

Revisiting the Division of Ownership in the Book of Joshua and Old Babylonia

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Abstract

At first glance, the division and allocation of ownership portrayed in the book of Joshua and the legal corpora of Old Babylonia seem to be a general division with shared features. A class of co-owners agree to, or the original owner consents to, the division and allocation of shared property and may apply two of an array of elective practices, i.e., lot-casting and firstborn share. My focus shifts away from such a general classification. I will show that at least two types of divisions—the *tribal division from Yahweh in the book of Joshua*, and the *family division from the estate of a deceased owner in Old Babylonia*—do not exhibit a shared standardised pattern. Each division has its own requisites, a distinct *raison d'être*, and even the elective lot-casting and firstborn share practices hold different functions in the two types of divisions.

Keywords: Book of Joshua; undivided inheritance; Old Babylonia; division; lot-casting; firstborn-share

Introduction¹

During co-ownership, co-owners are obliged to maintain the shared property to the advantage of all the parties concerned. The action of one co-owner may have financial or social consequences for all co-owners. Irreconcilable differences in management could cause an irretrievable breakdown in the co-owners' relationships with one another. Even if an administrator is appointed to manage the administration and control

1 This article is an extensively revised and updated version of a draft delivered at the International Meeting of the Society of Biblical Literature on 7 July 2013, held at St Andrew's University, Scotland. I use the following abbreviations in the article: ANE (Ancient Near East); family division (family division from a deceased estate in Old Babylonia); OB (Old Babylonia/n); OT (Old Testament); tribal division (tribal division from Yahweh, in the book of Joshua).

of the shared property, corruption cannot be excluded. One solution is the discontinuation of co-ownership in the division and allocation of shared assets by mutual agreement between the co-owners or special power granted by the original owner (Westbrook 1991, 141).²

The division and allocation of shared assets³ in the Old Testament (OT) and legal corpora Old Babylonia (OB), are coined under different names,⁴ and emerge in their variety as either a recording of an oral division by a scribe, or as an occurrence in a text,⁵ or as an explanation of a division once taken place (Van Wyk 2013a, 154–159; 2013b, 413–414). The different types of divisions embodied common and irregular practices, including the elective practices, named the “lot-casting” and “firstborn share” (Van Wyk 2013b, 413–440).

In each of the contributions by Kitz (2000a) and Westbrook (1991), the theme of the “features” of the “undivided inheritance” or divisions in the book of Joshua⁶ and OB is

2 This brought about “flexibility in the contractual arrangements” (Westbrook 1991, 118–141).

3 Contemporary jurists would immediately recognise the Roman institution of a division of co-ownership in its earliest stages in Roman law. Gaius, a Roman jurist in the second century C.E., describes the legal institution *ercto non cito* as a type of partnership for Roman citizens, constituting “undivided ownership” (Westbrook 1991, 118–119). The partnership could be ended by a legal action called the *actio familia eriscundae* which derived from the Twelve Tables, known traditionally by legal scholars as the earliest Roman law code from the fifth century B.C.E. Westbrook (1991, 118–141) refers to Daube (1950, 71–92) and Koschaker (1933, 37–42, 46–51, 68–80), who show in their studies deriving from the Bible and cuneiform documents, that the division of co-ownership is a much older institution.

4 The division of co-ownership is also used all over the world, irrespective of time, place, as well as law tradition, custom, and system. Cognisance must be given to the different names which are assigned to it. For example, in Mesopotamian sources, the names are: partition agreement, partition, allotment, redistribution, division, inheritance division, and family division agreement (cf. Claassens 2012/1, 1–2; Van Wyk 2013a, 150–151). In the previous century, in contemporary South African law, jurists coined it a “family agreement” but now name it a “redistribution agreement” (Claassens 2012/1, 1–2).

5 I have opted to use the term “text” rather than “recording” to prevent confusion with regards to the coined “texts” of the OT books. However, the term “recording” is more correct regarding the OB legal corpora. It is in support of my hypothesis that the OB practices—as part of the unwritten law of OB society—were flexible by nature and to a degree amorphous in adapting to the needs, obligations, and circumstances of the family members (cf. Van Wyk 2018a, in press). The recording is an abridged version of an agreement through a process of transactions via verbal and non-verbal transmissions/communications (Renteln and Dundes 1997, 2). Renteln and Dundes (1997, 2) make a differentiation between the so-called “written” law societies that are accustomed to think in terms of a “text in fixed, unchanging form” in contrast to the “oral”/ “folk”/“unwritten” law (*lex non scripta*) societies for whom a recording is not the final and binding transmission. Cf. Renteln and Dundes (1997, 2–4).

