 is an agreement between three brothers Lipit-Ištar, Ibi-Sin and Sin-mâgir, and their sister, Lamâzî, a *sal-me/nadītu* priestess of Šamaš; and also Sin-idinam and Rîš-Šamaš, the children of Ilušu-ibišu, possibly a deceased brother. Figure 3 (*infra*) shows the outline of this family.

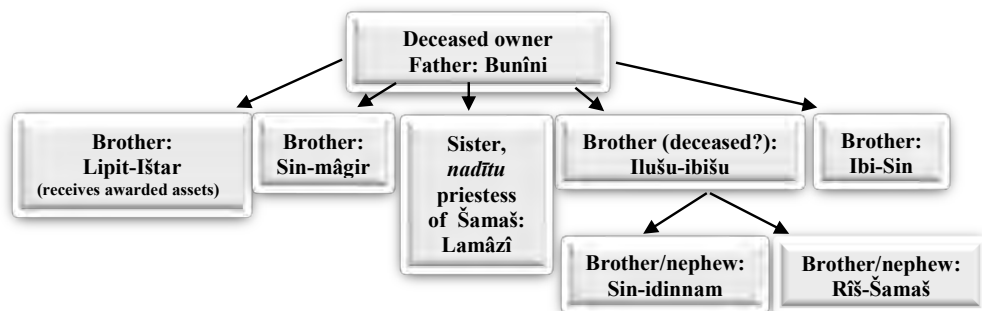


Figure 3 Schematic outline of the family of Text 3

Deceased estate owner

The communally-shared inheritance was derived from the siblings' paternal and/or maternal estate.²⁰ In the instance of more than one estate owner, at least one of the parents was deceased.²¹

²⁰ In my thesis (Claassens 2012/1 & 2), in only four of the 26 Sippar texts the estate owner is the deceased mother, as reflected from the sources of Dekiere (1994:108-110); Schorr (1913:252-253); Dekiere (1995:173-175) and Dekiere (1994:164-165).

²¹ This is one of the 26 Sippar texts from my thesis (Claassens 2012/1 & 2) and in

Text 1 is an agreement regarding the assets of the father's deceased estate; Text 2 is an agreement regarding the estates of both parents: deceased father and living mother; and Text 3 is an agreement regarding the estate of the deceased father.

Estate assets

A third prerequisite was the estate assets of the paternal estate which devolve to the family members as an inheritance (Claassens 2012/1:125). The estate assets can consist of houses, fields, movable property and include the whole of the estate or part thereof.²² Sometimes all of the communally-shared divided assets, as well as the property subject to the usufruct, are included in one recorded agreement, whereas at other times only the property subject to the usufruct was reflected in the recorded agreement.

In Text 1, lines 1-4, the awarded immovable property of one brother gives the description of “ $\frac{2}{3}$ **sar** $8\frac{1}{3}$ **gín** [...] house”, and affirms the position of the unit by identifying the owners of the surrounding house. In line 1, the only recorded asset is a certain house subject to a usufruct.

In Text 2, lines 1-9 reflect the one brother's awarded assets, including a house, household goods, utensils, identified slaves and animals. In an additional provision in lines 18-21, the undescribed inheritance assets, and undescribed inheritance (in line 19) from the mother's estate is subject to a usufruct.

In Text 3, lines 1-9, as in Text 2, various assets are mentioned which are awarded to one brother. This includes a two **sar** built-house with description of the unit's position and identified slaves. Similar to Text 2, in Text 3 in an additional clause (lines 13-14); the undescribed communally-shared property is burdened with a usufruct in favour of a priestess-sister.

Mutual consent

As a quintessential element for a division agreement, the family members mutually agreed to the division. Depending on the city-state and scribal school traditions, there were certain term/s allocated in the texts, illustrating the family parties' intent to agree

this article it is assigned under Text 2, reflecting the estate of a living mother and deceased father who were both the estate owners. See Schorr (1913:260-261).

²² In some instances, a bringing-in of assets belonging to the family members assists with an equalisation of the re-shuffling of bequeathed property. Cf. Claassens (2012/1:117-120, fn. 134 at 119-120).

to the terms and conditions of the agreement.²³

In Text 1, lines 6-7, the clauses appeared: *zi-zu gam-ru li-ba-šu-nu ʔà-ab*, which translates that they (the family members) have mutually agreed to divide (*zi-zu*) the assets; the division is finished (*gam-ru*), with an added symbolic expression that their hearts are satisfied (*li-ba-šu-nu ʔà-ab*), as well as a no-claim clause, in lines 7-11.

In Text 2, line 14: *i-zu-zu zi-zu ga-am-ru* translates that they, the family members, have mutually agreed to the division (*i-zu-zu zi-zu*); the division is finished (*ga-am-ru*), together with the no-claim clause, in lines 16-17.

In Text 3, in line 15, the clause states: *zi-za ga-am-ra*, which translates that the family parties have mutually agreed to the division (*zi-za*) and that the division is, finished (*ga-am-ra*). In addition, the family members agreed in a no-claim clause (lines 17-18) that they will not claim against another.

Thus, in all three texts the following terms supported the “mutually agree” clause,²⁴ namely “division is finished”, “from straw up to gold”²⁵ and that “no one will raise a complaint against another”.²⁶ In Text 1, as an added affirmation, the family members stated that their hearts are satisfied.

Raison d'être

The family members partook in a reshuffling of estate assets for a reason; and the reason for the partition to the agreement and solution to the problem went hand in hand. General resolutions normally entailed a typical sale, donation or exchange. The

²³ Cf. the discussion in my thesis (Claassens 2012/1:151-210) of the terms used in the division agreements from OB Nippur, Larsa and Sippar.

²⁴ The term group *i-zu-zu zi-zu* translates as “they mutually agree to the terms of the division agreement”. I explained the term group in my thesis (Claassens 2012/1:158-159). Cf. also the following: AHw 1533-1534: the terms *zittu(m)*, and *zīzātu(m)* are indicated in German as *Anteil* or *Teil* and AHw 1517-1519 the term *zāzu(m)* is translated in German as *Teilen*, *Verteilen* or *Anteil nehmen* (Von Soden 1965-1981). Cf. CDA (Black, George & Postgate 1999:449) where the Akkadian term *ziti* is given as *zittu(m)* or *zīzātu(m)*; also *zinātu*, which means share. This denotes a division of the portion of the estate, division of other assets, the division, or a total division. Oppenheim (1961:139,146,147) in CAD Z 1 A outlines under the heading *zittu* the Akkadian term *zittu* (headings 1 and 4).

²⁵ See the discussion of the term “from straw to gold” under the heading “Symbolic expressions”, *infra* in this article.

²⁶ See the discussion of the no-claim clause under the heading “Formalities, implementation and enforcement of the division agreement”, *infra* in this article.

vehicles for division could either have been an exchange and/or a donation and/or a “bringing-in” of communally-shared inheritance assets between the family members (Claassens 2012/1:120).²⁷

In Text 1, an exchange takes place regarding the different types of communally-shared inherited assets, reflecting only one brother’s awarded share in the recorded agreement. In this text, the family members agree to create a usufruct over a house in favour of the sister, and one brother becomes the bare-dominium owner. In Text 2, an exchange of communally-shared assets takes place and the recorded agreement refers to one brother’s share. Additionally, a usufruct is created over unidentified burdened inheritance from the father’s deceased estate, and the estate of the mother who is still living. The burdened property remains the communally-shared property of the brothers. In Text 3, an exchange of communally-shared assets takes place and only the one brother’s divided assets which he receives as sole owner are recorded in the text. As an additional clause, the family members agree to a usufruct in favour of the priestess-sister over an undescribed property. The burdened property remains the communally-shared property of the family members. Possibly, in the case of all three of the families, there were recorded division agreements regarding the other siblings’ awarded shares. Thus, in the Sippar texts, exchange was the primary instrument for dividing the estate. In the following section, I show the advantage of the family members to have the choice of a wide range of legal practices in their conclusion of a division agreement to suit their needs and special circumstances and to establish harmony within the family.

Natural elements or legal practices (other than the usufruct)²⁸

Introduction

The chosen legal practices, coined “natural elements”, can be divided into the following functional-categories: namely, mechanisms; procedures; symbolic

²⁷ In my thesis, I concluded that, in the study of 26 chosen Sippar division agreements, the primary mechanism for a division was exchange. Sometimes the exchange was supported by minor practices such as a “usufruct”, “trust-construction” or “casting of lots”. Supplementary to exchange, the other division-mechanism in Sippar was a donation (Claassens 2012/1:358).

²⁸ See the discussion (Claassens 2012/1:223-230, 396-398) in my thesis regarding the natural elements or legal practices: I based this section of the article on these findings.

expression; formalities, implementation and enforcement; as well as additional provisions (Claassens 2012/1:377). In the three discussed texts, some of Sippar's wide varieties of legal practices chosen by the family members are

- symbolic expressions: "heart is satisfied", "completely divided" or "the division is finished" and "from straw to gold" clauses;
- formalities, implementation and enforcement of the agreement: "no claim", "oath" and "witnesses" clauses; and
- additional conditions and provisions: "usufruct" clause.²⁹

Other options of legal practices, excluded in the three Sippar texts, but included in family division agreements from Old Babylonia Larsa and Nippur, are

- mechanisms of the division practice – which is the bringing-in practice;
- practical procedure of division practice – which is the management of a division by lots; and
- additional conditions and provisions – which are the adoption, preference portion, "equal shares" clauses and *sui generis* trust.

A discussion follows of the practices of symbolic expression and formalities, which are present in the three texts.

Symbolic expressions

OB scribal schools and their trained scribes assisted us in the knowledge of the recordings of the division agreements, as well as a vast corpus of other types of literature. However, in the wider geographical context, OB societies were still predominantly preliterate societies (Pearce 1995:2265-2278). Legal traditions were performed and cognisance must be given to the fact that the mainly illiterate OB society relied on multi-sensory³⁰ and symbolic³¹ communication (Hibbits 1992:874).

