

LOST IN TRANSLATION: PRESENT-DAY TERMS IN THE MAINTENANCE TEXTS OF THE *NADIĀTU* FROM OLD BABYLONIAN NIPPUR¹

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ABSTRACT

Present-day terms such as the usufruct – in civil law systems – and its equivalent, the life-right – in common law systems – were foreign to ancient Near Eastern legal texts. *Prima facie* both terms – usufruct and life-right – direct the “time-limited interest” of the use and enjoyment by a person over the property of another. However, mainstream ancient Near Eastern scholars’ unqualified use of the foreign terms – diverged in time and space – affect the translation and our insight into ancient texts. In addition, differences in land ownership institutions and philosophies in present-day law systems and those of ANE contribute to variances in the meaning and interpretation of the intrinsic aspects of property and as such “time-limited interest” applicable: a usufruct, life-right or even a hybrid form of both. In the article, I focus on the maintenance – a time-limited interest – of the *nadītu* priestess in the Old Babylonian city-state of Nippur. The application of Stone’s theory on Nippur’s land ownership – the institutions’ economy – *prima facie* shows that the *nadiātu* of Nippur held a freestanding life-right, rather than a usufruct which the majority of ANE scholars assigned to the *nadiātu*’s maintenance. However, I propose a deviation with the superficial overlay of present-day terms on the maintenance of the *nadiātu* by presenting a time-limited interest framework. The framework serves as a delineation method of identifying the characteristics of the maintenance-construction of the *nadiātu* from OB Nippur: communicating a “unitary concept” in context of the ancient texts – rather than only assigning coined terms – taking recognition of the influences of Nippur’s land ownership philosophy.

¹ The Sumerian terms are in bold font. The Akkadian terms and any other foreign language terms are italicised. Abbreviations used in this article are: OB (Old Babylonia/Babylonian), ANE (ancient Near East/Eastern), PSD (Pennsylvania Sumerian Dictionary), CAD (*Chicago Assyrian dictionary*), CDA (*A concise dictionary of Akkadian*), and LH (laws of/law collection of/law code of Hammurabi).

INTRODUCTION

Mainstream ANE scholars unqualifiedly coined the foreign term “usufruct” and, to a lesser extent, the life-right in the identification of a maintenance or support clause in ancient Near Eastern’s legal texts.² The usufruct term is from our civil law systems, derived via Roman law and the life-right is from our common law system. Prima facie both terms – usufruct and life-right – direct the “rights” or rather interests³ of use and enjoyment by a person over the property of another. However, different land ownership philosophies in the two law systems and ANE legal traditions dictate variances in the purpose and application of the interests of use and enjoyment, as well as a different understanding of the type of property law governing such a law system or legal tradition. A misunderstanding of the meaning of the terms – diverged in time and space – can affect the translation and insight into ancient texts,⁴ for the present-

² Crist (1958:295) refers to a usufruct (rather than a life-right) as a gift by God who appointed His representative as owner of the land and gives His people the right to use the land as a grant. The coined term “usufruct” (rather than a life-right) is compared with the land tenure system in Egypt’s fellah, where thousands of labourers worked in the building of the pyramids and other monumental buildings. Also, Jasnow (2013:114) considers a usufruct (rather than a life-right) in the instance where tenants are working on non-royal lands of Egypt’s Old Kingdom Egypt and Intermediate period. Roth (2002:4) refers to a “usufruct” as a property right in the OB period in her reference to LH 34 and an OB letter TCL 7 73 wherein Šamaš-hazir, Hammurabi’s man in Larsa, gave information about a man “who has had the usufruct of an *ilkum* field for forty years”. In addition, Batto (1980:219) mentions a certain Asqudum who acquired the usufruct of a huge palace field and secured water rights at the expense of his neighbour. However, the “title to these crown lands remained with the palace”. It seems that the time-limited interest here falls within the ambit of a life-right. In the contribution of Speiser (1928-1929:62) in discussing adoption texts, he refers to a “life interest”. He opines that in Nuzi and Nippur texts, various clauses can form part of a contract, which ranges from a marriage agreement, inheritance disposition and adoption to maintenance clauses. The maintenance clause he refers to as a “life-right”. Although in my unpublished doctoral thesis (Claassens 2012/1) I neglected to define a usufruct-construction found in three Sippar division agreements, in a recent published article, I have identified them as the contractual maintenance support of a priestess-sister in Old Babylonia Sippar (van Wyk 2014:195-236).

³ I adapt Verbeke, Verdickt & Maasland’s (2012) reference to “time-limited interests”. For purposes of the article, a time-limited interest includes a usufruct or life-right or any other similar type of time-limited interest, which held the characteristics of a person enjoying a beneficial income and/or use and/or possession and/or certain rights or title of another’s object for a certain time.

⁴ Boecker (1980:18-19) gives an example of the word “widow”, which in ancient Mesopotamian legal traditions is not confined to family life and only a woman independent

day terms in the study of the ANE legal texts may influence ANE scholars, depending on where and when they are living. For example, present-day ANE scholars and legal historians based in the United Kingdom are governed by a common law system and accordingly the life-right construction; here, traditionally, the king or queen owns the land. On the contrary, the law system in countries such as Holland, France and, in a hybrid form, in South Africa is mainly ruled by a civil law system, using the usufruct construction. ANE scholars from these countries may consider a land ownership philosophy from a predominantly private ownership stance.

I propose the notion that “You can’t talk about something if you haven’t got a word for it”, because of “mental abstractions” we have regarding a concept (Seipp 1994:31). This does not necessarily mean the assignment of a “unitary label” for every concept, but at least a “communication” towards an understanding of a “unitary concept” (Seipp 1994:31) of ANE legal constructions in their time and place.

In this article, I investigate the designation of foreign terms on the maintenance of the *nadītu*⁵ priestess from the Old Babylonian city of Nippur. Applying Stone’s land ownership theory of social institutions *prima facie*, the maintenance of the Nippur *nadiātu* reflects a life-right rather than a usufruct. However, for the purpose of communicating a unitary concept on the scope and nature of the *nadiātu*’s maintenance, I design the time-limited interest framework.⁶

I begin by introducing the usufruct and life-right in the present-day systems. This is followed by an outline of the ANE terms – coined by ANE scholars mainly as a usufruct – and the coined “usufruct’s” related terms, from which we can gather the nature, rights and obligations of the parties involved in the application of a time-limited interest in a cuneiform text. I reflect on the land ownership of Mesopotamia and then on Nippur’s on the side of Stone’s theory of OB Nippur’s social institutions.

of a family taking no share of the family property is considered a widow. See CAD Part 1 of Oppenheim (1964:362-364) regarding the term *almattu* (widow). Thus, Boecker (1980:16-18) cautions us of the dangers of misinterpretation when we consider superimposing terms from our law systems onto concepts in ancient texts. See also Charpin’s (2010:1-5) discussion of the “historian’s task and sources” and especially on p. 2 the stress that in translation we must avoid “anachronisms”.

⁵ In CAD N Part 1, the plural for *nadītu* is *nadiātu* or *nadātu* (Reiner 1980:63).

⁶ I first introduced this design in a previous article (van Wyk 2014:195-236).

Finally, to communicate a unitary concept, I present a time-limited interests framework: identifying the characteristics of the maintenance-construction of the *nadiātu* from OB Nippur, taking recognition of the influences of Nippur's land ownership philosophy.

PRESENT-DAY USUFRUCT AND ITS RELATED TERM: THE LIFE-RIGHT

Introduction

Our contemporary law⁷ mainly consists of two systems: the common law and the civil law, contrary to the Old Babylonian law (ANE law in general). A legal system, for the common and civil law, is an operating set of legal institutions, procedures and rules (Merryman 2007:1). Each legal system is a “rubric” of different legal systems: sharing

⁷ The Islamic is another law system consisting of a time-limited interest and I only reflect on some of the notes by Crist (1958), due to limitations in the length and purpose of the article (Crist uses the term “usufruct”). Crist (1958) made a comparative study between the “usufruct” found among the Assyrians’ feudal system, references to the “usufruct” from David and Solomon’s time on (1958:296), references to the Romans in their provincial administration (1958:298-299), including the Byzantium period (1958:299) and the Koran (1958:301-304). In the Koran, God gives a certain right of use of the land to the believers and in return, the believers give portions to the poor and taxes. At first, there was no distinction between a “usufruct” and possession, but with the Arab conquest the “usufruct” turned into real ownership (Crist 1958:304). The “usufruct” deriving from land codes includes a right to work, rent, sell and mortgage. Later the *waqf* developed, which was a “Moslem institution” and Crist (1958:304) considers it to have “features of the trust fund and of the religious, educational and charitable foundations prevalent in the Western world”. Crist (1958:305) considers the *waqf* as similar to the feudal system in England. The *Sulh* was a treaty peace: when Islam conquered a land, the “infidels” could keep their “inferior status” and pay head tax. In some cases, they continue their ownership, otherwise the land was annexed as a *faiḥ*, which become the property of the state, administered by a Moslem ruler “on behalf of the community” (Crist 1958:301). Practically all of the land under cultivation was spoils of war, the title to which the religious leader, the *imam*, claimed in the name of the Moslem community (Crist 1958:303). By far the greater part of the land in the Near East is either *mulk*, *miri* or *waqf*. *Mulk* land, or land held in fee, is a very small percentage of the area conquered by the Arabs. *Miri* lands are known as the land of the *emir* or ruler and Crist (1958:304) compares it to the so-called “crown lands in the countries of western Europe”. The state owns the land with a representative. In addition, if the *miri* lands are uncultivated for a time, the state has the right to give them to someone else. If the state permits it, *miri* lands are converted into *waqf* (Crist 1958:304).

as a group some commonalities, which differentiate the one classified system from the other (Merryman 2007:1). However, the ANE law “is the product of many societies, with different languages and cultures, that flourished, declined, and were replaced by others over the course of thousands of years” (Westbrook 2003a:2).

In this section, I explained the borrowed terms – usufruct of the civil law legal system and its equivalent, the life-right of the common law system – outlining the general differences and similarities between each other. ANE scholars adapt the usufruct largely and, to a lesser extent, the life-right in their translation of the interests of use and enjoyment-clauses in the texts of the ANE legal traditions. For ease of reference, see the illustration in Figure 1 below, reflecting the main differences and similarities of the present-day time-limited interests of the two systems.