6 The book of Joshua is the sixth book of the Hebrew Bible and Christian OT, consisting of twenty-four chapters, and it tells of the emergence of Israel from the exodus out of slavery in Egypt. It starts with the transfer of leadership to Joshua in Chapter 1, and the entrance into and victory over Canaan in Chapters 2–12. In Chapters 13–21, the division of the land among the tribes is outlined. The conclusion

that of a generalised discussion, centred around elective practices of lot-casting, the oldest son's administration of the shared property, and the receipt of a greater share in the paternal inheritance. The "features", in summary, are:

The Establishment of Shared Ownership

In OB and OT, the father's house is a "unit" and the father the "sole owner of the household assets". The sons inherit the estate for the continuation of family patronage in a patronage household. Additionally, in the book of Joshua, all the tribes collectively form part of the covenant community (Westbrook 1991, 23; Kitz 2000a, 618).

Appointment of an Administrator to Manage Shared Property

In Josh 18:8b–10, it is Joshua who acts as an administrator over the land of Israel and casts the lots (Kitz 2000a, 618). In OB divisions, the beneficiaries (co-owners) could appoint an administrator—usually the oldest brother—in managing the shared inheritance (Kitz 2000a, 607 fn. 23, 618; Westbrook 1991, 140–141). In some OB divisions, and in one occurrence from the book of Joshua, the oldest brother receives a greater share of the paternal inheritance (Westbrook 1991, 14).

Discontinuation Process of the Shared Ownership

Kitz (2000a:615) argues that between both sources there is a "basic structural parallel" in a "sequence" present. In the OB divisions, the parallel starts with the recorded description of the shared inheritance, after which the beneficiaries reach a consensus regarding all the terms and agree not to raise claims against each other (Kitz 2000a, 616). The paternal house and "co-heirship" are terminated (Kitz 2000a, 617). In Josh 18:8, an inventory or formal record is compiled. Then, in Josh 21:43, each beneficiary, as a "legally independent tribal/family unit", takes possession of the recorded portion of the land of Israel, awarded in sequential order (Kitz 2000a, 617–618).

Lot-casting is a final parallel in the sequence that serves as a method of dividing the shared land (Kitz 2000a, 618;⁷ Westbrook 1991, 23). Kitz (2000a, 618) concludes that the "writers/editors" of the book of Joshua were "familiar" with the OB "inheritance practices" or "have the same customs" as the Old Babylonians.

Notwithstanding the general features present in both divisions, I will show by means of my applied analysis method, referred to as such, that there are at least two types of divisions, each with its own distinct *raison d'être*: the tribal division from Yahweh in

in Chapters 23 and 24 consists of Joshua's farewell. The book consists of two parts: first, the storytelling of the campaigns of Israel and the destruction of its enemies, and, secondly, the division of the conquered land among the twelve tribes (cf. Mitchell 1993, 13; Hawk 2000, xi).

7 Cf. Kitz's (2000a, 602) special references to the mechanism of lot-casting which featured in Josh 18:6 and 18:9–10.

the book of Joshua (referred to as the tribal division), and the family division from a deceased estate in OB (referred to as the family division). In each division a certain class of co-owners, or the original owner, consent to the division and allocation of a certain type of shared property. In this way my focus turns away from a general classification of a division.

First, I give an introductory outline of my applied analysis method and explain its terms. Thereafter, regarding the tribal and family division, I present the requisites that qualify each division as such, as well as the two elective practices—lot-casting and firstborn share—that differ in their function in each type of division.

Analysis Method

In my unpublished doctoral dissertation (Claassens 2012/1, 107–150), I developed an analysis method⁸ as an aid in my study of forty-six OB family divisions. The method was developed to simplify the study of a division and assist in the identification and analysis of its components (Claassens 2012/1, 107). It also served the function of differentiating one type of division from another, by identifying which elements exists only in a certain type.