In the Sippar division texts, symbolic expression statements which were recorded

²⁹ I discussed the clause in a separate heading: see *infra* in this article.

³⁰ Cf. discussion on multi-sensory communication by Hibbits (1992) and Malul (1988).

³¹ Cf. discussions on symbolism with different perspectives in the analysis of the performance of legal acts and agreements from scholars, such as Kruger (1998), Gruber (1980) and Barakat (1969). Cf. Charpin (2010:42-52) in Chapter 3 titled "Old Babylonian Law: Gesture, Speech, and Writing". Charpin (2010:42) remarks that the OB law contract involved "symbolic gestures engaging those who performed them and by the utterance of solemn words, all in the presence of witnesses who would remember the matter".

were: “heart is satisfied”, “from straw to gold” and “completely divided” which occurred alone or combined as chosen legal practices (Claassens 2012/1:364, 404-405).³²

The term “heart is satisfied” was a symbolic expression and in the division agreements of my thesis (Claassens 2012/1:363) from OB Larsa, Nippur and Sippar, this expression occurred only in the Sippar discussed texts.³³ The term *iš-tu bi-e a-di hurāsim*, translated as “from the straw up to the gold”, demonstrated that the property was divided from the smallest value to the highest value, thus the division of the estate enclosed all of the inheritance property.³⁴ The other term used in all three of the texts was the statement that the family members mutually agreed that they have completely divided the estate assets (*zi-zu ga-am-ru*).³⁵

Hence, the symbolic acts and terms assisted in the mutually-agreed division by the family members, whereby they confirmed that their hearts were satisfied with the

³² This term occurs in 84 per cent of the 26 elective Sippar texts which I studied in my thesis (Claassens 2012/1:346).

³³ In my thesis, I identified this legal practice in 30.7 per cent of the 26 elective Sippar texts (Claassens 2012/1:346). For example, from the source Dekiere (1994:173-175): tablet (BM 92658) = CT 6 42b line 8: *zi-za ga-am-ra iš-tu pi-e* - the division is finished and their hearts are satisfied and from Dekiere (1994:163) in line 7: *li-ba-šu tū-ub* - their hearts are satisfied.

³⁴ Cf. discussion by Westbrook (1991:223). In CAD H Volume 6 by Oppenheim (1956b:245), under the heading *hurāšu* the term is translated as “gold”, which held special qualities including material, varieties, economic use, figurative use, in pharmacopoeia, etcetera. In AHW 358 (von Soden 1965-1981), *hurāšu(m)* is translated as “gold”. The term *hurāšu* is a symbol of valuable property and, in accordance with the CAD H (Oppenheim 1956b:245), it occurs in a corpus of OB legal documents. Duncan (1914:177) discussed the expression *iš-tu bi-e a-di hurāsim*, which he translated as “from chaff to gold” and previously translated as “from mouth to gold”. Duncan (1914:177) opines that the meaning of the expression is “from the least valuable to the most valuable”; thus, complete division of all of the property has been made. Cf. also AHW 874 (von Soden 1965-1981): *pu(m)* meaning in German “*Spreu*” or in English “chaff”.

³⁵ I mentioned in my thesis (Claassens 2012/1:179) the term *ga-am-ru* meaning “completeness and finality, encompasses all of the assets involved”. In the CAD G, the term is identified as completeness and finality as a subject. In its verb form, it meant “to bring to an end” which includes “to annihilate, to use up, to spend, to settle, to encompass, to control, to possess in full and to finish an activity” (Oppenheim 1956a:25-25). In AHW 276 I and AHW 276 II (Von Soden 1965-1981) *gamāru(m)* the term is translated in German as “*Vollständigkeit* or *Ende bringen*”.

division; that everything was divided from straw (the smallest items) to gold (the most expensive); and to add to the finality of the division, they stated that the division was finished (Claassens 2012/1:360).

Formalities, implementation and enforcement of the agreement

The “no claim”, witnesses and the oath clause represented the formalities, implementation and enforcement of the agreement of the family division agreement (Claassens 2012/1:380).³⁶ The “no-claim” clause was widely used in various legal documents, including the majority of the OB division agreements texts. The claim-clause translated that brother against brother will not claim against another or raise a claim against another, or speak a word against another (Claassens 2012/1:129-130, 182-183).

The oath clause occurred in the three Sippar texts and was a general clause used in other OB family division agreements. However, oath clauses occurred in some contracts and the assumption is that this supernatural control was not necessary over all “actions of men”. When used, it was for providing an “added assurance” in the conditions of agreement (Magnetti 1979:28).³⁷ The family members in a division agreement stated an oath to the gods and/or king. In some OB Sippar division texts, the parties may also have sworn to the city-state of Sippar.³⁸

Witnesses, together with the parties, testified to the details of the agreement (Veenhof 2003:147). Their appearances and names were of the utmost importance, because if a dispute occurred, these witnesses would testify to the details (Claassens 2012/1:131; Greengus 1995:475).³⁹

³⁶ Hereby abbreviated in the article as “formalities of the agreement”.

³⁷ Oath references are found in many of the named law collections such as Laws of Ur-Nammu, Laws of Ešnunna, Laws of Lipit-Ištar (LL), Laws of Hammurabi (LH) and Middle Assyrian Laws (Magnetti 1979:2).

³⁸ Some of Sippar’s division agreements reflected an “oath in a temple” clause. It seems that the oath consisted of ceremonial rituals, and confirmed the registration of the provisions of the agreement in a kind of a “land register” (Claassens 2012/1:365). Cf. Schorr (1913:258-260, 269-271-273).

³⁹ In the witnesses-clause, the Akkadian variant of *maḥrum* is placed in front of the name. This term *maḥrum* refers to “first, former, earlier” and *qudmu* to “front (side)”. In CAD M Part 1 (Reiner 1977:105-106), the term *maḥru* is defined as follows under heading/number 2: it is used as a preposition and means “before, in the presence, in front of (persons, objects, staples), under the responsibility of, in the direction of” (Reiner 1977:105-106). Thus, when one reads together both

Usufruct: Additional condition and provision⁴⁰ as a legal practice

Introduction

The usufruct as a chosen legal practice in a family division agreement had long-term consequences for the family members involved regarding the use and enjoyment of the burdened property. In this section, I give some background information regarding the priestess position in the OB family life and society, followed by an explanation of the term usufruct as a *sui generis* usufruct utilised in this type of division agreement. Lastly, I present the specific kind of usufruct's characteristics, supported by references in the texts.

Background notes regarding the priestess position in OB family and society

A society different from ours can easily be misunderstood. Roth (1998) advocates the re-examination of social categories in a set society in their context and what we understand of its social categories. Roth (1998:175) contends that we have our own assumptions and we need to uncover and re-examine them.⁴¹

OB society was socially-orientated, and thus the adherence to the interests of the group as a whole was a dominant factor in their society. Various scholarly contributions show that the family was an integral part of OB society, and the family head represented the family.⁴² Maintaining good relationships was important in

variants found in the division agreements, the witnesses appear in the presence of the contractual parties to witness the proceedings (Greengus 1995:475). Cf. discussions by Tanret & Suurmeijer (2011) regarding the officials of the Šamaš temple in the OB period who acted as contract witnesses.

⁴⁰ Hereafter in the article abbreviated as "additional provision".

⁴¹ Roth (1998, 1987) gives an extensive explanation in her examination of social categories and provides reasons for the interpretational problems in legal texts and other documents regarding social factors and categories. Also important are the rituals and ceremonies that provided a clear indication of a person's social roles and expectations of him/her in a society (Roth 1998:717).

⁴² Leemans (1986) adopts different emphases, considering the role of the individual within the kinship relationship from an economic perspective. Forster (1995) opines that there was a difference in the geographical setting of northern and southern Mesopotamia regarding social kinship relationships, albeit a family orientation or focus on individual rights of co-ownership. Fleishman (2001) regards kinship relations as sometimes extending further than only a biological connection, thus including an adoptive status.

sustaining OB family life. Steadman (1996:55) opines that the household of OB was a “critical level of cultural and social activity”. Apart from sustaining itself, it contributed to the labour and/or services of other households by exchanging and trading commodities with them (Matthews 2003:169).

Frymer-Kensky (1981) stresses the importance of maintaining and managing kinship relationships by illustrating that in the study of kinship relationships, the social role of each person in his or her particular juridical relationship position in the family formed an integral part of the latter.⁴³ In the large extended family, the sons lived in one house: the principles governing the structure of the family were that it was “patripotestal in authority” and “patrilineal in descent” (Frymer-Kensky 1981:210). There was the following pattern: the brothers for an unknown reason kept the land for a period and did not immediately divide the inheritance, but “maintain corporate ownership of the productive land” (Frymer-Kensky 1981:210-211). Before this could occur, however, the brothers provided for the payment of dowries of unmarried sisters and a bridal payment for younger brothers: all this happened while they still held communal ownership and before a division of the property had occurred (Frymer-Kensky 1981:211-214).

Certain special institutions and practices complicated the study of kinship relationships. Postgate (1992:96) opines, when discussing “inheritance documents”, which in context refer to division agreements, that property rights were “usually vested in the simple family unit” and he assumes that the underlying principle is the “patrilineal system” whereby inheritance by male offspring of the deceased took place (Postgate 1992:96-97). However, there are “two major modifications of male succession rule” concerning the daughter of the estate owner: namely, donation during lifetime not accounted for in a division, referring to a dowry and the support of a priestess by her family members (Postgate 1992:97).⁴⁴

⁴³ Frymer-Kensky (1981:241) considers the terms “first-born, brother, sister, father” to have a “particular juridical relationship” which occurred by contract or by birth, since people adopt others as brothers, brothers adopt each other as sons, and brothers adopt women as sisters. Thus, the designation of an individual as “first-born” can be a matter of choice.