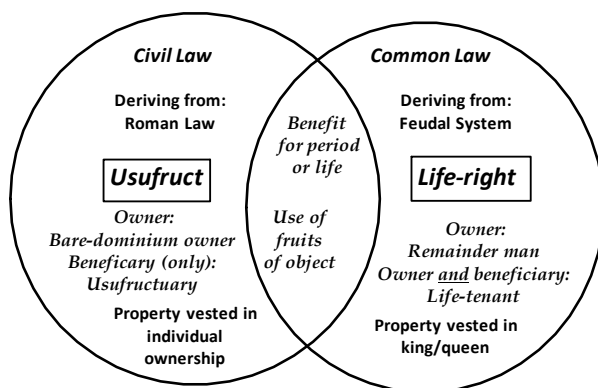


Figure 1 Usufruct and Life-right of today's two legal systems

General differences

The present-day common law system, as applied in countries such as England,⁸

⁸ See Merryman’s (2007:20, esp. 25) discussion of England’s common law system from summarising England’s law system as “unsystematic accretion of statutes, judicial decisions, and customary practices”. Lee (1915) outlines the “diffusion” of both the civil law and common law and their influences upon one another. See also the map, which gives an overall impression of the application of the common, civil and the hybrid form of both systems in the different countries in the world (Lee 1915:90). For instance, the map indicates that South Africa applied a hybrid form of both systems. Seipp (1994) discusses the problem of labelling the word “property” onto the common law. In the fifteenth century C.E., property meant goods and animals and did not include land. A “variety of persons”

afforded real ownership only to the crown, “based on a system of estates or tenures” (Verbeke, Verdickt & Maasland 2012:38). The landowner owns an “abstraction called an estate” (McClellan 1963:649). Two or more people, at the same time, can own the estate as separate owners: the various ownerships are concurrent, legal and equitable, but separate for one another (McClellan 1963:649).

The common law system’s interests of use and enjoyment is coined the life-right or life estate.⁹ The life-right consists of a person called the life-tenant¹⁰ – in possession – who owns the land for life and the so-called remainder man who has a “vested fee simple interest” at the same time, but also retains a “separate ownership of a ‘time in the land without end’” (McClellan 1963:650; Verbeke, Verdickt & Maasland 2012:38).

On the other hand, the civil law system¹¹ entails absolute ownership: the owner owns the land. Other than the common law, there is no abstraction called an estate and ownership is not a kind of trust. In the civil law system, either you own the object or

could only have a certain “right” in the land, all depending on the “scope and nature of the land” (Seipp 1994:39). This is in contrast with the Roman law’s *proprietas* of absolute and individual ownership over a thing, including land (Seipp 1994:32-34). In earlier common law, the king in a feudal society was the only one who had the “absolute property right” in “all the land in the realm” and everyone else only “held land” (Seipp 1994:40). With later developments, the term “property” was widely used because of the influence of the Roman “legal terminology” and “Roman and Canonist ideas”. However, Seipp (1994:88-91) pleaded that clarification is needed for the unqualified use of the word property, which causes much confusion due to the nature of the common law. Diakonoff (1982), in his examination of the ANE land tenure systems of the second millennium B.C.E., reconsiders also the importance of designating the word “property” in ANE ownership of objects.

⁹ The term life estate or life-right is used in accordance with the scholars’ preference. For instance, Verbeke, Verdickt & Maasland (2012:38) refer to “a life-right or life estate”, while McClellan (1963) refers to a life estate. For ease of reference, I use the term “life-right”, although the term life estate should be read together with the chosen term.

¹⁰ There are two types of life tenants: the legal life tenant who has the “right to use” and “to receive profits directly” and the equitable life tenant who has no “right to enjoy the property but only has a right via payments or distribution by a third person” in the form of a trust (Verbeke, Verdickt & Maasland 2012:38).

¹¹ Cf. Merryman (2007:4-10) outlining the origins of civil law, starting with its roots in Roman law, and discussing the codification of mainly the civil law by Justinian from 533 C.E. in his *Corpus Iuris Civilis*. The study of the *Corpus Iuris Civilis* was revived in the first modern European university in Bologna with law as a “main subject” and later codices developed in the nineteenth century C.E. Merryman (2007:56) opines that the “teacher-scholar” is the “real protagonist” of the civil law tradition and that the civil law is a “law of the professors”.

you do not; any other right limits and burdens the property (McClellan 1963:650; Rheinstein 1936:632).

The usufruct of the civil law, as a limited right to another's property, derived from Roman law times. The Latin word *usufructus* (*usus et fructus*) means use and enjoyment and in Roman law it was a person's right over movable and immovable property, which another person owned (Verbeke, Verdickt & Maasland 2012:36).¹² The usufruct term distinguished between a "bare-dominium owner" or "nude owner" and usufructuary. The bare-dominium owner is a person who has limited rights to his or her ownership and, 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). The term "usufructuary" 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).

The usufruct is created over movable and/or immovable property,¹³ while the common law's life-right is only concerning the estate (land property) (McClellan 1963:652). Furthermore, the common law's life-right, unlike the civil law's usufruct, does not require the compilation of an inventory or security as an obligation when the parties agreed to such construction (McClellan 1963:657). In addition, the usufruct's alienation is limited only to the rights over the property: its use and enjoyment. The usufructuary cannot alienate the usufruct itself; therefore, the usufructuary may lease and mortgage the usufruct, but stays personally liable for all its obligations. In the common law, subject to approval by the courts, the life-tenant has an "unrestricted power of alienation". The difference in the degree of alienation is because the life-tenant is an owner, whereas the usufructuary has technically a kind of personal servitude¹⁴ over the burdened property (McClellan 1963:659; Rheinstein 1936:632).

¹² Cf. discussions by Verbeke, Verdickt & Maasland (2012) and Roark & Roark (2006:170).

¹³ In the civil system of French Quebec and the hybrid system of South Africa, the *quasi* usufruct entails that the usufructuary may use the fungibles on condition of returning the object intact (McClellan 1963:652).

¹⁴ Kagan (1946:159-160) examined the concept of possession rights of the usufructuary deriving from Roman Law, because the "concept" of the nature of a usufruct has not been

Basic similarities

The life tenant is entitled to the fruits of the property (Verbeke, Verdickt & Maasland 2012:38, McClean 1963:658), and the usufructuary may use another's property and have the right to take the "fruits" or proceeds (de Waal & Schoeman-Malan 2008:166).¹⁵ In addition, the life tenant and usufructuary can only alienate what they have (McClean 1963:660, 665). Furthermore, the life-right tenant and usufructuary have the "obligation" to "preserve" the object's "substantial quality" when the owner is finally freed from the burden to his property. The usufructuary needs to take the "highest degree of care" and the life tenant cannot "cause lasting or permanent damage" (McClean 1963:662).

Conclusions

To sum up: what is similar between the two time-limited interests are the method of creation, the life-tenant or usufructuary's rights to the use and fruits and their obligation to return the object intact, as well as the rights of the owner or the remainder man to the property.

The main differences lie in the two interests' "theoretical bases" (McClean 1963:651). The life-right consists of a life-tenant who is owner of the freehold estate – concurrent and separate from other ownerships – and the remainder man of the property who is one of the owners of the property. However, the usufruct consists of a usufructuary who is not the owner and receives only a right to the use and fruits of the property of the bare-dominium owner. The usufructuary's lifetime or periodical rights of fruits, possession and some alienation rights, burden the ownership of the bare-

properly investigated. From a common law historian stance, the borrowing of terms from Roman law is "inexpressibly perplexing" and without a proper explanation of the Roman law, the usufruct gets confused with a real servitude-right (Kagan 1946:160). In classical times, the usufruct was not classified as a servitude and later in the Byzantine time this changes (Kagan 1946:161). The usufruct is a collection of rights (Kagan 1946:163) and the *dominium* of the usufruct does not entail "the object by the ownership of the object" (Kagan 1946:165).

¹⁵ The rationale for today's usufruct in South Africa is to make provision for the usufructuary to receive income for a certain period as a privileged right of the usufructuary (de Waal & Schoeman-Malan 2008:166).

dominium owner (McClellan 1963:651 Verbeke, Verdickt & Maasland 2012:38). Also, with the usufruct, there is the requirement of an inventory and security given by the usufructuary before taking possession (McClellan 1963:665). In addition, with the life-right, only the legal life-tenant has possession, and not the equitable life-tenant; while with the usufruct, the usufructuary has the right of possession. Furthermore, the rules regarding alienation differ: the usufructuary and bare-owner's right of alienation is more limited than in the instance of the life-right (Verbeke, Verdickt & Maasland 2012:38).

TIME-LIMITED RIGHTS (USUFRUCT) AND RELATED TERMS IN OB TEXTS

The “usufruct term” assigned by ANE scholars

Akālu

ANE scholars translated the *akālu* term as a usufruct and predominantly the designated ANE term is a benevolent act of receiving allowance or income from another person's property.

CAD A, Part 1, translates *akālu* as to eat; consume; provide for oneself; to enjoy (something or the use of something); to have the usufruct (of a field, etc.). The term variants are *ik-kal*, *ik-kal-la*, *ik-ka-al* (Oppenheim 1964:245). In PSD (Tinney n.d.) the Sumerian variant **gu**₇ translates as “to eat, consume”, deriving from the Early Dynasty, Old Akkadian, Lagash II, Ur III, Early Old Babylonian and Old Babylonian periods.¹⁶

Occurrences of the *akālu* term in the texts are, for instance, in CH par. 178:13 in a contract stating *eqlam*¹⁷ *kirām u mimma ša abuša*¹⁸ *iddinušim asi balāt*¹⁹ *i-kal* –

¹⁶ The Sumerian variant of the Akkadian *akalu* is **ninda**, meaning bread or food (Tinney n.d.).

¹⁷ *Eqlu* means “field” in the text Waterman Bus. Doc. 25:15 (OB) *adi PN...balātu...e-qī-el-ša ikkal* – as long as PN lives; he will have the usufruct of her field (CAD E in Oppenheim 1958:250).

¹⁸ *Abu* in plural means forefathers, ancestry and in context in TCL 7 43: *šibtu labīram ša ab-bu-ni* (forefathers) *īkulu* (usufruct) translated as “our old holding, of which (even) our forefathers had the usufruct” (CAD A, Part 1 in Oppenheim 1964:72).

¹⁹ The term *balātu* translates as “lifetime, duration of life” and in reference to the usufruct in MDP 28 403:9 and MDP 402:5 is given as *adi ba-la-ī-ša takkalma* – “she will have the

translating as “(after the father of an *ugbaltu*-woman dies) she has the usufruct (*i-kal*) of the field, orchard, and anything else which her father gave her as long as she lives” (CAD A, Part 1 in Oppenheim 1964:252-253). Also CH par. 180:57 reads *ina makkūr bīt abim zittam kīma*²⁰ *aplīm ištēn izāzma adi balṭat i-ik-ka-al* – translating as “(after a *nadītu*-woman’s father dies) she takes a share in the property of her father’s estate equivalent to (the share of) the first-born son, and as long as she lives (*balṭat*) she has the usufruct (*i-ik-ka-al*) of it. In TCL 7 43:6 the following line reads: *eqlātini šibitni labīram*²¹ *ša abbūni i-ku-lu* – translating as “our fields, our ancient holding, of which our fathers had the usufruct (*i-ku-lu*)” (CAD A, Part 1 in Oppenheim 1964:253).