The concept of a house is used as an illustrative example to explain the method (Claassens 2012/1, 101–109). For a structure to qualify as a house, it needs basic structures, defined as “requisites”. When the basic structures, or requisites, are all present, it represents a house, or a division.

There are different types of houses, or types of divisions,⁹ identified by its unique building type, or unique requisites, such as a condo/townhouse, or a family/tribal division.

8 The length of this article does not permit a thorough discussion of the analysis method. This section of the article is only informative regarding the approach to the study of the two divisions. See the discussion of the analysis method in Van Wyk (2013a; 2013b, 423–440) and Claassens-van Wyk (2013). The two contributions are based on my unpublished doctoral thesis (Claassens 2012/1, 107–150; 2012/2, 224–231) wherein I made a “content analysis” of the division texts from OB Nippur, Larsa, and Sippar and then compared the texts typologically. In the application of the method to the study of family divisions, I have made a distinction between the requirements (“essential elements”) to comply as an inheritance division, the “natural elements”, which are the practices, and the “incidental elements” which constituted the written formalities of the scribal school traditions and qualities of the written agreement (Claassens 2012/1, 107–150; 2012/2, 224–231).

9 Cf. Claassens (2012/1; 2012/2) and Van Wyk (2013a, 154–159) regarding the OB divisions, such as the dissolutions of partnerships, living estate owners’ estates, *quasi* divisions (adoptions) and family divisions from a deceased estate. These different divisions have at least one characteristic in common: namely, the dissolution of co-ownership. Still, each type of division has its “own unique specific purposes and consequences” as well as “different constructions and solutions” (Van Wyk 2013a, 148).

Within its type, not every house, nor, in this instance, every division, is the same. The structures of a certain type of house (condo/townhouse) or certain type of division (family/tribal) may differ in accordance with the practices and preferences the contractual parties agreed on.¹⁰ For instance, a certain type of house can have a patio, or a double storey attached to it. A certain type of division may include a firstborn share, lot-casting, or other practices.

Then, in the recording of an oral agreement by a scribe, the agreement is “decorated” by the idiosyncratic style of the scribe in accordance with the scribal school practices, in the same way as the interior and exterior of a house might be: e.g., the choices regarding the type of windows and colour of the paint.¹¹

The requisites and practices are present, at least, in the oral division and the written formalities and qualities in the division’s recording (Van Wyk 2013b, 432–439).

The aim of this article is to identify the two types of divisions as a certain type of division within a framework of “requisites”. The scope and purpose are limited to the discussion of two elective practices. The study of the “written formalities and scribal traditions” is an extensive and independent one and for the purposes of this article is excluded from the discussion.¹² Following is an outline of the requisites and two of the elective practices in the two different divisions: the tribal and family division.

10 Cf. Claassens’ (2012/1, 127–131; 175–202) discussion of the division’s array of elective practices from OB Sippar, Nippur, and Larsa. Cf. Van Wyk’s (2014a, 195–236; 2013c, 302–342) discussion of one of the practices, the maintenance provision for a priestess in family divisions.

11 Thus, in my study of the family division, the scribe, in accordance with the particular scribal tradition in a given city (and possibly time), would use different techniques and styles (“decorations” of a “house”) to capture the oral agreement on a clay tablet. Here, the idiosyncratic style of the scribe and scribal traditions in time and place of the division’s recording are reflected (Van Wyk 2013b, 432–439; 2014b, 443–483; 2014a, 195–236).

12 A wide range of possible methodologies can be employed in the study of the written formalities and scribal traditions of the divisions in the legal corpora of OB and/or the book of Joshua. For instance, a comparison study can be conducted between the two types of divisions regarding the techniques and styles, such as the idiosyncratic style of the scribe and the different scribal school traditions. Otherwise a specific study may be conducted investigating how the conclusions reached in this article affected the composition and intention of Josh 13–21.

Israelite Tribal Division from Yahweh, in the Book of Joshua¹³ (Tribal Division)

Requisites of the Tribal Division

The tribal division has its own requisites: (E1) tribes involved, (E2) Yahweh as the estate owner, (E3) the land of Israel as the shared property, (E4) qualified consent, and (E5) the *raison d'être* for the dissolution and allocation of the shared property.