⁴⁴ In this instance, regarding a *nadītu*, see a letter from a *nadītu* at Sippar, which reads: “(I swear) by my lady, with my hands clasped, until recently I had not heard the wording of my tablet, and indeed up till now my tablet was deposited with my... Since my father went to his fate, my brothers have not given my dowry on the tablet. Now the word is – let us speak frankly – that a *nadītu* whose brothers do not

Regarding the support of the priestess in the OB period there were different priestess groups with different functions and regulated by society under different rules. As the appointed usufructuary over the burdened-shared property of her family, the priestess-sister, in some OB Sippar division texts, received the fruits of the burdened-property as maintenance, however on her death her male family members becomes the sole-owners of the burdened property.

I focus on the discussion of two types of priestesses, who are beneficiaries in their capacity as usufructuaries in the three texts, namely the *kulmašītu* priestess in Text 1, and the *nadītu* priestess in Text 2 and 3.

The *nadiātu*⁴⁵ priestesses played an important role in OB documents, especially the legal documents from Sippar (Tanret 2010:227). Harris⁴⁶ (1976:130) concludes that the “explicit kinship terms” found in the texts show that in OB Sippar, inheritance

maintain her may give her inheritance where she will. I will appeal to the judges” (Postgate 1992:98).

⁴⁵ The *nadiātu* women of Šamaš were actively involved in a variety of business transactions (Harris 1975:3). Even one of the daughters of King Sîn-muballit was a *nadītu* who lived in the cloister in Sippar (Harris 1975:7; Tanret 2010:234-236). The priestess groups were in a unique position in OB society. They were part of the temple, and to a certain extent, part of the more economic advantages of society.

⁴⁶ Thousands of cuneiform tablets were unearthed; however, some were unfortunately crumbled or badly damaged. Harris managed to make some qualitative study of these tablets, which contributes to her book *Ancient Sippar* (1975; cf. especially from pages 358-365 regarding the inheritance and division agreements wherein the *nadiātu* were involved). Harris addresses some individual problems regarding the *nadiātu*, in various academic journal articles. The following articles of Harris provide insight into the lives, social background, family relationships, business transactions of the *nadiātu* priestesses, including some references to other types of priestesses from Sippar. Harris (1961) outlines the *nadiātu*, and their rights in the so-named LH. Harris (1962) presents some bibliographical notes of some of the *nadiātu* priestesses. Harris (1962:4) refers to the text VAS 9 144/145, which dated from the fourteenth year of Hammurabi. This text records the division of the paternal estate (with a usufruct-clause) between the three brothers of Awat-Aja. The parties agreed that the inheritance of Awat-Aja belongs to her brothers on her death. Harris (1961, 1963, 1964, 1968, 1969) discuss the *nadiātu* women in general and give a general overview of the organisation and administration of the cloister. There are some general notes on kinship and inheritance by Harris (1976), in addition to notes on slave names in Harris (1977). Harris (1989) gives an overview article on the named independent women in ancient Mesopotamia (OB), with some responses from other scholars.

rights were handled as first in line: the father, sons, uncles (brothers of the father), nephews (sons of the brothers); and lastly the first patrilineal cousins, and the *nadītu* priestess-sister.

In CAD N (Reiner 1980:63), the *nadītu*⁴⁷ (Sumerian variant **lukur**⁴⁸ **sal-me**) was a woman dedicated to a god, who was usually unmarried and not allowed to have children, and who lived in a *gagûm*, a kind of cloister. A *nadītu* entered the *gagûm*, usually at a young age, in which she lived with servants and other personnel.⁴⁹ The *gagûm* was walled, enclosed and “consisted of a large complex of individual buildings within the temple” (Lerner 1986:242).⁵⁰ Large numbers of as many as 200 priestesses at a time lived in the *gagûm*, but the number of *nadiātu* slowly declined after the reign of King Hammurabi in the OB period (Lerner 1986:242).⁵¹

⁴⁷ Cf. references in LH 182, 93, 180 and 179. The plural for *nadītu* is *nadiātu* or *nadātu* (Reiner 1980:63).

⁴⁸ Cf. Diakonoff (1986:234) who opines that the Sumerian term **lukur** of the third millennium “was something quite different” from the *nadiātu* of Sippar and Babylon. In the Ur third dynasty, a priestess group called **lukur-kaskal-(I)a**, translating as “the **lukur** of the road” (or “march”, or “campaign”) was a “concubine of the deified king”. Furthermore, there was a *hieros gamos* ritual involving the **lukur**; but the profession discontinued with the deification of King Rim Sîn I.

⁴⁹ Harris (1963:130) mentions that the cloister had two levels of personnel within it, which paralleled the household of the individual *nadītu*. There were the administrative officials, which included stewards, “watchmen” of the cloister gate, **PA-KU** officials of the *nadiātu*, male and female scribes, the cloister judge, and an abbess (Harris 1963:130, 141-142). Harris (1963:131) mentions also longer-ranking servants employed to take care of the menial tasks of the cloister. The latter included the female weavers, several men, cloister servant girls, female baker, *sekru* woman, overseer of the sailors; and female cooks (Harris 1963:139-144, 147). See also discussions by Harris (1975:38-208) regarding the administrative structure of the *gagûm*. Some *nadiātu* possessed large estates with a steward looking after them and numerous staff working for them (Stol 1995:139).

⁵⁰ Cf. Harris (1963:122-124) describing the layout of the cloister compound, including a description of the wall on page 124 and the type of homes of the *nadiātu* from pages 124-126. Harris (1963:128) describes the *bit gagîm*, which was a fairly large structure – the cloister granary – connected to the administrative building and considered it an important unit in which a large amount of barley was stored (on page 129). Most of the fields were outside the cloister, because of insufficient space in the cloister. However, mention in the texts was made of the “arable plot of the cloister (*meres gagtum*)” (Harris 1963:130).

⁵¹ Harris (1963:126) gives a synoptic outline of officials responsible for

According to Harris (1976:133), the *nadītu* institution was used by Sippar's wealthy families to deviate from the kinship rights, which resulted in the *nadītu* priestess-sister receiving an "equal share" to that of her male family beneficiaries. However, the usufruct or support-clause in the division agreement, between the siblings concerning their inheritance, served as a precautionary mechanism, which stood in the place of the factual inheritance of the *nadītu* and meant that her inheritance would on her death return to her brothers and/or nephews (Harris 1976:133). LH paragraphs 180 and 181, as well as LL paragraph 22 mention these rights and obligations.⁵² Some of the cuneiform texts, especially from the *gagûm* records, show that there was "tension" of the "two conflicting systems of inheritance" which sometimes led to lawsuits between the *nadītu* and her family members (Harris 1976:133).⁵³

Stol (1995:107) argues that the religious idea of a *nadītu* can be explained in terms of the existence of cloisters in the OB period, rather than an economic motive to preserve the family capital. Rich, even royal families sent their daughters to this cloister to pray and make sacrifices on behalf of their relatives, as we can conclude

administration who also lived in the cloister and the number of women in the *gagûm* on page 127.

⁵² LH Par 180 reads, "If a father does not award a dowry to his daughter who is a cloistered *nadītu* or a *sekretu*, after the father goes to his fate, she shall have a share of the property of the paternal estate comparable in value to that of one heir; as long as she lives, she shall enjoy its use; her estate belongs only to her brothers" (Roth 1995:180). LH Par 181 reads, "If a father dedicates (his daughter) to the deity as a *nadītu*, a *qadištu*, or a *kulmašītu*, but does not award to her a dowry, after the father goes to his fate she shall take her one-third share from the property of the paternal estate as her inheritance, and as long as she lives she shall enjoy its use; her estate belongs only to her brothers" (Roth 1995:118). Par 22 of LL reads, "If, during a father's lifetime, his daughter becomes an *ugbabbu*, a *nadītu*, or a *qadištu*, they (her brothers) shall divide the estate, considering her as an equal heir" (Roth 1995:31)

⁵³ Harris (1975:135) listed 16 litigation cases (given by their text numbers, the regal year, and king's name) in which the *nadītu* were involved in disputes about a division of an inheritance. Also, note LH Par 179 that reflects a possible tension between family members and a priestess-sister. It is provided that in the instance where the father of an *ugbabbu*, a *nadītu*, or a *sekretu* awards to her a dowry and grants her written authority to give her estate to whomever she pleases and gives her full discretion, she has permission to do so, and her brothers will not raise a claim against her. Cf. translation by Roth (1995:117).

from their letters (Stol 1995:108). Nevertheless, Harris (1968:117) argues that, although the *nadiātu* had close relationships with the temple and the god Šamaš, especially with his consort Aja, and the *nadītu* institution was religion-based, there were important social and economic aspects which we can gather from the *gagûm* records.⁵⁴ The *gagûm* records show that the structure of the *gagûm* administration was “complex”. The *nadiātu* managed their households and they played an important role in the economic activities of their community. In the *gagûm* records, for instance, the *nadiātu* acted as creditors, lessors of their wide real estate holdings, and purchasers of property (Harris 1968:118). They were also a party to many litigation texts with their family members and with other members of the society, which according to Harris (1968:119) is not surprising, due to the conflicting roles which they played in society. Stone (1982:69) focuses on the economic function of the *nadiātu* and concludes that although the *nadītu* institution once had a “spiritual and social need”, the *nadiātu*’s economic functions later played a more important role. The institution was “transformed” by the “social, economic, and political climate” which varied from time to time in the OB period (Stone 1982:69).⁵⁵

In addition, we are uncertain regarding the position and role of the other class priestess as reflected in Text 1: the *kulmašītu*.⁵⁶ CAD K (Oppenheim 1971:526) describes this type of priestess as “a woman devotee to a deity”.⁵⁷ The Sumerian

⁵⁴ The *nadiātu* as a special class of women had the services of officials of the cloister who served the function of protecting their “interests” (Harris 1968:117). The officials had to keep records of transactions of landholdings of the *nadiātu*, lawsuits, and their *piqittu* offerings (Harris 1968:118).