Ilku

The term *ilku* or *alku* – although sometimes translated as a usufruct²² – refers rather in the CAD I to “work done on land held from a higher authority or services performed for a higher authority in return for land held” (Oppenheim 1960:73). In CDA I (Oppenheim 1960:126), CDA (Black 1999:129) *ilku(m)* is explained as “state service which includes a military or civilian service for the state, including *alākum* meaning ‘to perform the *ilkum* service’”.²³ This term occurs, for instance, in CH par. 182:9

usufruct (of the field) during her lifetime” and in MRS 6 92 *ina ud-mi-ti ba-la-ṭ i-šu ikkal* – “he will have the usufruct during his lifetime” (CAD B of Oppenheim 1965:46, 51).

²⁰ The term *kīma* means “as soon as”. For instance, “when a person will have the usufruct for three years” – *kī-ma šanātešu ū-sa-līm* – “when he has completed his term” (CAD K in Oppenheim 1971:363).

²¹ *Labīru* means inherited, owned for a long time as in text TCL 7 43:5: *eqlātini šibitni la-bi-ra-am ša abbūni ikulū rēdūtum ibtaqrūnīāti*, translating as “the *rēdu*-officials have claimed from us the fields, our age-old holding of which our fathers had the usufruct” (CAD L in Oppenheim 1973:28).

²² For instance, de Graef (2002:143) refers to *ilkum* as a usufruct as part of the performance of obligations to the state.

²³ Selman (1976) made some observations regarding the *ikkal* term in a comparative study of the Nuzi’s “special relationship” with the “Patriarchs of Genesis”, which include the inheritance agreement between Abraham and Eliezer (Gn 15), Jacob’s marriages (Gn 29-31), and Rachel’s theft of her father’s household goods (Gn 31) (Selman 1976:116 ff.). Selman (1976:131) shows that the term “to eat money” – *’kl ksp* – as one of the accusations Leah and Rachel brought against their father means the father has “eaten” and “consumed” money (*wy’kl gm ’kl kspn*), but it is not the same parallel in Nuzi and other records, as stated by Gordon. Gordon (1935:36) argues that the sisters enjoyed the “usufruct” of certain goods or money and this is the same as the Nuzi texts – *as kaspā akālu* – claiming that

which reads: *ina níg-ga é-a-ba igi₃-gàl dumu-uš-ša ... izâzma il-kam ul illak* – translating as “(a *nadītu*-priestess of Marduk) takes as her share of the heritage one-third of the estate of her father, but does not perform the *i*-duty (*illak*)” (CAD I in Oppenheim 1960:73).

Našû

The term in CAD N, Part 1 96, is given as “to provide for; payments or deliveries” – for instance, in CH 178:8, it is stated *errēssa it-ta-na-aš-ši-ši*, translating as “her (the *nadītu*’s) tenant farmer who will provide her with regular support” (Reiner 1980:96). Also in CH 148:81, with special reference to line *adi balṭat it-ta-na-aš-ši-ši*, it is translated as that “the divorced wife will stay in the house (the husband) built and he will support her as long as she lives in it” (CAD N, in Reiner 1980:96-97).

Related terms

The following related terms are mainly from texts referring to the *akālu* and *ilku* terms. My intention for the outline of the related terms is to assist the reader in understanding the consequences and provisions of binding the parties with the establishment of a benevolent act of receiving allowance or income.

Parties agreed to an agreement consisting of a time-limited right (usufruct)

- *Dabābu* – meaning to come to an agreement or to claim. For instance, in JCS 5 81

kaspu is another term for a dowry, which meant that goods were held in trust by the bride’s father for the bride when she became a widow or divorcee. Although Selman (1976:132) agrees on one point with Gordon that the money was a dowry which the sisters received from their father as a gift and which he withheld from them unexpectedly (therefore “consumed” it), Selman disagrees with Gordon’s usufruct-reference. Selman (1976:132) argues that in Nuzi, in mainly the adoption contracts, the verb *’kl* was mentioned in, for example, a text wherein the adopted girl states, “A. [the adopting brother] shall receive and ‘consume’ (*ikkal*) twenty silver shekels from my husband, and my brother E. [now giving her in adoption to A.] shall (also) ‘consume’ (*ikkal*) twenty silver shekels”. Selman (1976:132) concludes that the guardian had already deducted the payment for the dowry and the adoptive guardian kept the money as a usufruct. However, the verb *’kl* in Hebrew means eating the whole amount and not just enjoying the income (Selman 1976:132).

MAH 1593:7 (OB), the term appears in the text as *ilkam...ana...zâzim [id]-bu-bu-ú-ma*, translating as “they agreed to divide the duty on the field” (CAD D in Oppenheim 1959:8). Also in line 9, in text ABL 421, the phrase reads *šanâte eqla ātakal memeni issija la id-di-bu-ub*, translating as “I had the usufruct of the field for fourteen years, and nobody claimed it from me”.

- *Epēšu* or *ú-piš-ma* means to come to an agreement – for instance, in the line *ú-piš-ma PN ina libbi 10 gín kù-babbar ašà ana mu-an-na-meš ikkal* meaning “PN has come to an agreement (concerning a field), and he will have the usufruct of the field for (six years) for the payment of ten shekels of silver” (CAD E in Oppenheim 1958:231-232).
- *Paqāru* means to claim or to contest (a sale or transfer). In text TCL 7 43:12 and 15, the applicable line reads: *ana mīnim eqlētim šibissunu labīram ša abbūšunu īkulū ib-qū-ru-šu-nu-ti...eqlam...la i-ba-aq-qa-ru-šu-nu-ti*, translating as “why did they (the officers) claim from them the fields they held of old and of which their fathers had the usufruct? They should not claim the field from them” (CAD P in Roth 2005:130).

Property subject to a time-limited right (usufruct)

- *Ebūru* means yield (of a field or date-orchard) – for instance, in TCL 12 18:7, it reads in the context of PN *libbū iššakkē ina libbi ebur zitta...ikkal*, translating as “PN will have a share of the crop like the (other) *iššakku*-farmers” (CAD E in Oppenheim 1958:18-19).²⁴
- The term *elû* means to grow, come up (said of plants) – for instance, in the context of the following line: *ebūr eqli ša ina zēri šuāti il-la-a PN ikkal*, translating as “PN will have the usufruct of the crop that will grow in this field” (CAD E in

²⁴ See Ellis (1976:31, 41) explaining that the *ilku* fields were the land worked by either the beneficiary of such land or on behalf of and in the capacity of a “tenant” to the beneficiary of the land, which in turn was arranged by an agricultural “contractor” (Ellis 1976:61). In addition, the *iššakku* farmers had a fair number of responsibilities and consequently a higher status of “a more or less hereditary position” in northern Babylonia in the seventeenth century B.C.E. than in southern Babylonia of a century earlier (Ellis 1976:40-55, 76).

Oppenheim 1958:121).

- *Huptu* is a term from the OB period, meaning a field or garden subject to special legal restrictions such as in BIN 2 87:4 1 *iku ašā hu-up-tum adi balṭat ikkal*, meaning “she (the creditor) will have the usufruct of one *iku* of *h*-field as long as she lives”. Also in BIN 2 87: 4 in an OB text, the *h*-fields have the function to “provide and secure” “the livelihood of women” and provide for the “maintenance, care” of a person (CAD H in Oppenheim 1956:242).

Place and restrictions and/or obligations of a time-limited right (usufruct)

- *Itû* refers to a neighbour – for instance, in *ana bīt ilkim ša é i-te-šu*, translating as “for an *ilku*-field that belongs to the estate of a neighbour” (CAD I in Oppenheim 1960:316).
- *Mānahtu* means maintenance, upkeep, improvements (in fields and house); expenses (incurred for these). In ZA 36 95 No. 5:8 the text refers to 1 **gán eqlam ana mu-2-kam ana ma-na-ḥa-ti-šu ipettēma ikkal**, translating as “for two years he (the tenant) will cultivate for the most time one *iku* of land (from a total of three) as compensation for his expenses and shall have (its) usufruct” (CAD M, Part 1 in Reiner 1977:204).
- *Napāšu* translates as “to put in good repair” such as in the line of text VAS 7 21:11 which states that “he will have the usufruct of the grove (rented) for three years” (*kirâm ú-na-pa-aš kirâm zakâm ana bēlišu utâr*) and “he will aerate (the soil of ?) the grove, he will return the grove to its owner in good condition” (CAD N, Part 1 in Reiner 1980:290).
- *Ripqu* meaning field broken up for cultivation – for instance, in line *ri-ip-qá-tim immaru[ma] eqlam kīma eqlim ikkal*, translating as “they (the owner and tenant in a *šākinūtu*-contract) will inspect the worked (grove) and he (the tenant) will have the usufruct of the field like a (regular) field”, as in BE 6/1 case 14 9 (CAD R in Reiner 1982:366).
- *Rapāqu* is a verb translated as to hoe or to break up the soil of fields and gardens – for instance, in line *eqlam kīma eqlim ikkal i-ra-pi₄-iq*, it translates as “he will hoe

and have usufruct of the field as (he would of any) field” in PBS 8/2 246:10 (CAD R in Reiner 1982:150).

- *Šadādu* meaning measure and in context in line: *i-ša-da-du-ma eqlam kīma eqlim ikkal*, translates as “they (the tenants) will measure (the orchard), and she (?) will have the usufruct of a corresponding property (lit. a field instead of the field)” in PBS 8/2 246:8 (CAD Š, Part 1 in Reiner 1989:28).
- *Šarāqu* refers to the unlawful appropriation of the land – for instance, in line CT 86b:6, it is stated *ana 2 gán a-ša ša PN₁ ša PN₂ iš-ri-qú-ma i-ku-lu*, meaning “(PN went to court) about X field from PN₁’s X field of which PN₂ unlawfully had usufruct” (CAD Š, Part 1 in Reiner 1989:56).
- *Šibtu* regarding the *sibtum* fields means “a (agricultural) holding (in feudal tenure)”. *Sibtum* is derived from *sabdatum*, which means to take possession of real estate or to hold in feudal tenure (CAD S in Reiner 1984:164). However, De Graef (2002: 147, fn. 10) opines that the “most encompassing term for fields in tenure” was the *ilkum* fields.²⁵ As discussed *supra*, the *ilkum* fields were subject to the performance of the state and civil obligations, the *ilkum* service (CAD I in Oppenheim 1975: *ilku* A 1, 2 and 4). *Ilkum* derived from *alaikum*, which means to serve or to do service (CAD A in Oppenheim 1964). Ellis (1976:19) considers the *sibtum* fields as a “sub-category” of *ilkum* fields.
- *Tidennu* (*titennu*) refers to a person or field serving as the object of a usufruct (CAD T in Reiner 2006:393).²⁶

²⁵ De Graef’s (2002) investigation of the *sibtum* fields was focused on the allotments to soldiers in Sippar-Amnānum and opines that the *sibtum* fields were a common occurrence in Sippar, especially the Late Old Babylonian Sippar-Amnānum (de Graef 2002:146).