Tribes Involved (E1)

The promise of the land to the fathers (tribes) of Israel is in terms of a royal grant found throughout the ANE (Knoppers 1996, 670–697; Westbrook 1991, 23). The grant of the land plays an important part in understanding the divisions in the book of Joshua (Westbrook 1991, 23). It begins with freedom from oppression, and then they receive, permanently, a holy inheritance from Yahweh. Yahweh gives the grant of the land to his servants: Abraham, Isaac, who succeeds him, and then to Jacob/Israel. The inhabitants and receivers of the grant may live in the land of their god, Yahweh—as his servants (Weinfeld 1995, 231–247). Each member is part of the “covenant community” (Weinfeld 1995, 231–247; Baker 2007, 213).¹⁴

Estate Owner: Yahweh (E2)

Another requisite in the tribal division is the presence of Yahweh as the ultimate, supreme, and only estate owner.¹⁵ The land will stay in the possession of Yahweh, notwithstanding the division (Hawk 2000, 177; Weinfeld 1995, 231–247).¹⁶ It is Yahweh who decides to divide his land as a conditional inheritance, as stated in Josh

13 The length and scope of this article does not permit the inclusion of the *magnus corpus* commentaries by OT scholars. I discuss only the bare essential aspects of the book of Joshua in so far as it is applicable to the scope of this article. I propose that a detailed study of the commentaries based on the analysis method may reveal tantalising results regarding the finer details of this type of division.

14 Cf. Weinfeld (1970, 184–203).

15 Soss (1973, 339) refers to the philosophy of the Pentateuch theocracy which states that everything “attributes” to the god Yahweh as the creator and ultimate owner. It is only a “legal construct” that the deity “transfers” ownership to Abraham, however subject to his control, and accomplished by a grant which was sealed with an oath, as set out in Gen 24:7. The grant is “maintained through a re-statement of the promise to Isaac in Gen 26:3 and Jacob/Israel in Gen 35:12, 48:4” (Soss 1973, 339).

16 Weinfeld (1995, 236) makes a comparison between the Greeks and the tribes of Israel in the book of Joshua, especially regarding Chapter 18. Weinfeld (1995, 236) refers to the ancient Greek historian Herodotus mentioning the freeing of the people of Cyrene from political oppression, connected in the way that their land now belonged to the gods, which they now cannot personally transfer. However, the city was divided into twelve portions by the legislator, by whom the lots were assigned to the twelve gods. Cf. Weinfeld (1993, 22–25, 35) and Koopmans (1990, 441). The tribes of Israel are liberated from “enslavement” held by the human king and in return the tribes accept “the yoke of the god-king” (Weinfeld 1995, 232).

13:7. In addition, Yahweh's ultimate command and control is present in the casting of the lots (Hawk 2000, 177).

The Land of Israel: Communally Shared Property (E3)

The division of the tribal territories is explained by different types of narration—some with stories of individuals such as Caleb in Josh 14:6–15, Achsah in Josh 15:13–19, the daughters of Zelophehad in Josh 17:3–6 and 19:49–50, as well as the apportionment of land described by the tribes in the rest of the book of Joshua (Hawk 2000, 177–178).¹⁷

Notwithstanding the differences in the description of the property, the continuous theme is that the land of the Israelite tribes is the land promised by Yahweh. This land is acquired by the tribes, to be allotted by the command, guidance, and will of Yahweh after it is conquered, and the conquered people removed from the land (Hawk 2000, 203; 1991, 21–55).

Qualified Consent (E4)

The tribes involve themselves willingly to accept the lot-casting procedure (Soss 1973, 325). It is Yahweh who gives his ultimate permission and consent for the division of the land among the tribes by means of his overall divine intervention and guidance (Soss 1973, 343–344).

Raison d'être (E5)

Soss (1973) takes an in-depth look at the nature of the economic society through the legal system of the Pentateuch. Soss (1973, 324) contends that the division of the land has the function of protecting the individual through an “income maintenance programme” whereby the “disposable income” is distributed for the sake of equality (Soss 1973, 343).