⁵⁵ Stone (1982:54-67) outlines some “superficial resemblances” between the *nadiātu* of Nippur and Sippar. However, Stone noted that in Sippar, unlike Nippur, the temple offices in Sippar have lesser importance and this enhanced the economic importance of the *nadītu* institution in Sippar. A few families were property owners and the priestesses shared in the wealth of their elite family. Some scholarly opinions held that their purpose was to serve in the continuation of the patronage estate, but this is an overall debatable issue. Cf. Frymer-Kensky’s contributions in her (1998) introduction to the compilation of essays on “Gender and law in the Hebrew Bible and the ancient Near East”. Contributions were also made by Eugene Fisher (1976) in “Cultic Prostitution in the Ancient Near East: A Reassessment”; Gerda Lerner (1986) in “The Origin of Prostitution in ancient Mesopotamia” and Zainab Bahrani (2001) in “Women of Babylon: gender and representation in Mesopotamia”.

⁵⁶ In CAD K (Oppenheim 1971:526) the plural for *kulmašītu* is *kulmašūtum*.

⁵⁷ Older sources such as Driver and Miles (1952:369-70) translated *kulmašītu* as a

equivalent for the term *kulmašītu* is **nu-bar** (CAD K Oppenheim 1971:526). Harris (1975:324) opines that the **nu-bar** priestess “may indicate a woman set apart or taboo”. Nevertheless, Astour (1966:189 in fn. 29) opines that the *qadištu* priestess shared the ideogram **nu-bar** with the *kulmašītu*. In addition, the term *kulmašītu* would then represent the Akkadian form of a presumable Sumerian **KUL-MAG**, which means “pure (of) semen” (Astour (1966:189 in fn. 29).

The *kulmašītum* (Text 1), as well as other classes of priestess such as the *qadištu*, *nadiātu* (in Text 2 & 3) and *ugbaltu* were “regulated by codes”; these classes were organised in special groups, and they had a “special relationship” to a male deity. Their sexuality was “controlled by celibacy or marriage” (Westenholz 1989:251).⁵⁸ Some *kulmašītum*, like the *nadiātu*, were from wealthy families (Harris 1975:326).

In the Sippar texts, there are 17 references to women called a *kulmašītu*, which are more than other classes of priestesses, except for the hundreds of references to the *nadiātu*. Five of the 17 *kulmašītum* priestesses’ elder sisters were *nadiātu* of Šamaš (Harris 1975:325). The *kulmašītu* seems to be an “un-cloistered woman” (Harris 1975:324), although two references refer to the “overseer of the *kulmašītum* women” which might indicate that the *kulmašītum* lived some sort of communal life (Harris 1975:327).

The *kulmašītum* conduct business transactions, which include sale, exchange and other types of agreements in their capacity as an owner of property. In some texts, a *kulmašītu* was, together with her family, party to joint transactions, which may indicate that at one stage she was part of her family and not married (Harris 1975:324-325). Also, the *kulmašītu* priestess influenced the inheritance shares of her family for in Text 1 and in LH paragraph 181⁵⁹ she received an inheritance share from the paternal estate in the form of a usufruct to enjoy the fruits thereof, but on her death the property reverted to the male beneficiaries as sole owners of the inheritance-property.

It is still debatable whether the *kulmašītum* were allowed to marry, though Harris (1975:324-325) refers to two instances where the *kulmašītum* entered into marriage contracts. In those two instances, the priestesses were also *nadiātu* of Marduk (Harris

“hierodule”.

⁵⁸ On the other hand, other “classes” of the *ḫarimtu*, *šamḫatu* and *kezertu* were “not regulated by the codes” and “had a special relationship to a female deity and whose sexuality was unregulated” (Westenholz 1989:251).

⁵⁹ See fn. 52 regarding the translation of the paragraph by Roth (1995:118).

1975:324-325).⁶⁰ It is unclear whether the *kulmašûtum* were allowed to have children (Harris 1975:324-325).

In addition, the name of a god was never mentioned after a *kulmašûtu*'s title, which is unlike the practice for the *nadiātu* and *ugbaltu* of Šamaš and the *nadiātu* of Marduk. Still, Harris (1975:325) opines that there seems to be evidence that the *kulmašûtum* priestesses were connected to Annunītum, an important goddess of Sippar. Even in an inheritance text, a *kulmašûtu* priestess named Lamassi invoked the goddess Annunītum in an oath, together with Šamaš and Marduk (Harris 1975:325).

In conclusion, different rules applied to the *kulmašûtum* and *nadiātu* priestesses in their roles as sisters and priestesses of their family and society. The priestesses' roles and positions in OB were, in most matters, uncertain or speculative. However, at least in the division texts, held also by other texts,⁶¹ both the *nadiātu* and *kulmašûtum* priestesses received maintenance support from their family members, subject to the condition that on their deaths the burdened property reverted to their male family members in their capacity as sole owners.

Terminology of the usufruct⁶²

The word usufruct, as applied from Roman law times, derived from the Latin word usufructus (*usus et fructus*), meaning use and enjoyment. In Roman law it was a person's right over movable and immovable property, which another person owned (Verbeke, Verdickt & Maasland 2012:36).

In our legal agreements in the civil law system, the usufruct came from the Roman law through a heritage of legal development of almost 2 000 years.⁶³ Although the

⁶⁰ The *nadiātu* of Marduk was unclloistered and allowed to marry (Lerner 1986:241-242) For instance LH Par 182 stated that if a father did not give his daughter, a *nadiātu* of Marduk, her dowry when she marries, the *nadiātu* of Marduk take one-third share of the inheritance. Cf. translation by Roth (1995:118).

⁶¹ See fn. 52: regarding paragraphs of LH 180 and 181, as well as paragraph 22 of LL. I give in fn. 44 *supra* Postgate's (1992:98) reference of a letter from a *nadiātu* at Sippar who wants to appeal to judges because her brothers did not maintain her.

⁶² The length of the article does not permit a thorough discussion of the use of the usufruct and the proper placement of a qualified term usufruct within the context of the family division agreement from Sippar. In an upcoming article, I will explain the different types of usufruct in the civil law systems and the difference with its common law counterpart – the life interest or life right.

⁶³ Cf. discussions by Verbeke, Verdickt & Maasland (2012) and Roark & Roark (2006:170).

coined usufruct term was foreign to the ANE, today's jurists and even non-professionals are acquainted with the term "usufruct" due to its application in our civil law systems. ANE scholars use the usufruct as a coined term when they identify a maintenance support clause in an ancient text, but they did not define the term in context of the text and its application in the ancient legal tradition.⁶⁴

ANE scholars such as Boecker (1980) caution us when using terms from our law systems to interpret ancient texts in this light. It is important to remember that, when using our legal terminology, it seldom has precisely the same meaning when applied in the study of ANE legal tradition sources (Boecker 1980:18). Even the simplest of words and terms can lead to mistakes, for we can be tempted to read our own ideas into them (Boecker 1980:18). Taking recognition of this, we should refrain from superimposing contemporary law's understanding of the usufruct and our intrinsic developed rules and limitations of property law, on to ancient texts.

When taking into account the context of the maintenance support-clause in OB Sippar division agreements, the usufruct was a freestanding usufruct, different from the ordinary meaning and mechanism of the usufruct applied in our civil law systems.⁶⁵ The usufruct in the OB Sippar division agreements had certain

⁶⁴ Sterba (1976:17) refers to Old Mesopotamia's "larger system of corvee" and then on page 18 notes that the "second class of land, the **kur** land", was allotted in a "usufruct" to the "temple community members". However, I propose that on closer inspection it does not seem to be a usufruct, but contains the elements of a life right, which occurs in today's common law systems such as the ownership of the land vested in the king, as is the common law system of England. McClean (1963:650-651) explains that the ordinary meaning of the word usufruct refers to land ownership which is from the "doctrine of estate from the Roman law" as it developed into "civil law" and "refers to absolute ownership" (see page 649). The civil law's equivalent - the life interest - derives from the common law system such as the English Law. The life interest basis of ownership lies with the king or queen who owns the land (see at pages 649-650). This means that the life tenant or "owner" has only ownership for his or her life or specific period, while the owner has ownership over the same property for "time in the land without end" (at page 650). In my thesis (Claassens 2012/1) I have neglected to define the term usufruct as it appeared in the OB division agreements. Other scholars who used the term of usufruct in the ANE sources without qualifications are for instance: Speiser (1932), Roth (2002) and Graef (2002:143, 147).

⁶⁵ For the purpose of this article, the *sui generis* usufruct definition is as follows: The usufruct in the OB family division agreements is a legal choice, mutually agreed upon by the co-beneficiaries in a family division agreement, consisting of two

characteristics, which constituted it as an OB Sippar division support-clause, and the characteristics are outlined in the following sub-section.

The characteristics of the sui-generis usufruct applied in the three texts

The maintenance support-clause, coined a usufruct, only applied to a specific legal construction manifested in a particular agreement – the family division agreement from a deceased estate – at a certain time and city-state: OB Sippar.

The characteristics of the usufruct, which occurred in the three texts, were beneficiaries involved, property involved, time-period of the usufruct, independent rights and powers of the parties, and consequences of unwise management.

Beneficiaries involved: bare-dominium owner and usufructuary

By agreement, specific member/s (bare dominium-owner/s) of the male lineage were responsible for the maintenance support of the usufructuary. The priestess-sister acted in her capacity as usufructuary and received a lifetime maintenance support from her male family member/s (bare-dominium owner/s). For instance, in LH paragraph 180,⁶⁶ it is stated that if a father does not award a dowry to his *nadītu* daughter, then on his death she shall share with her brothers an equal value in the paternal estate and shall have a right to enjoy the property, but at her death the inheritance will revert to her brothers. See Figure 4 *infra*.