²⁶ See Purves’ (1945:80) outline of a debate between Cuq, Koschaker and Speiser regarding the Nuzi *titennūtu*. Cuq considers the *titennūtu* as a pledge transaction with the creditor who held the pledge but who has no title, while Koschaker states that the creditor had at least a temporary title and a property right. However, with the translation of another text, the *titennūtu* contract shows no title and then Koschaker considers the *titennūtu* as a usufruct. Speiser challenges this assumption and considers the *titennūtu* as a *quasi* or imperfect usufruct based on the present-day definition of a civil law’s usufruct (Purves 1945:80, fn. 54). Purves (1945:79) opines that the Nuzi tablets entitled *tuppi titennūti* is a usufruct.

Conclusions

ANE scholars translated the main ANE terms *akālu* and *ilku* of *alku* interchangeably as a usufruct. The related terms at least show the importance of all the parties having to come to an agreement, and in context indicate a variety of obligations.

From my discussion in the previous section and my reflections in this section, *prima facie* the *ilku* term is more suitable for a feudal system and *prima facie* constitutes a *sui generis* life-right, while the *akālu* term seems to possess some of the characteristics of a *sui generis* usufruct and life-right. However, the superimposing of present-day terms is superficial and we need to agree on a “unitary concept” of the ANE time-limited interests applicable in time and place, subject to the relevant type of land ownership.

LAND OWNERSHIP AND LAND INSTITUTIONS IN OB NIPPUR

Within the different land regimes, human beings created the institution of property, which has grown into many facets, and includes present-day terms such as private property and public property. Private property is subdivided into individual ownership and household ownership, while public property is sectioned into group-, horde- and open-access property (Ellickson 1993:322-1323).²⁷ The concept of property is a controversial subject, with conflicting values.²⁸ However, sometimes our species manages to organise and manage the institution – property – benevolently for the

²⁷ Ellickson (1993:1323) gives in a table format an estimation of the “number of privileged entrants” against each type of “ownership regime”. Within the private property group, the number of entrants for individual property is one entrant and that of the household property between 2 and *circa* 12. Under the main category of public property, the number entrants under group ownership are *circa* 13-1000, with horde ownership *circa* 1000-millions and with the open-access property all the “privileged entrants of society”.

²⁸ Brentjes in his comments on Zagarell’s study (Zagarell 1986:420-421) remarks that the labelling of the temple and privately-owned property with the words “public” and “private sector” result in misleading information about the control of property. The question should be if the “producer has control over the means of production” on (Zagarell 1986:420) for the “production of propertyless (*sic*) producers are controlled by rulers” (Zagarell 1986:421).

group and with some luck even to the advantage of individuals within the group.²⁹

General survey of land ownership of Mesopotamia

Mesopotamia's harsh environment and the Mesopotamians' growing need for survival forced innovations for conquering the environment's obstacles, but consequently posed problems of possible abuse and misuse of the area's natural resources. Collectively, these challenges limit and influence the different social and political groupings in the area (Stone 1987:13).

The rainfalls during the late fall and winter were not enough for dry farming and Mesopotamia developed into a "hydraulic society",³⁰ driven by a "system of gravity-flow irrigation" (Ellickson & Thorland 1995:329; Stone 1987:13). The irrigation canals supplied water to the cultivated fields of the farmers – even the distant fields – while the desert dwellers delivered wool, milk, meat, fish, fowl and reeds; thus, Mesopotamia became the "breadbasket of the East" (Stone 1987:13). However, the water supply was uncertain due to flooding and drought, as well as the ongoing danger of salinization because of "over-cultivation and over-irrigation" (Stone 1987:14). In addition, there were the threats of invasion, which in turn evolved into the building of many "rival walled city-states"³¹ with surrounding farmers and desert-dwellers living

²⁹ Ellickson (1993:1318-1319) considered the fundamental issues of land ownership as "the rules that establish the foundation of virtually all human activity".

³⁰ Ellickson & Thorland (1995:350) made an overview summary of the political and land structures of Mesopotamia, Egypt and Israel between 3000 B.C.E. and 500 B.C.E. In the midst of different theories, they identified four main theories of land regimes, varying in time and place (1995:324). See Ellickson & Thorland's (1995:324-327) discussion of the four general schools of opinion to which extant human institutions can be expected to vary – timely and spatially – namely the rational-actor optimists, rational-actor pessimists, stage theorists and cultural pluralists. The study of the ANE structures/institutions is from a "law-economic perspective". However, the authors acknowledge the shortcomings of their study, which includes a long timeline of 5 000 years, and the model tendency to the rational-actor model of human behaviour. This model entails "that an individual will estimate the expected utility of alternative actions, and then choose the action that promises to maximise his personal expected utility, which may, of course, reflect a concern for others' welfare" (Ellickson & Thorland 1995:327).

³¹ See Stone's (1995:235) notes on the general organisation and structure of Mesopotamian city-states, focusing on the tension between the two main institutions: the temple and palace. See Stone's (1999:203-221) study of the urbanisation and land ownership in the

in the rural areas (Ellickson & Thorland 1995:330).

Still, the basis of Mesopotamian society was agriculture “with integrated husbandry”, rather than the manufacturing and trading of created goods. Therefore, “arable land” and especially the control thereof played an important role, adding the influence of social, economic conditions and ecological factors, “interdependent and interacting” with one another (Renger 1995:269). This resulted in different forms of ownership (Renger 1995:269-270).³²

Throughout the millennia, in the history of Mesopotamia, agricultural ownership has a tendency to change.³³ In most periods, the agricultural lands were privately owned, “with no special services to the crown” (Ellickson & Thorland 1995:339). The “small family units” were responsible for their homestead and “agricultural operations” (Ellickson & Thorland 1995:337). The Mesopotamians owned their houses (Ellickson & Thorland 1995:337).³⁴ “Private property connotes both a type of

ancient Near East by investigating the differences between territorial states and city-states. City-states were a “network” of neighbouring states, and although independent, they share a “common culture, belief system and status symbols”, but “compete” over resources, territory and trade routes. In Mesopotamian city-states, “productive land” was “temporary and mutable” (Stone 1999:204). Stone (1999:210) states that scholars such as Gelb, Diakonoff, Zagarell, Pollock and Wright considered Mesopotamian society as “highly stratified” with “few opportunities for social mobility”. By contrast, Stone considers herself and scholars such as Postage and Steinkeller as viewing Mesopotamia as “much less stratified”, with “numerous potential avenues for social mobility (Stone 1999:211; 221ff.).

³² Zagarell (1986:415-420) gives an outline of the debate of the Mesopotamian society, economy and trade throughout the different periods and the roles of the temple-economy, private ownership and other public institutions. Complex social relations of productions changed in time, which had influenced the “various modes of production, consumption and distribution” (Zagarell 1986:416).

³³ See Zagarell (1986); Diakonoff (1975; 1982); Gelb (1971; 1979). Leemans (1975) investigates the role of land lease in the OB period and concludes that large numbers of land leases are known from north Babylonia, notably from Sippar, Kish, Dilbat. The greatest number of leases is held by *nadiātu* of Šamaš who owned vast areas of land, either inherited from their parents or bought by themselves. One of the wealthiest among these women, Iltani, the daughter of the king, owned large areas and managed the cultivation and the pasturage of vast numbers of workers and slaves. However, most *nadiātu*, officials and merchants from Sippar owning fields, lease the fields to farmers. Thus, in the eighteenth and seventeenth centuries B.C.E., a large part of Sippar fields were held by leaseholders, with proprietors being the city-dwellers.

³⁴ The importance of ownership of property by private individuals is noticed throughout the corpus of cuneiform contracts such as sale, exchange, loan and other transactions of land property. In this regard, see for instance Yoffee’s (1988) discussion of land sales.

owner and a core set of entitlements”. The type of owner could be an individual, a “nuclear household”, or an “extended household” consisting of sons’ wives and children. The owner’s entitlements include rights to use the land and to exclude trespassers, as well as the right to choose heirs for the transfer of ownership to the next generation in the family (Ellickson & Thorland 1995:336). However, from the third millennium, in certain city-states private property in agricultural land co-existed to a greater or lesser extent with the palace and temple (Ellickson & Thorland 1995:339; Diakonoff 1982; Stone 1987:16).³⁵

In managing property, the different institutions³⁶ and individuals in society act as “enterprise sizes”, having two functions: (1) to decrease the “sum of transaction costs”, (2) as well as reducing “deadweight losses arising out of coordination failures” (Ellickson & Thorland 1995:350). The “deadweight losses” can develop because of risks that have been “spread to individuals”.

The organisation and management of the institutions may assist to spread the risks and utilise the size better (Ellickson & Thorland 1995:351). The “redistributive systems” cultivating the land – “collectively” as a group – hold the advantage of “built-in, risk-sharing attributes” (Stone 1987:14). The produce is “redistributed” to the landowner and the workers in the “form of wages or as a share of the crop”. Good management prevents over-cultivation and the long-term losses of salinization (Stone 1987:14). In addition, family households and kinship relations “cheaply monitor” the

³⁵ Deimel coined the “temple-state theory” and considered the whole of Mesopotamia in the third millennium as a temple-state and even included the “entire history of Mesopotamia” based on a temple-state (Makkay 1983:1). Later scholars Gelb (1971) and Diakonoff (1975; 1982) contend that the temple-economy was only one of the different types of regimes. Makkay (1983:1, 5-6) believes that the temple economy participates in the “accumulation, redistribution and mobilization” of goods of the society, much more than that of their own; even in the fourth millennium the temple gathered “significant revenues” (Makkay 1983:5) by exchanges of various services, products and commodities: “highly reminiscent of early capitalism, rather than feudalism” (Makkay 1983:6). Renger (1979:249) doubts that private field ownership was common in the South, where the palace and temple retained many sustenance and rental fields.