Weinfeld (1993, 184) contends that, although the “divine promise of land to an ethnic group or tribe” is a common theme which can be found among many people, such as in the Greek world, there are unique qualities in Israel's relationship to its promised land. In the book of Joshua, the promised land reflects the inhabitants' “religious and ethical behaviour”. A safe dwelling in the promised land is ensured by its inhabitants adhering to the will and commandments of Yahweh, otherwise the consequences will be dire (Weinfeld 1993, 184; Hawk 1991, 56–93).¹⁸

17 Cf. Hawk (1991).

18 Cf. Weinfeld (1970, 184–203).

Different Practices

Lot-casting (NI)

Lot-casting features as an “everyday custom” in the ANE. Proverbs 18:18 states, “The lot puts an end to disputes and separates powerful men from each other” (Lindblom 1962, 168).¹⁹ Kitz (2000a, 602) mentions the views of various biblical scholars regarding the lot-casting function, such as Boling and Wirth who refer to lot-casting as serving as “sacred dice”, revealing the “divine will”; Dommershausen consider it a “sacred act” and Rast as “Yahweh’s right to bestow the land as a gift”.

Van Dam (1997, 261) refers to two occasions where lots are used in the Bible.²⁰ The first instance is the division of the promised land in the Gilgal (Josh 14:6) and then in Shiloh (Josh 18:8–10). Here the distribution of the land of the tribes of Eleazar and Joshua are carried out by lot in Josh 14:1–2 and *passim* in chapters 18, 19, and 21. This is a “matter of national importance” and in Numbers 26:55, 33:54, 36:2, 3 Yahweh has already given instructions that the land is to be divided, which is again confirmed by his command in Josh 14:2 (Van Dam 1997, 261).

Lot-casting (*nḥlh/naphal*)²¹ is used in Joshua 18–19 as a “census mechanism of dividing the land”. This method/practice manages conflicts and thus determines the proper allocation and distribution of the land among the Israelite tribes (Soss 1973, 325). The process started when seven tribes did not receive their apportionment and Joshua commissioned certain men to give a report of the identified, suitable territories, including determining their boundaries. Then, by way of lot-casting, Joshua gives to each tribe an apportionment share. The first lot cast is given to Benjamin, then to Simeon, the third to Zebulum, etcetera (Lindblom 1962, 168; Soss 1973, 325).

19 The extent of this article does not allow a study of the nature of the devices used in lot-casting. However, in this regard, see the following discussions: Hallo (1983, 22) refers to the assigning of lots from Palestinian excavations in the early second millennium B.C.E; cf. Lindblom (1952, 164–178) regarding lot-casting in the OT and its practices; and Seebrass (2006, 92–104) regarding the division practices in Num and Josh of the OT, as well as the discussions by Greenberg (1999) regarding the OT divisions.

20 Cf. Van Dam (1997) regarding lot-casting and the so-called Urim and Thummim (UT). By name, the UT appears in Ex 28:30, Lev 28:30, Num 27:21, Deut 33:8, 1 Sam 28:6, Ezra 2:63 (Van Dam 1997, 4). Yahweh was actively involved in the “approving” and “demanding” of the UT. However, there were occasions when the use of the UT was not necessary and only by lot-casting could Yahweh’s will be shown. Cf. discussions by Hurowitz and Hurowitz (1992, 95–115) regarding the UT in light of a psephomancy ritual from Assur.

21 However, Greenberg (1999) investigates the terms *naphal* and *hippil* and critically examines its English translations of “dispose of lot, or assign, apportion, or by lot”, or “casting of lots”. Greenberg (1999, 251) contends that the expression which assigned (the land) by lot does not exist. There was no reference to the division by lots, and only to the “allocation and appropriation of a tract of (undivided) territory” (Greenberg 1999, 252).

Lindblom (1962, 168) opines that this order “is not traditional” or “geographical” and is only determined by the casting of lots.²²

Firstborn Share (N2)

In the description of the Manasseh division in Josh 17:1–13, the firstborn is mentioned. Manasseh is the firstborn of Ephraim, and Gilead the firstborn of Machir. Gilead is used to introduce the “rest of the tribe” with a list of names. Gender is the issue, revealing the patriarchal kinship network of Israel’s basic social construction (Hawk 2000, 205). However, in the story of Zelophehad’s daughters, outlined in Josh 17:3–6, Zelophehad died without sons. His daughters approached Moses, who allowed them, according to verses 5–7, to become heirs of their father’s estate and they are included in Israel’s patriarchal social system (Hawk 2000, 208–209; Hiers 2009, 47–48).²³