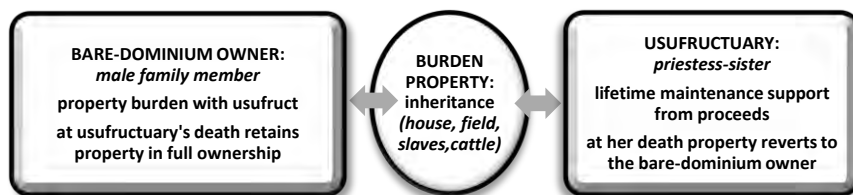


Figure 4 Two types of property “rights” of a usufruct

In Text 1, the bare-dominium owner is the one brother, Iddin-Adad. The usufructuary

types of “owners”: namely, the bare-dominium co-owners – usually the brothers – and the usufructuary – the priestess-sister – whereby in agreement, the bare-dominium owners maintain the property with the highest degree of care, in order to obtain fruits from the property to sustain the usufructuary with a lifetime of maintenance support and on her death the bare-dominium owners automatically receive the property free from the restraints of a usufruct.

⁶⁶ Cf. translation by Roth (1995:180) and fn. 52 *supra*.

is the unnamed sister, a *kulmašītu* priestess. In Text 2, the bare-dominium owners, Mâr-iršitim, Budium, Ilušu-ellâzu are brothers (*aḥ-aḥ-šu*). The usufructuary is their sister, Awât-Aja, a *nadītu* priestess of Šamaš. In Text 3, the bare-dominium owners are Sin-idinnam and Rîš-Šamaš, and the children of Ilušu-ibišu, possibly a deceased brother. The sister Lamâzî, a *nadītu* priestess of Šamaš, is the appointed usufructuary.

Property involved: inheritance

An elective inheritance from the parental estate, which was part of the provisions of the division agreement, is burdened with a usufruct. The property may consist of movable or immovable property, e.g. house, garden or slaves, etc. For example, sometimes the sister may receive goods such as slaves to use and enjoy and to make a profit from, as well as to serve her; and on her death, the property will revert to her brothers.⁶⁷

In Text 1, the awarded house to the one brother (bare-dominium owner) is burdened with a usufruct in favour of his *kulmašītu* sister, the usufructuary. In Text 2, in an additional clause, the undescribed inheritance of the father and living mother is burdened with a usufruct in favour of the *nadītu* sister. The brothers as bare-dominium owners held the property as a communally-shared inheritance. In Text 3, in an additional clause, the undescribed communally-shared property by family members as bare-dominium owners is burdened with a usufruct in favour of the *nadītu* sister, the usufructuary.

Time period of usufruct: lifetime of usufructuary

The usufruct lasted for the duration of a lifetime of the usufructuary and thus discontinued with the death of the usufructuary, so that the bare-dominium owner/s received full ownership free from the restraints of the usufruct. However, Harris (1975:309) opines that the *nadiātu* tend to live longer as a result of secluded living conditions, for society was often plagued by periodic epidemics; and also as a result of their celibacy, for they were not subjected to the complications of childbirth. This in return was problematic for her maintenance support, for both her family and she must support herself and her lifespan was probably much longer than that of her siblings

⁶⁷ Harris (1975:334-350) discusses the different movable assets which the *nadiātu* may inherit in different texts, and gives special attention to slaves which were an expensive commodity. She mentions that sometimes the *nadiātu* could use the slave-inheritance as a regular income – monthly or annually – by renting them as harvest workers or holding by specific occupations, as explained on page 337.

(Harris 1975:309). This is also probably why, in division texts such as Text 3, the nephews of the deceased brother, together with their uncles, must support by agreement the priestess.⁶⁸

In Text 1 it practically seems that the awarded asset of inheritance of the *kulmašītu* sister served to her advantage as a lifelong usufruct. In Text 2, it is concluded in lines 18-21 that, after the mother's and *nadītu* sister's death, the burdened inheritance assets will fall back into the possession of the three brothers. In Text 3, Schorr (1913:258) interpreted lines 13-14 as signifying that the *nadītu* sister's inheritance, due to her status and occupation as a priestess, was the burdened inheritance assets of the brothers and at the time of her death became the common property of the brothers or that of their successors, free from the restraints of the usufruct.

Independent rights and powers of the parties: maintenance of the sister and obligation to support by the male family members.

Generally, the usufruct clause does not specify the intrinsic details of the rights and powers of the parties concerned and we have to rely on the interpretation of content of the division texts and references in other written sources, such as letters, court decisions and law collections. For instance, CH states that in the instance that a *nadītu* (paragraphs 180 & 181) and a *kulmašītu* (paragraph 181) did not receive a dowry, when her father dies the priestess shall receive an inheritance with her brothers as a lifelong usufruct, which on her death reverts to her brothers. Also LL paragraph 22 stated that in case of a *nadītu*, the priestess shall share in her father's estate equally with that of her brothers.

In addition, in a case heard in front of a tribunal, a decision was noted in the letter of King Hammurabi to his successor Samsu-iluna. This decision contributes to paragraphs 180 and 181 of LH and illustrates the social norms and obligations of the family members to maintain their priestess-sister in such a way that she can enter the

⁶⁸ As an alternative, the *nadītu* may adopt someone to support her. Harris (1975:335-357) discusses the adoption by the *nadītu*. However, this practice held a possible conflict of interest between the adoptee and the *nadītu* family members, for the *nadītu* might then bequeath her property to the adoptee and disown her family members. See also Harris' (1963:152-154) outline of the records of adoptions of *nadiātu* women. Harris (1963:155) hypothesises that one aspect of the relationship between the *nadītu* and the *gagûm* as found in some texts shows that the *nadītu* pays an annual fee as a kind of lease to the *gagûm*. Subsequently, the *nadītu* had to obtain an income in order to live in the *gagûm*.

cloister. The letter,⁶⁹ translated in the English version by Charpin (2003:156-157) regarding the “ruling of the king”, reads:

If a *nadītu* has not been provided with subsistence, I have ordained that she is not to be allowed to enter the cloister. And if there is a *nadītu* living in a cloister whose father or brothers have not provided any means of subsistence for her and have not drawn up documents for it, I have ordained that pressure be put on the father and brothers to draw up documentation for her to be allowed into the cloister.⁷⁰ ... He should write out a document for her and let her enter the cloister.

Thus, the brothers (bare-dominium owner/s) have the obligation to look after the usufructuary, regarding some identified asset, subject to the usufruct. This places an extra burden financially and personally on such an owner. By practical implication, the bare-dominium owners not only have to maintain the property, they must also make it sufficiently profitable for themselves, as well as for remunerating the usufructuary in accordance with the agreement.

In Text 1, only the one brother has the responsibility to give to his *kulmašītu* priestess-sister maintenance support from the proceeds of a certain house. However, as previously mentioned, it is unclear if the *kulmašītu* was cloistered and maybe she received a right to inhabit the house or even to lease the house to another for a fixed money payment. In Texts 2 and 3, each of the *nadiātu* sisters in the two cases receives

⁶⁹ The first part of the translated letter reads: “Introduction: Say to Sin-našir, Nuratum, Sin-iddinam, to the guild of merchants (*kārum*) of Sippar and to the judges of Sippar-Amnanum, to Awil-Nabium, to Sin-iddinam, to the *šangûm*-priests, to the judges, to the heads of the temples, to those in charge of the *nadītum* women, to the ...judges and to the guardians of the gate of the cloister of Sippar-Yahrurum, Samsu-iluna (has said) this: The first case: „Those in charge of the *nadiātu* women of Šamaš at Sippar have informed me of this. The people of Sippar have let their daughters enter the cloister but they have not provided any means of subsistence for them. They have become hungry and have been feeding from the stores of our lord. Even now the people of Sippar are continuing to let their daughters enter the cloister.“ That is what they have told me.”

⁷⁰ “And whatever he gives for his daughter he should bring into the presence of Sin-našir, Nuratum, Sin-iddinam, the *kārum* of Sippar and the judges of Sippar-Amnanum, Awil-Nabium, Sin-iddinam, the *šangûm*-priests, the judges, the heads of the temples, those in charge of the *nadiātu* women... the judges and guardians of the gate of the cloister of Sippar-Yahrurum” (Charpin 2003:156-157).

maintenance support from an undescribed inheritance from their parental estates. From the context of both texts, all of the siblings must support her, although on her death the siblings will finally acquire full ownership of her inheritance. From the context of the text and in the light of the LH and LL paragraphs and a letter, as well as a court decision, it seems that her male family members had the responsibility of maintaining the inheritance property, since the *nadītu* sister was cloistered and therefore she could not manage the property.⁷¹

Consequences of unwise management: remuneration of usufructuary for loss of income.

The bare-dominium owners were the ultimate owners, subject to the condition that they must support the usufructuary; unfortunately, in the three texts, the consequences of unwise management are not explicitly mentioned.

However, LH paragraph 178⁷² states that if the primary owners forsake their duty, the usufructuary can appoint someone else to look after the property. Alternatively, in a court case from OB Sippar, MHET 2, 4, 459, the court decided that the bare-dominium owners should forfeit their ownership because they forsook their duty to

⁷¹ Translations of LH 180, 181, LL 22 at fn. 52 and reference to LH 182 at fn. 60. The outline of a letter from a *nadītu* stating her wish to appeal to judges because her brothers does not maintain her (Postgate 1992:98) at fn. 44. Also note the court case from Greengus (2001:264) under the next sub-heading “Consequences of unwise management: remuneration of usufructuary for loss of income”.