³⁶ The terms “institutions” or “corporate group” are not ANE terms and do not possess a legal status, as known in our law systems. It is our superficial reference to “social units” reflecting “behaviour patterns of the individual who made up their membership” in a unit (Stone 1987:16, fn. 15).

“shirking and grabbing by members” by means of different types of contracts. However, this resulted in “transaction costs” (Ellickson & Thorland 1995:351). Thus, the larger the institution, the more expensive is the “governance” of the institution. It boils down to a constant weighing-up of transaction costs and dead-weight losses (Ellickson & Thorland 1995:351) by “spreading risks”, using “market transactions, diverse investments and charitable institutions” (Ellickson & Thorland 1995:352).³⁷

Nippur: Stone’s theory of the interaction of the economy of three social institutions

Focusing on contracts, Stone (1982) theorises that in OB Nippur there were three interrelated social institutions:³⁸ (1) patrilineal lineages, (2) temple office group, and (3) the *nadītu* institution.³⁹ The patrilineal lineages were the “most traditional and earliest social groups”: their membership was based on kinship relationships (Stone 1982:52). The second group – the temple office group – is the “most innovative”, its membership based upon “institutional ties”. Membership of the third group, the *nadītu* institution, is based on “kinship and institutional relationships” (Stone 1982:52).⁴⁰

Stone (1982) studied the genealogies⁴¹ of four to six generations and with her

³⁷ Added to the theory of risk-distribution, Stone (1977:283) opines that from a sharecrop arrangement, an agricultural tenant could obtain insurance by asking for aid from his tribe or working at a second job.

³⁸ See also discussions by Stone (1987:16-28).

³⁹ Textual records show that each Mesopotamian city-state’s social structure differs. See in this regard Stone’s (1982) differences between the *nadītu* institutions of OB Nippur and Sippar. Also, in my thesis (Claassens 2012/1 & 2), from studying 46 division agreements from OB Nippur, Sippar and Larsa, I concluded that the city-states held differences in their scribal traditions, philosophical outlooks and choices in their application of legal practices in division agreements. In these instances, Larsa acted as “practical idealists”, Nippur as “traditionalists” and Sippar as “innovators” (Claassens 2012/1:400-406). See also Stone (1977:283-287), explaining that Nippur’s three social institutions were “operated” in Nippur in different combinations.

⁴⁰ Stone (1982:51, fn. 3) mentioned that from the 500 Nippur contracts available for study, only 10% included the *nadīātu* as a contractual party. However, the contracts were found in the houses of the Nippurians and not, like Sippar, in only the cloister. Thus, Stone considers it in a positive light, for the Nippur *nadīātu* can be studied “within the broader context of the society as a whole” (1982:51) and the contracts reflect their social role (1982:51-52).

⁴¹ In the studying of different transactions, the names of the parties involved are generally

examination of five hundred private contracts⁴² she contends that even in the earliest contracts the “judicial and defence functions” were controlled by the state; however, “individual property ownership” existed and assisted in the “transformation of the lineages.” The contracts predominantly consist of transfers of privately-owned fields, houses and temple property, which involve mainly sale and inheritance transactions (Stone 1982:53).

There is a pattern, which entails that generally the lineage members owned the land and temple offices and exchange of ownership took place within the lineages.⁴³ Even outsiders are seldom witnesses to the contracts (Stone 1982:54). The lineage groups acted as “self-contained economic units”, while the temple office-group “conferred a leadership role” (Stone 1982:54).

In order to minimise the “dead-weight losses”, the lineages developed three “strategies” to avoid the over-dividing of familial property into too small land holdings (Stone 1981:23). In most of the division agreements, the eldest son received an extra share (primogeniture share) and kept the greater part of the property and temple offices, compensating the younger brothers with other types of property, including silver, by a bringing-in or sale (Claassens 2013/1:175, 186-191, 247-269; Stone 1981:23).⁴⁴ Another strategy was to omit some sons from the division by allocating property before the death of the father and affording them the opportunity to

accompanied by a kinship and/or profession reference, assisting us in reconstructing the genealogies, mapping out the real estate and neighbourhoods (Stone 1987:16). Stone (1987:16, fn. 14) explained the challenges experienced during the creation of genealogical reconstructions and the methodology of such reconstructions.

⁴² See Stone (1977:267). Stone (1977:268) identified among these contracts four types, namely (1) contracts of permanent exchange, such as transfer of property to another; (2) contracts stating temporary exchange, usually loans and leases; (3) contracts reflecting new social relationships such as adoptions, marriages and manumissions; and (4) records of settlements of disputes regarding the above-mentioned three types of contracts.

⁴³ See discussion by Stone (1981:19-33).

⁴⁴ See my discussion of the type of arrangement and unique solutions found in OB Nippur where the parties to a division agreement devised the “meticulous” dividing of their inheritance portions, taking into account the allotment of the eldest brother’s primogeniture share (Claassens-van Wyk 2013:56-89). See Stone’s (1981) study of house property transactions and architectural modifications using texts and archaeological data to show OB residence patterns. See esp. Stone (1981:24-29) and my notes on her study in my thesis (Claassens 2012/1:62-65).

“rebuild” their wealth through purchasing property from other family members. The third strategy was utilising the *nadītu* institution by keeping family property in the lineage group and “control property” with the transfer of property from one lineage to another: obtaining property from other lineages rather than from its “minor branch” (Stone 1981:24).

The second institution, the temple office group, acts as an “open-ended group”. It is uncertain what the functions of the office holders entailed, but at least we know that they had something to do with the “state judiciary system”: for instance, the office holders acted as witnesses in court cases and function as part of the redistribution system” (Stone 1982:54). However, ownership in the temple-office group involves shares (Stone 1982:54), expressed in the number of days in the year or “fractions of the total office” (Stone 1982:55).⁴⁵

The temple-office group was involved in agricultural production, the main purpose of this agricultural concern being to provide remuneration for state personnel (de Graef 2002:143).⁴⁶ This could be either in terms of rations or pay, or through the assignment of land (Stone 1982:55) and generation of a time-limited interest.⁴⁷

The temple offices, like the “traditional lineages”, had the advantage of “risk-sharing attributes”. Practically, this means that the offices received income from

⁴⁵ Sterba (1976:17) also refers to Old Mesopotamia’s “larger system of corvee” and then notes that the “second class of land, the **kur** land,” was allotted in a “usufruct” to the “temple community members” (1976:18).

⁴⁶ Ellis (1976:12 ff.) states that the public land was assigned in allotments to the people and in return, labour and/or military services were given to the state institution. These services were mandatory and inheritable. In the instance of non-compliance, the state retains the right to take it back. De Graef (2002:143) mentions references to the allotments by the state to the soldiers: LH 32, 36-38 and 41; transfer by inheritance to male children: LH 28-29. It seems from the texts that the “obligators” were not the owners of the land and the state was the owner (de Graef 2002:146). See also discussions by Lafont (1998) regarding the “feudal system” of Mesopotamia.

⁴⁷ Ellis (1976:12 ff.) dealt with the methods for state assignment of land as well as the actual processes by which state-controlled land was cultivated, on the basis of letters from the archive of Šamaš-hasir, Hammurabi’s governor at Larsa, the Code of Hammurabi and some Late Old Babylonian economic texts from northern Babylonia. The state assigned its land to certain classes of workers, such as military personnel, as subsistence allotments in return for labour and/or military service performed. The performance of the relevant obligations was mandatory for the usufruct of the field. See discussions by Yoffee (1988:119-120).

different fields and that they had “large storage capacities”, all adding to the advantage of withstanding “local, short-term variations” in water needs and the infertility of soil (Stone 1982:55).

By 1730 B.C.E., the temple office owners “formed a single economic unit”, progressively weakening the traditional lineages by taking over the lineage functions (Stone 1981:18; 1982:55). In contrast to the lineages, the temple-group was a “loosely-knit organisation” and held more “economic freewheeling” than the lineages. The temple offices were exchanged “freely” and Stone believes that as a large group they were clearly identified in the community (Stone 1982:55). However, there seems to be some tension between these institutions, especially in the later reign of Samsuiluna, as economic transactions shifted to other members of the temple group, rather than keeping the exchange of land within the lineage group (Stone 1981:18). Now the ties were based on institution and not on kinship (Stone 1982:55).

The third institution, the *nadiātu* of Nippur, have a combination of “elements” of the lineages, temple group and the priestess *nadītu* institution of Sippar (Stone 1982:55).⁴⁸ The Nippur *nadītu* institution was an “intrinsic part” of the lineage system, as well as the temple office and “forged inter-lineage ties” (Stone 1981:18).

CAD N, Part 1 (Reiner 1980:63) describes the *nadītu*⁴⁹ (Sumerian variant **lukur**⁵⁰ **sal-me**) as a woman dedicated to a god, who was usually unmarried and not allowed

⁴⁸ There are five texts of the available Nippur contracts that give some information of the *nadiātu* of Nippur. However, it is still unclear if this can be considered as “representative of the city as a whole”. The relevant texts are ARN 29; PBS 8/1, text 1; PBS 8/1, text 16; PBS 8/2, text I 5; BE 6/z text 18 (Stone 1982:57).

⁴⁹ Cf. references in LH 182, 93, 180 and 179 mentioning the *nadiātu*.

⁵⁰ Cf. Diakonoff (1986:234) 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. Stone (1981:19) considers that in Nippur the word used for *nadītu/nadiātu* was the Sumerian **lukur** and this shows that the institution was already in existence during the Ur III period as a possible means of providing high status for women who could not find “suitable husbands” (fitting their status). At least in Ur III Nippur kin-based groups, the *nadītu* and temple-office were already institutions in Nippur society, although it is uncertain to what extent the institutions were tied up in the urban or rural areas and the extent of their property control (Stone 1981:19-22).

to have children, and who lived in a kind of cloister.⁵¹ At a young age, the *nadītu* entered the cloister and lived with servants and other personnel.⁵²

The *nadiātu* institution of Nippur resembles and differs from the one in Sippar, but this was only “superficial” (Stone 1982:55). For instance, the manner of dedication to a god differs, which includes different gods. In Sippar, it was the god Šamaš or Marduk, while in Nippur it was Ninurta. With regard to the type of secluded place, in Sippar, it was a kind of a cloister, **gi-gia-a**,⁵³ while in Nippur the area is described as the “place of the *nadiātu*”, **ki-lukur-ra**. Also in Nippur, no men were owners of the houses in the secluded area (Stone 1982:56). In addition, the manner in which the *nadiātu* received property differs; in Sippar, the *nadiātu* received property via inheritance from their father or other *nadiātu* and in Nippur, the *nadiātu* received “gifts of property” (Stone 1982:57). Stone (1982:54-67) outlines some “superficial resemblances” between the *nadiātu* of Nippur and Sippar. The *nadiātu* of both city-states actively partook in the economic milieu on a par with men (Stone 1982:55).⁵⁴ In both institutions, they live in a “specific area”. However, Stone noted that in Sippar, unlike Nippur, the temple offices in Sippar have less importance and this enhanced the economic importance of the *nadītu* institution in Sippar.⁵⁵ A few families were

⁵¹ For instance, the *nadītu* of Šamaš was the god’s junior wife and his first wife a goddess in PSD, as the Sumerian variant **lukur** (Tinney n.d.). *Nadiātu* of other deities were allowed to marry and did not live in the cloister; they were not allowed to bear children, however the husband was allowed to get a second wife (**ugētum**) or a slave, and then the priestess was considered “the mother of their offspring ... through a legal fiction [LH 144-147]” (Westbrook 2003b:424).