Family Division in the Estate of the Deceased Family Owner (Family Division)

The family division starts with the death of the original estate owner. The beneficiaries (co-heirs) inherit and become co-owners of the shared inheritance. At a certain stage, which may occur days, months, even years later, the co-owners decide that all or some of the shared inheritance should be divided into certain portions. Each co-owner, who now becomes a contractual party, negotiates the division of the shared inheritance and becomes the sole owner of specific portions (Claassens 2012/1, 83–84).²⁴

22 There are a few comparative studies of the practice of lot-casting, for it is generally regarded by ANE scholars as an ANE practice. For instance, Taggar-Cohen (2002) made a comparative study of lot-casting among the Hittites with other ANE sources and detected this practice among “the division of land, the election of officials, the working order of priests and choosing a sacrificial animal”, as well as a mechanism used among the gods to reach a decision. For Taggar-Cohen (2002, 97), the intention and reason for lot-casting was to “reveal some inherent, hidden truth, perhaps even a cosmic one”. Cf. Kitz (2000b, 207–214) regarding the Hebrew terminology of lot-casting and its ANE context. Crone and Silverstein (2010, 423–450) did a comparative study between the ANE and Islam lot-casting. Cf. discussion by Beardslea (1960, 245–252) regarding the casting of lots at Qumran and in the Book of Acts; also Lyon’s (1896) comparative study in the ANE regarding the “division of the Kingdom”. Cf. also Levy (1956, 42–46) regarding property distribution by lot in present-day Greece.

23 Hiers (2009, 47, 48) refers to the assumption of firstborn share as the “elusive birthright tradition” in the OT sources and argues that such assumption derives from Deut 21:15–17 which only mentions a “birthright.” Jacob gives to his son Joseph a double share, but this is not by means of a birthright. The idea of the firstborn son is nowhere directly indicated, as regards a double or larger share. There is only the assumption that Jacob purchased “a double share” (Hiers 2009, fn 96, 49). However, when reading Gen 25:29–34, there is no direct reference to a double share (Hiers 2009, 49).

24 Cf. Van Wyk (2013a, 146–147) discusses the OB family division in the estate of a deceased owner as part of a vast OB legal corpus. Although a seemingly simple, straightforward agreement between family members, it is still a complex legal notion with intricate practical and theoretical mechanisms, involving evolutionary stages in the inheritance division (Van Wyk 2013a, 146–147).

Requisites of the Family Division

The requisites qualifying this type of division as a family division are the following: (E1) family members involved, (E2) estate owner, (E3) estate assets, (E4) mutual consent, and (E5) the *raison d'être* for the dissolution and allocation of the shared inheritance (Claassens 2012/1, 124; Van Wyk 2013b, 424–425).

Family Members Involved (E1)

The appointed beneficiaries (co-heirs) of the deceased estate owner's assets have a familial connection with one another (Claassens 2012/1, 124–125; Van Wyk 2013b, 424–425). Generally, the beneficiaries are brothers.²⁵ Under certain circumstances a sister, or sisters, who is usually a priestess,²⁶ can also be involved as a beneficiary—either directly but usually indirectly. For instance, in OB Sippar the sister is a co-beneficiary or dependent (Van Wyk 2014a, 195–236). In OB Nippur the sister is usually a dependent and her brothers, as the beneficiaries, notate her maintenance reward in a separate agreement, after the conclusion of the division (Van Wyk 2014b, 467–80). In some OB texts, especially in Nippur, the nephews and uncles are also beneficiaries (Claassens 2012/1, 125).²⁷

25 Brothers as the only contractual parties are mentioned as follows: cf. 6 OB Larsa texts from Charpin (1980, 204–205; 212; 215–216; 231–232) and Leemans (1954, 34–38). Cf. 6 OB Nippur texts: O'Callaghan (1954, 137); Hilprecht (1909, 20–21; 23); Stone and Owen (1991, 56–59; 65–67; 87–89). Cf. 12 OB Sippar texts from Dekiere (1994, 103–104; 163; 195); Schorr (1913, 197; 249–250; 255–256; 271–273); Dekiere (1995, 115–117; 148–149) and Pinches (1888, 59–61).