⁷² For instance, in LH Par 178, there is provision that if the bare-dominium owners forsake their duty, the usufructuary can appoint someone else to look after the property. In such a case, it seems that the brothers are owners. The paragraph translated by Roth (1995:117) reads: “If there is an *ugbābtu*, a *nadītu*, or a *sekretu* whose father awards to her a dowry and records it in a tablet for her, but in the tablet that he records for her he does not grant her written authority to give her estate to whomever she pleases and does not give her full discretion – after the father goes to his fate, her brothers shall take her field and her orchard and they shall give to her food, oil and clothing allowances in accordance with the value of her inheritance share, and they shall thereby satisfy her. If her brothers should not give to her food, oil, and clothing allowances in accordance with the value of her inheritance share and thus do not satisfy her, she shall give her field and her orchard to any agricultural tenant she pleases, and her agricultural tenant shall support her. As long as she lives, she shall enjoy the use of the field, orchard, and anything else which her father gave to her, but she will not sell it and she will not satisfy another person’s obligation with it; her inheritance belongs only to her brothers.”

support the priestess family member. The facts of the case are that the brother sustained his *nadītum* sister for an extended period, by working in the fields and orchards, which formed part of her dowry, and he held it on her behalf. On his death, his four sons who inherited these properties “starved her for two years”. The *nadītu* asked for relief from the judges, who interrogated the nephews, and decided to give her full control and management over her property during her lifetime (Greengus 2001:264). It is paramount for the bare-dominium owner who probably invested some capital from his own funds, to maintain the property and thus ensure good interest (Claassens 2012/1:385).

In conclusion, the family members in Sippar acted as “innovators” in division agreements wherein they possessed an overall philosophy of compassion and innovation in problem-solving during the division-process by using expressive symbolism and creative solutions to suit their needs (Claassens 2012/1:378-379). One of the innovations was the creation of a *sui generis* usufruct in the division agreement. This legal practice was tailor-made to manage the priestess-institution by regulating her financial position within her family and securing the preservation of the family property.

SUMMARY

In all three discussed texts, the family members agreed to a certain agreement: the family division agreement from a deceased estate. Prior to the agreement, they inherited the assets from a deceased family member’s estate, usually the father or mother, or in some texts both parents. As co-beneficiaries of the inherited estate assets, they could reach a point in their capacity as co-owners of the communally-shared inherited assets where they decide to agree to divide some or all of these assets to start a new beginning (*tabula rasa*) as sole owners of the awarded portions. However, three elective OB division agreements from Sippar show a deviation from this general rule, whereby family members in their capacity as contractual parties in a division agreement decided to burden the inheritance with a support clause, coined a *sui generis* usufruct, in favour of their priestess family member.

I have discussed three elective division texts, which included the support clause or *sui generis* usufruct. The texts are from the city-state of Sippar, First Dynasty of Babylon. Text 1 is published by Goetze (1957:15-16) and was recorded during the

reign of Apīl-Sīn (1830-1813 BCE). Schorr (1913:260-261) published Text 2 and Text 3 (Schorr 1913:256-257). Both Texts 2 and 3 were recorded during the reign of Hammurabi (1792-1712 BCE)

First, on the side of my analysis method, I have established that the essential elements of the three texts as a specific type of division agreement – the family division agreement from a deceased estate – are present. They are the following: family members involved, deceased estate owner, estate assets, mutual consent, and *raison d'être* (Claassens 2012/1:216-225; Van Wyk 2013a:423-427). Figure 5 *infra* summarised the essential elements and their components in the three texts.

I then identified the legal practices in the three texts (Claassens (2012/1:377). Figure 6 *infra* is an abridged outline of the natural elements or legal practices which the family members in the division agreement have chosen to include in the agreement.

The legal practices, as they occur in the three texts, are categorised as follows: symbolic expressions, formalities of the agreement, as well as the additional provision: the “usufruct” clause.

In the category of symbolic expressions, “the division is finished” clause is included in all of the texts; the clause from straw to gold appears in Texts 1 and 3 and the “heart is satisfied” clause occurs only in Text 1.

In the analysis of the symbolic expressions, it seems that in the OB Sippar divisions the family members’ approach to the division of the assets was to maintain harmony, and each agreement was considered on its own merits, while trying to suit every contractual party’s needs. Furthermore, legal traditions were performed and cognisance must be given to the fact that the mainly illiterate OB society relied on multi-sensory and symbolic communication (Hibbits 1992:874). The symbolic acts and terms assist in a mutually-agreed division by the family members.

Another identified legal practice-category is the formalities of the agreement, which constitutes the “no claim”, “oath” and “witnesses” clauses. They are common legal practices in the majority of the Sippar division agreements, occurring in the three texts.

In the additional provision category, the application of the usufruct legal practice shows that the priestess-sister fulfils a special role in OB Sippar. However, the reading of the texts requires the re-examination of social categories in the OB society (Roth 1998). OB society was socially-orientated and the focus was on maintaining good

relationships, especially in the family (Steadman 1996:55; Matthews 2003:169).

The social role of each person follows a pattern of male succession rule subject to the father's authority in the family (Frymer-Kensky 1981:210-211). However, certain special institutions and practices complicate the study of kinship relationships and Postgate (1992:96) refers to "two major modifications of male succession rule", namely: donation during lifetime not accounted for in a division, referred to as a dowry, and the support of a priestess by her family members (Postgate 1992:97).

The different priestesses provided with support in the three division texts are the *kulmašītu* priestess in Text 1, and the *nadītu* priestess in Texts 2 and 3.

The *nadītu* was usually unmarried and not allowed to have children, and she lived a cloistered life in the *gagûm* (CAD N Reiner 1980:63). She received an "equal share" to that of her male family beneficiaries, which was a factual inheritance, for which she received a lifetime support on the condition that at her death the inheritance returned to her brothers (Harris 1976:133).

The *kulmašūtum*, like the *nadiātu* (in Texts 2 & 3), were "regulated by codes" (Westenholz 1989:251) and some of their older sisters were *nadiātu* of Šamaš (Harris 1975:325).

The *kulmašītu* seems to be an "un-cloistered woman" (Harris 1975:325). It was debatable whether the *kulmašūtum* were allowed to marry, but Harris (1975:324-325) refers to two instances where the *kulmašūtum* enter into marriage contracts.

Both type of priestesses had a connection with the temple and the gods – for instance, the *nadītu* of Šamaš was connected to the god Šamaš, especially his consort Aja, while the *kulmašītu* priestess was connected to Annunītum, an important goddess of Sippar (Harris 1975:325). Notwithstanding their connection with the temple, their role in society is still uncertain or speculative and ANE scholars hold different viewpoints of their primary function in OB society and family life. For instance, Stol (1995:107) emphasises the religious function of a *nadītu* because of the existence of cloisters. Conversely, scholars such as Harris (1968:117) and Stone (1982) take into an account the importance of their overall economic role and motive in preserving the family capital. For example, in the *gagûm* records, the *nadiātu* extensively conduct business transactions. In addition, the presence of the usufruct-clause in the division agreement seems to serve as a built-in mechanism to provide for the support of the priestess family member, while retaining the family property within the family.

Concerning the meaning of the term "usufruct", our understanding of the usufruct-

term is from our civil law system, which originally derived from Roman law through a legal legacy of development over two thousand years. Consequently, the coined usufruct term is foreign to the ANE frame of mind. Boecker (1980) advocates awareness that, when using our terminology, we should not superimpose our meaning of the term on that of the ANE. From the context of the texts, the usufruct in the OB Sippar family division agreement is that of *sui generis* or freestanding usufruct.

The following characteristics of a *sui generis* usufruct may assist in understanding the mechanism and function of the support-clause in the Sippar division agreement, namely: different beneficiaries, property involved, time-period of the usufruct, independent rights and powers of the parties, and consequences of unwise management. In the article, I explain the characteristics, supported by some examples from cuneiform texts, especially references in the three texts. Figure 7 *infra* shows an abridged summary of the characteristics of the *sui generis* usufruct.

The summarised points of the characteristics are as follows:

Concerning the beneficiaries, type of property, and the time-period, the following apply: By agreement, the bare dominium-owner/s of the male lineage is/are responsible for the maintenance support of the usufructuary over certain awarded property to one bare-dominium owner or the communally-shared property of bare-dominium owners. This is a lifelong obligation for the bare-dominium owners and lifelong right for the usufructuary to receive maintenance support. Sources such as LH 180, LH 181 and LL 22, as well as references made to letters and court cases reflect these aspects. In Text 1, the bare-dominium owner is the one brother of his awarded house property. His unnamed sister, a *kulmašītu* priestess, is the usufructuary and a lifetime usufruct is created over a house in her favour. In Text 2, all the brothers are the bare-dominium owners of an awarded undescribed inheritance from their father and mother's estates, subject to a lifetime usufruct in favour of the usufructuary their sister, a *nadītu* priestess of Šamaš. In Text 3, the bare-dominium owners are brothers, and the children of possibly a deceased brother of an undescribed inheritance subject to a lifetime usufruct. The sister, a *nadītu* priestess of Šamaš, is the appointed usufructuary.

Another characteristic of the *sui generis* usufruct is the independent rights and powers of the bare-dominium owner/s and usufructuary. In the three texts, the usufruct clause does not specify the rights and powers of the parties concerned and we have to rely on the interpretation of content of the division texts and references in other

written sources. For instance, in a letter a *nadītu* stated her wish to appeal to judges because her brothers did not maintain her, which indicated that the bare-dominium owners had the obligation to support their priestess-sister and she had a right to receive a lifetime of support (Postgate 1992:98). Another example is a court case noted in King Hammurabi's letter to his successor, King Samsuilina (Charpin 2003:156-157). The king wrote in his letter that, in accordance with the decision of the court/king, it was in the interests of society that the family members provided suitable financial support for their priestess-sister when she entered the cloister.

Lastly, concerning the consequences of unwise management, the usufructuary had some rights for loss of income. Unfortunately, in the three texts, the consequences of unwise management are not explicitly mentioned. However, in LH, paragraph 178 provides that, in the case of mismanagement of the burdened property, the priestess may appoint another person to manage the burdened property. Also in a court case, the bare-dominium owners forfeited their ownership (Greengus 2001:264). Thus, if the bare-dominium owners mismanaged the usufruct property and did not support their sister, they would forfeit their investment of their own capital to maintain the property and even their family property.