⁵² Harris (1963:130; 1975:38-208) gives a description and discussion of the Sippar cloister’s personnel with high and low ranking servants in charge, taking care of the cloister’s administration. Cf. Harris (1963:122-124) describing the layout of the Sippar cloister compound, including a description of the wall (1963:124) and the type of homes of the *nadiātu* (1963:124-126). Most of the fields were outside the cloister, because of insufficient space in the cloister (Harris 1963:130).

⁵³ The Sippar *nadiātu*’s place of residence was the *gagūm*: walled, enclosed and with different buildings serving different functions (Lerner 1986:242).

⁵⁴ *Nadiātu* actively traded in land and defended their rights through litigation (Westbrook 2003b:424).

⁵⁵ 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

property owners and the priestesses shared in the wealth of their élite family. Some scholarly opinions held that their purpose (especially in Sippar) was to serve in the continuation of the patronage estate, but this is overall a debatable issue.⁵⁶

In the study of the *nadiātu* from Nippur, the majority of contract transactions as part of Stone's (1982) study were during the reign of Rim-^dSin.⁵⁷ The *nadītu* institution was useful for the lineages, for the *nadiātu* provided exchange mechanisms and served as a "large, risk-sharing, redistributive institution" (Stone 1982:68). The *nadiātu* priestesses purchased land adjacent to the fields of their families, showing that their *nadiātu* business transactions were about land. This assisted them to become a large institution group, and as a "power group", they sold, leased and bought property together with their family members and other *nadiātu*. In OB Nippur the "individual *nadītu* manipulated family holdings, taking advantage of her sheltered position in the cloister, apparently free of the surveillance of the crown".⁵⁸ In addition, the Nippur *nadītu* institution "provided an effective means to manipulate and to preserve family landholdings", for the holdings were "linked" to "political power of status of the

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). See also my discussions (van Wyk 2014) regarding the contractual maintenance support of a priestess-sister in three Old Babylonian Sippar division agreements.

⁵⁶ See the opinion of Stol (1995:107) that the *nadiātu* represented a religious idea, due to the existence of cloisters in the OB period, rather than an economic motive to preserve the family capital. Stol (1995:108) based his argument on the wealth and on royal families, who sent their daughters to the cloister to pray and make sacrifices on behalf of the family. Harris (1968:117) argues that the *nadiātu* in Sippar had close relationships with the temple and the god Šamaš, especially with his consort Aja, and although the *nadītu* institution was religion-based, it played an important social and economic role in society. 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, as a result of 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). See also my discussions in van Wyk (2014).

⁵⁷ Stone (1986) considers this, because of difficulties experienced in the institution of lineages, based on kinship relations.

⁵⁸ See Wright's (Zaggarel 1986:425) comments on Zaggarel's study.

family” and the institution acts to “serve their kin” (Wright’s comments in Zagarell 1986:425).

In Nippur’s last twenty years before abandonment, the temple office group dominated the city-state’s private economy; the OB Nippurians’ membership was based less on kinship and more on institutional ties.⁵⁹ As local only to OB Nippur, the social role of the *nadiātu* declined as Nippur was abandoned between the thirty-first and thirty-second year of Samsuiluna’s reign (Stone 1982:69).⁶⁰

TIME-LIMITED INTEREST FRAMEWORK OF THE MAINTENANCE RIGHTS OF THE *NADIĀTU* OF NIPPUR

The law’s roots were vested in culture and history, serving the demands of society in solving social problems and making a society’s legal system and traditions irreplaceable by another (Merryman 2007:150). In addition, the unqualified superimposing of coined terms of one law unto another might result in awkward results of misinterpretation.

Therefore, when taking into account the context of the maintenance support-clause in OB Nippur, the intrinsic details of the benevolent act of receiving fruits and use of the property of another need to be analysed within a framework, in order to communicate a common understanding of the maintenance construction. In my

⁵⁹ In contrast, the temple office in Sippar was of minor importance and so the *nadiātu* institution becomes more important, enhancing the *nadiātu* in Sippar’s economic importance and activities. This gives the *nadiātu* of Sippar the opportunity to become private owners of real estate property or at least keep it in the hands of their family and become a benefactor to the property (Stone 1982:68-69).

⁶⁰ The abandonment of Nippur was due to factors such as the economic crisis during Samsuilina’s eleven reigning years and contributed to the later abandonment of Nippur and other southern cities (Stone 1982:52). Also, in southern Babylonia and especially in Nippur, flooding and excess irrigation occurred which “contaminated soil with salts brought up by capillary action”. In addition, the aggregated results of the changes of channels were another factor for abandonment (Ellickson & Thorland 1995:352). Stone (1977:285) opines that for political motives, Samsuilina changed the flow of the Euphrates to the river’s western branches and reduced the water supply to Nippur and Isin who were already experiencing a water shortage. See also discussion by Stone (1977:267-290; 1981:26-28) regarding the abandonment of Nippur and the roles the different kings play, especially Hammurabi and his son and successor, Samsuilina.

previous article, I discussed the freestanding usufruct in the maintenance clause in OB Sippar division agreements and outlined certain characteristics, which constituted it as an OB Sippar division support-clause (see van Wyk 2014).⁶¹ I propose a similar framework of the characteristics of the time-limited interests of the *nadiātu* from OB Nippur. The characteristics are as follows:

- (1) Beneficiaries involved. This entails an identification of the parties involved: the owner, the patrilineal lineage group, with the father and brothers who, as the representatives of the group, are the obligators; and the beneficiary in her capacity as a *nadītu*-priestess and member of the patrilineal lineage group.
- (2) Property involved entails immovable and/ or movable property in the form of a dowry, inheritance from family *nadītu* and family, as well as maintenance sustenance.
- (3) Period of the time-limited interest: for a lifetime.
- (4) Independent rights and powers of the parties: this entails the maintenance and obligations of support by the male family members, who are under an obligation to keep the property intact; what type of allowance and income the priestess received, and under what circumstances.
- (5) Consequences of unwise management. For instance, is there remuneration for loss of income or loss of capital or property, and under what circumstances?

Beneficiaries involved

In Old Babylonian Nippur, the *nadiātu* fulfil dual roles in a symbiotic relationship: as a familial member of a lineage group and as a priestess of a *nadītu* institution, as reflected in Figure 2 (*infra*).

⁶¹ I discuss in the mentioned article the usufruct of the Sippar *nadiātu*, from three Sippar texts: one text of a *kulmašītum* priestess, from Goetze (1957:15-16), and two different texts of *sal-me/nadītu* priestesses of Šamaš, from Schorr (1913:260-261; 256-257).

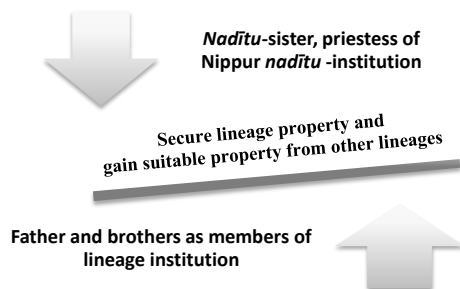


Figure 2 Symbiotic relationship between the lineage and priestess institutions of Nippur

The *nadiātu* act as officials of the temple and this also gives status to their family lineage group. For instance, FN 17 P 56 in PBS 8/2, a *nadītu* receives a considerable amount of a **gudu**₄-ship of Ninlil, the most prestigious temple office (Stone 1982:55). Not only does this text illustrate the “degree of freedom from economic constraint” enjoyed by *nadiātu*, but it also demonstrates the secular nature of temple offices (Stone 1982:55).

The *nadiātu* was a privileged social position to which only certain powerful lineage groups could gain access, deriving from a tradition of women in the family who are allowed into the institution. For instance, in ARN 29, the award of maintenance to a *nadītu* came originally from her *nadītu* aunt’s estate on her father’s side (Stone 1982:62).

The *nadiātu* have a contractual capacity similar to men, a privilege not granted to other women in Mesopotamian society. However, as Wright stated, the *nadītu* sister acted to the advantage of her lineage: to “serve her kin” (Wright’s comments in Zagarell 1986:425).

In addition, some Nippur texts show that the *nadiātu* had “close economic ties” with their families (Stone 1981:19). In the case ARN 101, a third party had to maintain the *nadītu* Lamasum, and after five months of failure to maintain her with a certain sum, her brother took the third party to court to ensure compliance (Stone

1982:60).⁶² In PBS 8/1, the brother of a *nadītu* tried to protect his sister's interests, although the meaning of the table is not clear (Stone 1982:60).