26 Sisters who are one or more of the contractual parties are found as follows: cf. 3 OB Larsa texts: Charpin (1980, 212–213; 240–241, 64; 252–253). Cf. 11 OB Sippar texts from Dekiere (1994, 108–110; 164–167; 173–175); Goetze (1957, 150–160) and Schorr (1913, 252–261).

27 Nephews and/or uncles who comprise one or more of the contractual parties are mentioned as follows: cf. a OB Larsa text from Andersson (2008:13–20). Cf. 3 texts from OB Nippur: Chiera (1922, 51–54); Hilprecht (1909, 25–27) and Stone and Owen (1991, 60–63). Cf. 3 OB Sippar texts from Dekiere (1995, 82–83) and Schorr (1913, 269–271).

Estate Owner (E2)

The deceased estate owner is most frequently the father,²⁸ sometimes the mother²⁹ or both parents.³⁰ The deceased estate owner's relationship to beneficiaries is at least that of kinship. Consequently, the family assets are bequeathed to family members, either biological or adoptive (Claassens 2012/1, 125; Van Wyk 2013b, 425).³¹

Estate Assets: Fully or Partially Divided (E3)

The deceased estate owner leaves an estate to his or her beneficiaries, consisting of different assets, which are in most cases immovable property. The family division deals fully or partly with these assets. The description of the type of assets varies from a brief outline in some texts to a vague description in others. Some texts mention only that an estate is divided among the beneficiaries. Thus, depending on the idiosyncratic style of the scribes from the different scribal schools, some of the details of the estate are recorded onto a clay tablet by which we can deduce the assets' type and relevance in the division. In most of the OB Larsa, Nippur and Sippar texts, certain terms imply that the division of the whole of the estate was recorded: for example, "as much as there is", "the division is finished", and "from straw to gold" (Claassens 2012/1, 125–126, Van Wyk 2013b, 425).

Mutual Consent (E4)

The beneficiaries agree to all the terms through symbolic expressions, confirmation that they will not claim against each other, an oath and the presence of witnesses, emphasising the seriousness and binding consequences of the agreed terms (Claassens 2012/1, 129–130, 182–183).³² In the event of transgression, witnesses, together with the parties, could testify to the details of the agreement (Veenhof 2003, 147).

28 Cf. 10 OB Nippur texts from O'Callaghan (1954, 137); Chiera (1922, 15–16); Hilprecht (1909, 20–21; 23; 150); Stone and Owen (1991, 56–59; 60–63; 65–67; 87–89). Also 21 OB Sippar texts from Schorr (1913, 197) Dekiere (1994a, 103–104; 163; 165–167; 173–174; 195); Goetze (1957, 150–160); Schorr (1913, 249–261; 269–273); Dekiere (1995, 82–83; 115–117; 148–149) and Pinches (1888, 59–61). A deceased father who is the only estate owner is alluded to in 8 OB Larsa texts from Charpin (1980, 204–205; 212–216; 231–232); Leemans (1954, 34–38) and Andersson (2008, 13–20).

29 A deceased mother who is the only estate owner is mentioned in a OB Nippur text (Hilprecht 1909, 20–21) and in 4 OB Sippar texts from Schorr (1913, 252–253) and Dekiere (1994, 108–110; 164–165; 173–175).

30 A deceased father and a deceased mother who are estate owners are to be found in 2 OB Larsa texts—Charpin (1980, 252–253) and Andersson (2008, 6–7, 13–20)—as well as an OB Sippar text from Schorr (1913, 260–261).

31 Cf. discussions in Claassens (2012/1, 355–356).

32 Different terms in accordance to the city-states' practices are evident in OB Larsa, Sippar and Nippur (Van Wyk 2014b, 426), e.g., **ba** (Sumerian), *zāzu* and *še-ga-ne-ne-ta* (Akkadian terms), meaning "agreed to divide". Cf. Claassens (2012/1, 345, 356–357).