In conclusion, the *sui generis* usufruct clause in the OB Sippar division agreement is an innovative solution for managing the priestess institution. It entails that the family members deviate from the general aim of the division of a clean slate start for sole owners and that they modify to an extent the male lineage inheritance rules.

Still, this was a tailor-made contractual provision, which complies with the OB social norms and obligations of family and social life to maintain the priestess-sister for a lifetime.

Consequently, the usufruct places a lifelong burden of financial obligations on the bare-dominium owners and provides financial security for the priestess family member. Nevertheless, as a *quid pro quo* to these obligations and compliance to social and family norms, the inheritance-property of the priestess will revert at her death to the bare-dominium owners, securing the preservation of the family property free from the constraints of limited ownership, created by the *sui generis* usufruct.

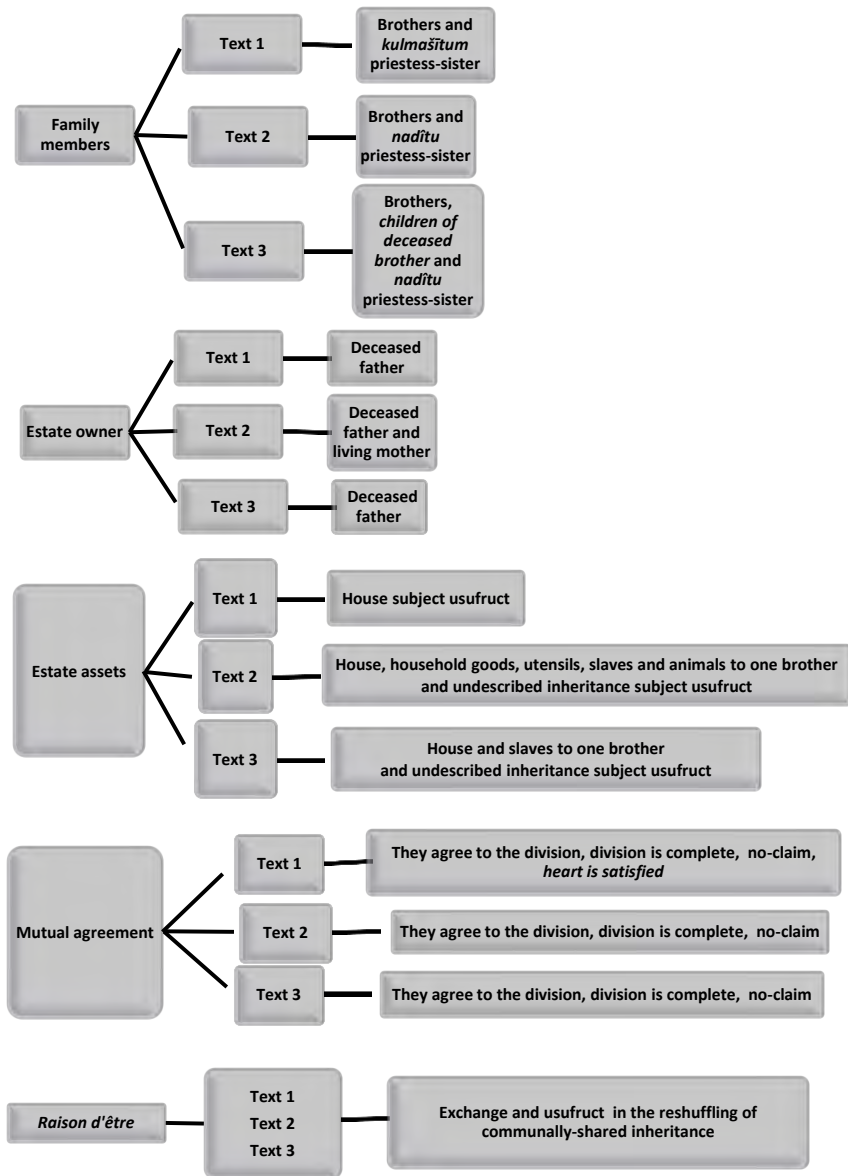


Figure 5 Essential elements and components of the three texts

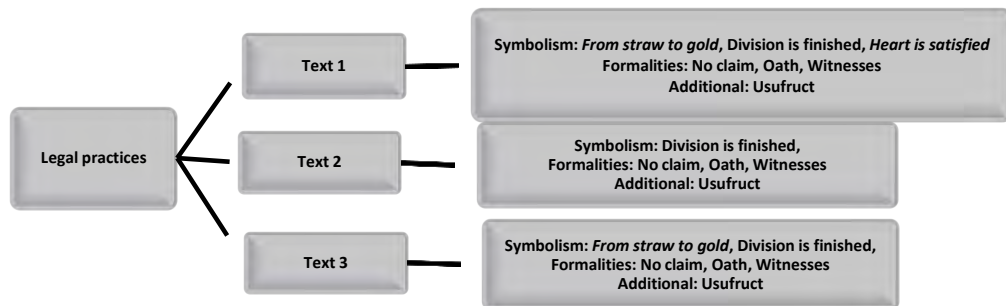


Figure 6 Natural elements or legal practices of the three texts

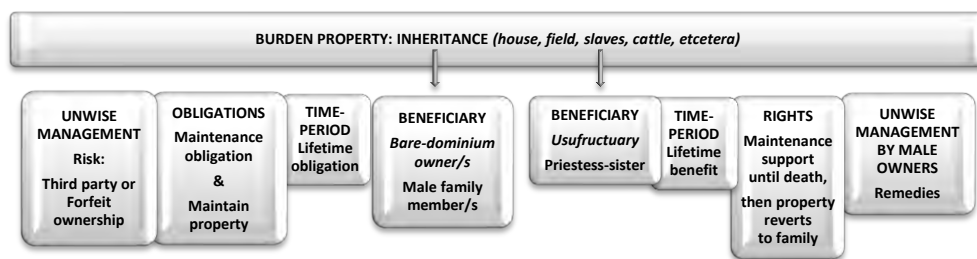


Figure 7 Characteristics of *sui generis* usufruct in Sippar division agreement

Table 1: Text 1 from Goetze (1957:15-16)

	<u>Transliteration by Goetze</u>	<u>Translation by Goetze</u>
Obv		
1	$\frac{2}{3}$ sar 8 $\frac{1}{3}$ gín bītam x x x zi-ti a-ḥa-ti-šū-nu kulmašītum	$\frac{2}{3}$ sar 8 $\frac{1}{3}$ gín ... house, share of their sister, the kulmašītum,
2	īta bīt A-da-ia-tum	beside the house of Adayatum
3	ù ita bīt E-te-li-ia	and beside the house of Etelliya
4	zitti I-din- ^d Adad	(is) the (inheritance) share of Iddin-Adad.
5	iš-tu pé a-di ḥurāšim	From the chaff (straw) to the gold
6	zi-zu gam-ru li-ba-šū-nu ṭà-ab	they have divided, they have gone through with it, their hearts are satisfied.
7	ú-ul i-tu-ru-ú-ma	(they will not come back – not translated by Goetze)
8	¹ A-wi-il- ^d Adad	and (that) Awil-Adad
9	ù A-da-ia-tum mārū Lam-mas-su-ia	and Adayatum, the sons of Lamassuya,

10	<i>a-na I-din-^dAdad a-ḫi-šu-nu</i>	will not raise claims
11	<i>ú-ul i-ra-ga-mu</i>	against, Iddin-Adad, their brother,
12	<i>nīš ^dŠamaš ^dMarduk ù A-pil-Sin itmū</i>	by Šamaš, Marduk and Apīl-Sin they sworn
13	<i>[^lA-wi-il-^d]Adad ù A-da-ya-tum</i>	Awil-Adad and Adayatum
14	[...] x [...]	[...][...][...]
Rev	Gap	(small gap)
5	<i>[maḫar...mār] Warad-^dŠamaš</i>	[before, son of] Warad- Šamaš
6	<i>maḫar Warad [-^d.... mār] x x -AN</i>	before Warad[-..., son of],
7	<i>maḫar I-tūr-Sin mār Na-wi-ru-um-ì-lí</i>	before Itur-Sin, son of Nawirum-ili,
8	<i>maḫar A-di-du-um mār A-ḫu-mi-šu</i>	before Adidum, son of Aḫum(m)išu,
9	<i>maḫar ^dŠamaš-[... mār]r U-bar-^dŠamaš</i>	before Šamaš-[...,son] Ubar-Šamaš,
10	<i>maḫar Šil-l[i-... mār] E-ri-ib-Sin</i>	before Šill[i-..., son of] Erib-Sin,
11	<i>maḫar NI[-...].mār U-bar-^dŠamaš</i>	before...[...], son of Ubar-Šamaš,
12	<i>maḫar A-da-[ia-tu]m mār Tà-bi-ia</i>	before Ada[iatu]m, son of Tàbiya,
13	<i>maḫar E-ri-ba-am mār Ì-lí-a-pí-lí,</i>	before Eribam, son of Ili-apili.