The close economic ties extended to her welfare. In ARN 29, the *nadītu* receives a donation from her father during his lifetime as a form of maintenance (Stone 1982:62). In another text, CBS 7112, PBS 8/2, allowances by the *nadītu*'s brothers were agreed upon. The text reads as follows:

(1) Idin-^dŠamaš, the eldest brother, (2) Ubar-^dŠamaš, his brother, (3) Sili-^dŠamaš, his brother, (4) and ^dNinurta-gamil, their brother, (5) the heirs of ^dEnlilrabi, (6) to Beltani, the devotee of ^dNinurta, (7) their sister, (8-10) they shall provide yearly with two **gur** and two **pi** of barley, eight **ka** of oil and eight **manas** of wool. (11) The heir who shall fail to provide the barley, oil and wool (12) shall forfeit his inheritance (13) (lit. will not be made an heir). (14) And until Beltani, their sister, (15) shall die (16) the heir who will dispose (17) of his field for money (18) shall forfeit the money and also the house, field and possession of (19) ^dEnlilrabi, his father. (20-22) In mutual agreement (23) they have sealed their documents.⁶³

⁶² (1) ^mTāb^{ab}-si-la-su (2) **dumu** ð-lí-i-ri-ba-am (3) ^mLa-ma-zum **lukur** ^dNinurta (4) **dumu-sal** ^dEnlil-ma-an-sum (5) u₄-mi ma-du-tim ú-un (?) - x-ma (6) ^{md}Šamaš-li-wi-ir **dumu** Mu-ra-x-x (7) a-ĥi La-ma-zum **lukur** ^dNinurta (8) il-li-kam-ma (9) a-na bi-it a-bi-šu (10) ki Tāb^{ab}-ši-lum ir-gu-um (11) a-na bi-ti zi-in-na-ti-šu (12) tu-ur-ri (13) a-da-nam a-na i-tu 5-kam (14) iš-ku-un x-x*x(?) (15) iš-tu itu sig₄-a u₄ [1-kam] (16) a-dī itu du₆-kù u₄ 30-kam (17) a-da-an-šu (18) ^{md}Šamas-li-wi-ir (19) ^mIn- bi-i-lí-šu **dumu**(?)-a-ni (20) ù In-bi-^dŠe-rum šeš-a-ni (21) ú-ul ub-ba-lam-ma (22) gi-im-ri ù zi-in -na-tim (23) Tāb^{ab}-ši-la i-pa-al. Translation in German as follows: *Den Tab-silašu, Sohn des Ili-iribam(?), hat Lamassum, die nadītu des Ninurta, Tochter des Enlil-mansum, (während) viele (r) Tage... Šamaš-liwir, Sohn des Mura . . . , Bruder der Lamassum, der nadītu des Ninurta, ist gekommen, und hinsichtlich des Hauses seines Vaters hat er eine Klage gegen äb-silum erhoben. Um dem Hause seine Verpflegung(?) innerhalb einer Frist von 5 Monaten zu erstatten, hat er versprochen . . . Wenn vom 1. Tage des Monats Simanu bis zum 30. Tage des Monats Tešritu, seiner Frist, er es dem šamaš-liwir und Inbi-ilišu, dessen Sohn, und Ibni-Šerum, dessen Bruder, nicht gebracht hat, dann wird Tāb-sila für die Auslagen(?) und Verpflegung(?) Schadenersatz leisten Zeugen, Datum (Si-manu 1).*

⁶³ (1) ^{mi}i-din-^dŠamaš **šeš-gal** (2) ^mu-bar-^dŠamaš **šeš-a-ni** (3) ^mŠi-lí-^dŠamaš **šeš-a-ni** (4) ù-nin-urta-ga-mil **šeš-a-ni-gè** (5) **ibila-meš** ^den-líl-ra-bi (6) ^mBe-el-ta-ni **geme+išib** ^dnin-urta (7) **sal+ku-ne-ne-ra** (8) mu-ám II (**gur**) II (**pi**) Be-gur (9) VIII ka íd-giš VII ma-na sig 10 in-na-

Thus, the Nippur *naditu*'s father acts as her benefactor, donating property to his daughter during his lifetime and on the father's death her brothers were, by agreement, obliged to provide her with lifelong income or allowance; while she in return served her kin, utilising the advantages of her privileges as a priestess to secure the lineage's property.

Property involved

From the text ARN 29, there seem to be three types of property involved (Stone 1982:58). In the ARN 29 text, the *naditu* Beltani first received from her father a list of goods in the form of a dowry: consisting of household goods, grain and a slave girl. The second property group was that of "substantial plot" of 18 **iku** field coming originally from her *naditu*'s aunt estate (Stone 1982:57). Another smaller plot was also awarded: a 3 **iku** plot provided by her father and her eldest brother. The third group of property consists of her maintenance support, which the *naditu* by agreement will receive during her lifetime. In a later agreement, CBS 7112, PBS 8/2, her maintenance was reduced and Beltani received for life from her brothers a monthly ration of rain, oil and an annual ration of wool (Stone 1982:58).⁶⁴ These written agreements were concluded by oath and in the presence of witnesses; Stone (1982:58) opines that the formalities show the implication of a "state legal system" which ensures "compliance".

Period of usufruct

The usufruct lasted for the duration of the lifetime of the *naditu* priestess and after her death; the lineage group were relieved from the restraints of the maintenance interests, gaining full ownership.⁶⁵ In text ARN 29, the *naditu* receives maintenance from her

ab-esig-gi-eš 11 **ibila** *še-ba iá-ba ti sig-ba* 12 *nu-un-in-na-ab-esig-gi-ne-e₅* 13 *nam-ibila-a-ni nu-ag-e* 14 *ti en-na* ^m*Be-el-ta-ni sal+ku-ne-ne* 15 *al-tíl-la-áš* 16 **ibila** *a-ša-ga-na* 17 *kù-šù ba-ab-si-mu-ne-gi*: 18 *kù-bi-ta ti ê a-sà nig-ga* 19 ^{md}*En-líl-ra-bi* 20 *ad-da-ni* 21 *ba-ra-ê-ne* 22 **še-ga-ne-ne-ta** 23 *kišib-ne-ne íb-ri-ês*. Under the heading "donation documents", considered from Nippur, under the number 116 from Museum no. CBS 7112, PBS 8/2 text no 116. Rim-^dSin's reign (Chiera 1922:123-124).

⁶⁴ Two **gur** and two **pi** of barley, eight **ka** of oil and eight **manas** of wool.

⁶⁵ Harris (1975:309) opines that the *nadiātu* of OB Sippar tended to live longer as a result of

father's estate for the duration of her life (Stone 1982:58). In LH 180 & 181, if a *nadītu* did not receive a dowry, when her father dies the priestess receives an inheritance with her brothers as a lifelong usufruct, which on her death reverts to her brothers.⁶⁶

Independent rights and powers of the parties

The *nadītu* in OB Nippur contract-transactions were most of the time shown as the sole owner of the property, so it seems that the *nadītu* institution's functions were to "bring members of different lineages together", without the removal of members from the "natal lineage" (Stone 1981:18-19). The contracts also show that the Nippur *nadiātu* have economic advantages and social relationships with the other *nadiātu* of the institution (Stone 1982:63).

However, her alienation rights were limited to permission from her father in LH 179, stating that if the *nadītu*'s father gives the land-dowry as a free disposition, the *nadītu* has the freedom to bequeath it to whomever she pleases, otherwise the land is her brothers' land and they must support her. Thus, the *nadītu* keeps a close connection with her family and the property of the *nadītu* gained were "at least partly" controlled by her brothers in their lineage (Stone 1981:18). The *nadītu* limitations are shown in ARN 120 where the brother had some control over his *nadiātu*-sister's property transactions. The brother complained to the court that his sister Naramtum sold a field he had given to her and which formed part of his father's inheritance

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 (Harris 1975:309).

⁶⁶ LH 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 1995:118). LH 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, emphasis added).

(Stone 1982:60; Harris 1968:119).⁶⁷

LH 178 states that if the father does not give his *nadītu* daughter the freedom for the alienation of the property, then the brothers must support her by managing her property and allotting the proceeds to her. This form of maintenance consists of food, oil and clothing allowances in accordance with the value of her inheritance share. Furthermore, the onus is on the brothers to ensure that she is satisfied with the allowances. In the instance of non-compliance, the *nadītu* is given the power and advantage to appoint an agricultural tenant who then can make better use of the land to provide her with maintenance from the proceeds of the fields and orchard.

Thus, the *nadītu* receives a lifelong right to maintenance, but her alienation rights are restricted and, notwithstanding the incapability of her brothers to manage the property and/or provide her with the sustenance, she cannot sell or alienate ownership outside the lineage group.

The brothers' obligation to look after their sister, regarding some identified asset, places an extra burden financially and personally on the lineage group: the brothers must maintain the property, and make it sufficiently profitable to comply with the agreement.

Consequences of unwise management

The obligators and owners of the property, the *nadītu*'s brothers, are obliged to look after their sister's maintenance needs.⁶⁸ In the previous section, LH 178 shows that with non-compliance the *nadītu* may appoint an agricultural tenant to attend to the land and fields and provide her with sustenance from the proceeds of the fields and

⁶⁷ This is an example of the tension between the *nadītu* and her brothers which Stone (1982:60) and Harris (1968:119) refer to.

⁶⁸ 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 support the priestess family member. The facts of the case are that the brother sustained his *nadītu* 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).

orchard. Text PBS 8/2 text 116 stated that the brothers would forfeit their inheritance if they withdrew their support.⁶⁹

In conclusion, the Nippur *nadītu*-institution retains the *nadītu* in her dual role as a member of the lineage and as a priestess. Through the institution, the *nadītu* serves her kin to secure the preservation of the family lineage property and to act as a link to obtain property from other lineages. It enhances the social position of the lineage, for her position as a priestess was a privilege and reserved for certain powerful lineage groups. In return, the family protects her interests and extends her welfare by donations and maintenance. Thus, the maintenance of the Nippur *nadītu* against the background of the Nippur social institutions' land ownership shows a unique character. The patrilineal lineage is the ultimate owner, with the father and then his sons, as the representative owners of the *nadītu* property, which is subject to the maintenance.

SUMMARY

Today, in the translations of the ANE law texts consisting of a time-limited interest, we used the borrowed terms of present-day law systems – the usufruct of the civil law legal system and its equivalent, the life-right of the common law system. However, there is a possible misinterpretation of the meaning of the borrowed terms – diverged in time and space – which can affect the translation of, and insight into, ancient texts. I propose a “communication” towards the understanding of a “unitary concept” (Seipp 1994:31) of ANE legal constructions in their time and place by focusing on the maintenance – a time-limited interest – of the *nadītu* priestess in the Old Babylonian city-state of Nippur.

The general differences and similarities between the present-day systems – the

⁶⁹ However the text held a “mysterious clause” stating “that any heir who sells his (or her?) field before Beltani’s death would lose all rights to their father’s property”. Stone interprets that either the fields were possibly “collaterally held” to secure compliance to Beltani’s maintenance or as “an alternative and more plausible interpretation” and “considerable significance” in the “understanding of the property rights of the *nadiātu*” the brothers were “prohibited” to alienate Beltani’s “field property during her lifetime” (Stone 1982:59).

common and civil law – as well as the OB Nippur law concerning time-limited rights are summarised in Figure 3 below.

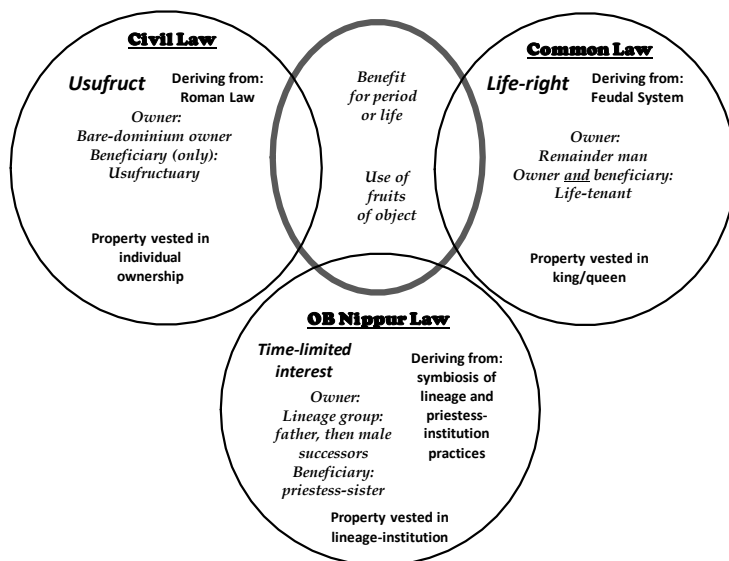


Figure 3 Summary of the differences and similarities of theoretical aspects of the time-limited interest

The similarities between the time-limited interests of our law systems – the common and civil law – are: method of creation, the life-tenant or usufructuary's rights on the use and fruits and their obligations to return the object intact, as well as the rights of the owner or the remainder man to the property (McClellan 1963:651; Verbeke, Verdickt & Maasland 2012:38, McClellan 1963:658; de Waal & Schoeman-Malan 2008:166).

The commonalities between our law systems and that of the OB Nippur's limited interests are that the benefit for the beneficiary is for a period of time or a lifetime and that such beneficiary has the right to use, and sometimes possess the object and receive the fruits or income from the object which is subject to the time-limited interest.

The differences in all the three law systems lie in the theoretical bases of the time-limited interests.

In the present-day common law system, real ownership applies only to the crown: “based on a system of estates or tenures” (Verbeke, Verdickt & Maasland 2012:38). Two or more people, at the same time, can be owners (McClellan 1963:649). The common law’s time-limited interest is the life-right, which consists of a person called the life-tenant who owns the land for life and the remainder man who also has separate ownership (McClellan 1963:650; Verbeke, Verdickt & Maasland 2012:38).

However, in the civil law system, ownership entails absolute ownership: the owner owns the land and any other right of another limits and burdens the property (McClellan 1963:650, Rheinstein 1936:632). The usufruct term distinguished between the bare-dominium owner or nude owner and usufructuary. The bare-dominium owner is the ultimate owner of the property, whose rights are limited by the usufruct (Verbeke, Verdickt & Maasland 2012:38; Meyerowitz 1976:24.20). The usufructuary refers to the person – as only a beneficiary and not an owner – 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).

While the usufruct is created over movable and/or immovable property, the common law’s life-right is only concerned with the estate (land property) (McClellan 1963:652).

The OB law is different in many aspects from the present-day law systems. In a general survey of Mesopotamian landownership, I show that Mesopotamia’s harsh environment and the Mesopotamians’ growing need for survival created different social and political groupings in the area (Stone 1987:13). Mesopotamia was a “hydraulic society” (Ellickson & Thorland 1995:329) and became the “breadbasket of the East” (Stone 1987:13). However, the water supply was uncertain due to flooding and drought, as well as the ongoing danger of salinization (Stone 1987:14). There were also the threats of invasion of “rival walled city-states (Ellickson & Thorland 1995:330). The influences of social, economic conditions and ecological factors “interdependent and interacting” with one another (Renger 1995:269) result in different forms of ownership in managing property and the challenges for survival (Renger 1995:269-270). The institutions and individuals in society acting as

“enterprise sizes” have two functions: to decrease (1) the “sum of transaction costs”, as well as reducing (2) “deadweight losses arising out of coordination failures”. The “deadweight losses” can develop because of risks that have been “spread to individuals” (Ellickson & Thorland 1995:350).

I then outlined Stone’s (1982:52) theory that in OB Nippur there were three social institutions, all having the advantage of “risk-sharing attributes” (Stone 1982:55). The first group – the patrilineal lineages – were the “most traditional and earliest social groups”, with membership based on kinship relationships (Stone 1982:52). The lineage members owned the land and temple offices and exchange of ownership took place within the lineages (Stone 1982:54). The lineage groups acted as “self-contained economic units”, while the temple office-group “conferred a leadership role” (Stone 1982:54).

The second group – the temple office group – is the “most innovative”, with its membership based upon “institutional ties”. The temple office group acts as an “open-ended group” (Stone 1982:54). Ownership consisted of shares (Stone 1982:54) and the temple-group was involved in agricultural production. It was a “loose-knit organisation” and held more “economic freewheeling” than the patrilineal lineages (Stone 1982:55). Therefore, some tension between these institutions occurred as economic transactions shifted to other members of the temple group, rather than keeping the exchange of land within the lineage group (Stone 1981:18).

However, the third group, the *nadītu* institution, consisted of women dedicated to a god, who were usually unmarried and not allowed to have children, and who lived in a kind of cloister (CAD N, Part 1 in Reiner 1980:63). The *nadītu* membership was based on “kinship and institutional relationships” (Stone 1982:52) and had a combination of “elements” of the lineages, temple group and the priestess *nadītu* institutions of Sippar (Stone 1982:55). The *nadītu* served to the advantage of the whole society, forming an “intrinsic part” of the lineage system as well as the temple office and “forged inter-lineage ties” (Stone 1981:18).

Most of the maintenance-clauses of the *nadītu* refer to the *akālu* term as a “usufruct” and predominantly the designated ANE term is a benevolent act of

receiving allowance or income from another person's property. CAD A, Part 1 translates *akālu* as to eat; consume; provide for oneself; to enjoy (something or the use of something); to have the usufruct (of a field, etc.). Another term, *ilku* or *alku* – although sometimes translating as a usufruct – refers rather in the CAD I as “work done on land held from a higher authority or services performed for a higher authority in return for land held” (Oppenheim 1960:73). *Našû* in CAD N, Part 1 96 is given as “to provide for; payments or deliveries”. I show that the terms related to ANE time-limited interests reflect the complexity of the construction and the importance of all the parties having to come to an agreement, and in context indicate a variety of obligations.

Although the ANE scholars translated the main ANE terms *akālu* and *ilku* or *alku* interchangeably as a usufruct, I propose the notion that “You can't talk about something if you haven't got a word for it” because of the “mental abstractions” we have regarding a concept (Seipp 1994:31). This does not necessarily mean the assignment of a “unitary label” for every concept. Rather, in my attempt to communicate a unitary concept, I present a framework of the characteristics for the time-limited interests of the *nadiātu* from OB Nippur against the background of the dynamics of the social institutions' land ownership of OB Nippur. The characteristics are as follows: (1) Beneficiaries involved; (2) Property involved entails immovable and/ or movable property; (3) Period of the time-limited interest: for a lifetime; (4) Independent rights and powers of the parties; (5) Consequences of unwise management.

With regard to the beneficiaries involved: the *nadiātu* held a symbiotic relationship as a daughter with her lineage group and as a priestess to the *nadītu* institution. The *nadītu* acts as an official of the temple (see PBS 8/2 in Stone 1982:55). In addition, the *nadiātu* have the contractual capacity similar to men to “serve her kin” (Wright's comments in Zagarell 1986:425). They retain “close economies ties” with their families, especially their brothers (Stone 1981:19), which is extended also to their welfare. In ARN 29 the *naditu*'s father acts as her benefactor, donating property to his daughter during his lifetime and on her father's death the brothers were, by

agreement, obliged to provide her with lifelong income or allowance (See text CBS 7112, PBS 8/2).

Property involved: three types of property were involved in the maintenance of the OB Nippur *nadītu* (Stone 1982:58). In ARN 29, the *nadītu* Beltani received a dowry from her father in the form of household goods. The second property group consisted of immovable property, which was a plot of 18 **iku** field coming originally from her *nadītu* aunt's estate (Stone 1982:57). Another lesser plot was awarded: a 3 **iku** plot provided by her father and her eldest brother. Then the third group of property is her maintenance support by her brothers during her lifetime.

Period: The *nadītu* received by agreement lifetime support from her family (Stone 1982:58).

Independent rights and powers of the parties: the *nadītu*'s alienation rights were limited to the permission from her father, as stated in LH 179 (Stone 1981:18). In LH 178, the brothers must support her by managing her property and by allotting the proceeds to her as her maintenance. The onus is on the brothers to ensure that their sister is satisfied with the sustenance. If not, she can appoint someone else to manage her property and provide her with the income. Thus, the brothers have the obligation to look after their sister, regarding some identified asset and, although the *nadītu* received it as a type of dowry from her father during his lifetime, the dowry is the property of the lineage group and the brothers use this property to maintain her. This places an extra burden financially and personally on the lineage group.

Consequences of unwise management: LH 178 shows that with non-compliance the *nadītu* may appoint an agricultural tenant to attend to the land and fields and provide her sustenance from the proceeds of the fields and orchard. Text PBS 8/2 text 116 stated that the brothers would forfeit their inheritance if they withdrew their support.

The *nadiātu* of Nippur have a combination of “elements” of the lineages, temple group and the priestess *nadītu* institution of Sippar (Stone 1982:55).⁷⁰ It was an

⁷⁰ There are five texts of the available Nippur contracts that give some information of the *nadiātu* of Nippur. However, it is still unclear whether this can be considered as “representative of the city as a whole” The relevant texts are ARN 29; PBS 8/1, text 1; PBS

“intrinsic part” of the lineage system as well as the temple office. Also the *nadītu* institution assisted in keeping family property in the lineage group and “controlling property” with the transfer of property from the lineage to another: obtaining property from other lineages rather than from its “minor branch” (Stone 1981:24).

In conclusion, the time-limited interest of the OB Nippur *nadītu* institution shows differences in the theoretical bases with present day time-limited interest. As shown in Figure 3 *supra*, the maintenance of the *nadītu* of Nippur on the side of the city-state’s social institutions’ land ownership shows a unique character. The *nadītu* acts in her dual role as member of the lineage group and as priestess of the *nadītu*-institution. However, she is only a beneficiary to her maintenance property. The patrilineal lineage is the ultimate owner, with the father and then his sons, as the representative owners of the *nadītu*’s maintenance property. The *nadītu* maintenance construction thus derives from the symbiotic relationship between the lineage and the priestess institution practices. Although the *nadītu* institution, lineage and temple-offices vanished with the abandonment of Nippur, a few texts survived, which are available to us, to show the once unique solution by the OB Nippurians in utilising the maintenance construction – a time-limited right – as part of the social institutions’ built-in, risk-sharing attributes.

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