Table 2: Text 2 from Schorr (1913:260-261) with my translation

	<u>Transliteration by Schorr</u>	<u>Translation by Schorr</u>	<u>My translation</u>
1	1 ^{re} wardum ^{ilu} šamaš-na-aḫ- ra-ri	Ein Sklave Šamaš-naḫraṛi	1 slave Šamaš-naḫraṛi,
2	1 ^{re} uamtum ^{ilu} nin-[gal]-um-mi	eine Sklavin Nin-Gal-ummi	1 slave Nin-gal-ummi, ...
3	1 aplum....	ein... Rind	1 bovine animal,
4	1 ^{abu} Ḫar-[zid]-gu	eine Handmühle für feines Mehl	1 hand mill for fine flour,
5	1 ^{isu} ka-...-tum	ein hölzernes ...	wooden ...
6	ki-ma 5 šikil k[aspim]	anstatt der 5 Sekel Silber als Gegenwert für den Hausgrund (?)	instead of 5 shekels of silver
7	ša bītam a-pa-li 1 ^{isu} narkabtum	ein Lastwagen -; ein hölzernes...	as an equivalent for the house (?)
8	1 ^{isu} ab....[1] ^{isu} iršum	ein Bett	1 wagon; 1 wooden ..., 1 bed
9	2 ^{isu} kussūm 1 ^{duk} ni-dub	zwei Stühle ein Speichertopf	with two chairs, a warehouse pot
10	mi-im-ma an-ni-im	all das ist Anteil des Mār- iršitim	all this is the inheritance
11	zitti mār-ir-ši tim [mār warad- ir-ra	welchen er (bei der Teilung) mit Budium und Ilušu-ellāzu	share of Mār-iršitim which he received by division with Budium
12	ša itti bu-di-um	seinen Brüdern	and Ilušu-ellāzu, his brothers
13	ù ilu-šu-ella(t)-zu a-aḫ-ḫi-šu	als Anteil empfangen hat.	as an inheritance share.
14	i-zu-zu zi-zu ga-am-ru	Sie haben geteilt sie sind fertig.	They have shared, they are finished
15	iš-tu bi-e a-di ḫurāšim	Vom Stroh bis zum Golde	From straw to gold.
16	a-ḫu-um a-na a-ḫi-im	wird einer gegen	Brother against brother
17	ú-ul i-ra-ga-am	den anderen nicht klagen.	Will not complain against another.
18	ap-lu-ut ^l awāt- ^{ilu} aja sal-me ^{ilu} šamaš	Die Erbschaft der Awāt-Aja der sal-me Priesterin des Šamaš	The inheritance of Awāt-Aja, sal-me priestess of Šamaš,
19	ù ap-lu-ut Ibe-li-zu-nu um-mi- [šu-nu]	un ihrer Mutter die Erbschaft der Bêliznu	and the inheritance of Bêliznu, their mother,

20	<i>ša awât-^{ilu} aja sal-me^{ilu} šamaš za-ab-ta-at</i>	welche Awât-Aja die sal-me Priesterin des Šamaš,	which Awât-Aja, sal-me priestess of Šamaš
21	<i>ša bi-ri-šu-nu-ma</i>	besitzt (nutznießt), gehört ihnen gemeinsam	possesses, belongs to them together.
22	<i>niš^{ilu} šamaš^{ilu} marduk ḥa-am- mu-ra-bi</i>	Bei Šamaš, Marduk Ḥam-mu- rapi haben sie geschworen.	They have sworn by Šamaš, Marduk and (king) Hammurabi.
23	<i>it-mu-ú</i>		
24	<i>maḥar a-wi-il-^{ilu} šamaš mâr sin-pu-uṭ-ra-am</i>	(witnesses clause not translated by Schorr)	before Awil- ^{ilu} Šamaš son of Sin-puṭ-ram
25	<i>maḥar mâr-sippar^{ki} mâr awil...</i>		before Mâr-sippar ^{ki} son of Awil...
26	<i>maḥar ib-ga-tum mâr sin-[e-ri- ba-am]</i>		before Ibgatum son of Sin- eribam
27	<i>maḥar upi^{ki}-ma-gir mâr na- [ra]-am-i-lí-šu</i>		before Upi ^{ki} -magir son of Na- ra-am-ilišu
28	<i>maḥar ḥa-bil-ki-nu-um mâr ig- ga-ab-^{ilu} šamaš</i>		before Ḥabil-ki-num son of Igab- ^{ilu} Šamaš
29	<i>maḥar sin-en-nam mâr sin-a- bu-šu</i>		before Sin-en-nam son of Sin- a-bu-šu
30	<i>maḥar zi-ki-ip-^{ilu} šamaš mâr anum-ma-lik</i>		before Zi-ki-p- ^{ilu} Šamaš son of Anum-malik
31	<i>warah šabâṭim [ûm 10^{kam}]</i>	[Am 10.] Šabâṭum, Jahr des Kanals išît-Ellil.	In the year of the channel Tisît-Ellil.
32	<i>šattum nâr ti-ši-it-^{ilu} ellil-lá(l)</i> Seal impressions, not translated: 1 [upi ^{ki} -ma]-gir 2 [mâr-sipp]ar-ki 3 [^{ilu} sin-en-nam] 4 bu(?)... 5 mâr-ir-ši(!)-tim 6 a-wi-il- ^{ilu} šamaš		

Table 3 Text 3: Schorr (1913:256-257) with my translation

	<u>Transliteration by Schorr</u>	<u>Translation by Schorr</u>	<u>My translation</u>
1	2 sar bîtum ši-ki-it-tum	2 Sar Hausgrundstück, Bauwerk(?),	2 sar house property, building (?),
2	<i>ita bît sin-e-ri-ba-am mâr warad-i-lí-šu</i>	neben dem Hause des Sin- eribam, Sohnes des Warad- ilišu,	near the house of Sin-eribam, son Warad-ilišu,
3	sag-bi sil zag-è-a	seine Front geht zur Straße hinaus,	its front goes out (surpasses) to the street,
4	2 gar šiddum 1 gar pûtum	2 Gar Langseite, 1 Gar Frontseite;	2 long side, 1 front side;
5	1 ^{rêsu} wardum warad- ^{ilu} eru'a	1 Sklave Warad-eru'a,	1 slave Warad-eru'a,
6	1 ^{rêsu} wardum lu-mur-gi-mil- ^{ilu} šamaš ḥal ^e -kum	1 Sklave Lûmur-gimil-Šamaš, der entflohen ist,	1 slave Lûmur-gimil-Šamaš, that has escaped,
7	1 ^{rêsu} wardum ta-ri-bu-um	1 Sklavin Tarîbum,	1 slave Tarîbum,
8	1 ^{rêsu} amtum ^{ilu} aš-ra-tum-um- mi	1 Sklavin Ašratum-ummî – ist der	1 slave Ašratum-ummî –

- 9 *zitti li-bi-it-ištar mâr bu-ni-ni* Erbanteil des Lipit-Ištar,
ša itti sin-ma-gir i-bi-sin Sohnes des Bunîni,
welchen er (bei der Teilung)
mit Sin-mâgir und Ibi-Sin
- 10 *mâr^{mēs} bu-ni-ni* der Kindern des Bunîni,
11 *sin-i-din-nam ù ri-iš-^{ilu}šamaš* Sin-idinnam und Riš-Šamaš,
12 *mâr^{ilu} ilu-šu-i-bi-šu i-zu-zu* den Kindern des Ilušu-ibišu,
ihres Bruders,
13 *ù ap-lu-ut la-ma-zi sal-me* als Anteil erhalten hat. Auch
^{ilu}šamaš gehört die Erbschaft der
Lamâzî, der **sal-Me**-Priesterin
des Šamaš,
14 *a-ḥa-ti-šu-nu ša bi-ri-šu-nu* ihrer Schwester, ihnen
gemeinsam.
15 *zi-zu ga-am-ru* Sie haben geteilt, sie sind
fertig.
16 *iš-tu bi-e a-di ḥurâšim* Vom Stroh bis zum Golde
wird einer gegen
17 *a-ḥu-um a-na a-ḥi-im* den anderen nicht Klage
erheben.
18 *ú-ul i-ra-ga-am*
19 *niš ^{ilu}šamaš ^{ilu}aja ^{ilu}marduk* Bei Šamaš, Aja,
Marduk
20 *ù ḥa-am-mu-a-bi it-mu-ú* und Ḥammu-rapi haben sie
geschworen.
21 *maḥar nanna(r)-tum mâr na-* (witnesses clause not
ra-am-sin translated by Schorr)
22 *maḥar zi-li-lum mâr ša-ma-ia* before Zililum son of Šamaia
23 *maḥar ^{ilu}šamaš-ella(t)-zu mâr* before ^{ilu}Šamaš-ellatzu son of
nu-úr-^{ilu}kab-ta Núr-^{ilu}kabta
24 *maḥar sin-šar-ma-tim mâr i-* before Sinšar-matim son of
bi-sin Ibi-sin
25 *maḥar ilu-šu-a-bu-šu mâr i-lí-* before Ilu-šua-bušu son of
i-din-nam Ili-dinam
26 *maḥar i-lí-i-din-nam mâr ma-* before Ili-dinam son of
ši-a-am-i-lí Mašiam-ilí
27 *maḥar šu-mi-ir-šitim mâr sin-* before Šu-mir-šitim son of
a-bu-šu Sin-a-bu-šu
28 *maḥar i-din-^{ilu}elil mâr sin-* before Idin-^{ilu}Elil son of Sin-
29 *[ri]-me-ni* ri-meni
30 *maḥar ibḫu-ê-a ṭupšarrum* before Ibḫu-êa, the scribe.
31 *waraḥ abim ûm 22^{kam}* Am 22. Abum,
In month Abum, the 22nd
day.

32	<i>mu bád ma-ri^{ki}</i>	im Jahre, in welchen die Mauer von Mari	The year in which the wall was
33	<i>ù mà-al-gí-a^{ki}</i>	und Malgûm zerstört wurde.	destroyed by Mari and Malgûm.

34 *mu-un-gul-gul*

Seal (outside):

1 [^{dingir}n]anna(r)-ma-a[n-sum] 2 [mâr] na-ra-am-^{ilu}[sîn] 3 warad ^{ilu}s[in] 4 ù ^{ilâni}amurrim

1 zi-li-lum 2 [sîn]-šar-ma-[tim] 3 i-din-^{ilu}sîn 4 ^{ilu}šamaš-ellat-zu 5 z[i]-kir-i-li-šu 6 [i-li]-i-din-nam 7 šu-
mi-ir-ši-tim 8 i-bi-sin

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