The oath clause is an indication that there was some god intervention. It usually occupies a specific position in the text, after the provisions and no claim clause, but before the date formula and witnesses' list. Each city-state's scribal school used its own formula or specific wording, usually sworn to the named gods or king.³³

Although the division is a permanent arrangement, there is textual evidence of litigation settlements as well as redistributions of awards from previous divisions.³⁴

Raison d'être (E5)

The OB divisions show that the parties initiated innovative solutions in dealing with impractical and undesirable circumstances around the dissolution of co-ownership. The special nature of the assets in their re-allocation, the bringing-in of goods or cash, and the equalising of the division of the assets according to the special circumstances of each case, reveal that the parties undertook some degree of originality in solving problems during the dividing-up of the portions (Claassens 2012/1, 357–358).³⁵

There are three main methods to dissolve co-ownership, namely, a typical sale, donation, or exchange. To a certain extent, a modification of the original instructions or will of the benefactor occurs. Instead of a proportionate share in an asset or assets, the beneficiaries, now the co-owners, agree to transfer certain asset/s only to one beneficiary. In other words, by agreement through a typical sale, donation, or exchange, the co-owners concur that certain beneficiaries alienate their share in certain assets. Each beneficiary acquires certain assets to enjoy the fruits of sole ownership of such an award (Claassens 2012/1, fn. 134, 119–120; Van Wyk 2013b, 426–427).

33 The oath in a private document usually consisted only of an oath before a god or, in exceptional cases in Sippar, in the temple. In the political documents or treatises, the oath possessed a different added characteristic, which included loyalty to the king, an obligation to act against rebels, and a curse for treaty breakers (Weinfeld 1976, 380). Cf. Mercer (1913). Some of Sippar's division agreements reflected an "oath in a temple" clause. It seems that the oath consisted of ceremonial rituals and confirmed the registration of the provisions of the agreement in a kind of a "land register" (Claassens 2012/1, 365). Cf. Schorr (1913, 258–260, 269–271, 273).

34 Cf. the so-called Ur-Pabilsag Archive consisted of 15 texts, included family divisions, redistributions, as well as court settlements deriving from family divisions. Cf. Kraus (1949:143–148); Stone (1991:11–19); Van de Mierop (1991/1993, 124ff). Also, cf. Van Wyk's (2018b) contribution titled "Inheritance Feuds in the Ur-Pabislag Archive from Old Babylonian Nippur" (in press).

35 For instance, architectural and agricultural obstacles, custom and scribal practices of a given city-state, and different time-periods, influenced the structure and content of the different types of divisions. Cf. general discussions by Kitz (2000a, 601–618), Westbrook (1991) as well as Claassens (2012/1, 51–78). See Van Wyk (2013a, 154–159) and Claassens-Van Wyk (2013, 63–69) regarding the OB Nippur division's practical problems and solutions.

Different Practices³⁶

Lot-casting (N1)

During the division, different assets are segmented into different portions and various factors need to be taken into consideration. The concerned parties may agree that their brother receives a firstborn share. Then, the rest of the shared inheritance decided upon is plotted out in portions (Claassens 2012/1, 130). Lots are drawn, and the respective portions are allocated as sole ownership to the awarded contractual party (Claassens 2012/1, 363).³⁷

In the family division, lot-casting is “a practical means of constituting an equal and fair distribution of the division” (Claassens 2012/1, 363). Claassens (2012/1, 363) opines that the advantage of lot-casting lies in the fact “that in decision-making, each participant willingly and with good intent agrees on the proper appropriation of each portion or asset, as any of the parties may end up with a particular portion”. This is thus much more “than the random throwing or casting of a few lots”.³⁸

Firstborn Share (N2)

The preference portion, or privileged portion, or right of firstborn share, denotes the situation where the eldest son receives an extra portion or percentage of the estate assets, before the division of the deceased paternal estate takes place (Mendelsohn 1959, 40; Westbrook 1991, 14; Claassens 2012/1, 186).

36 Claassens (2012/1, 382) argues that the choice of practices in a typological comparison between the city-states of OB Larsa, Nippur, and Sippar can be classified as follows: (1) “mechanism of division” which is the bringing-in of assets and occurs predominantly in OB Nippur and Larsa; (2) “practical procedure to manage a division” which is the practice lot-casting and utilised mainly in OB Nippur and Larsa; (3) “symbolic expressions” such as “the heart is satisfied” which occurs in OB Sippar, the expression that the “estate is completely divided”, which occurs in OB Sippar and Larsa and the expression of “straw to gold” which occurs in OB Sippar; (4) “formalities, implementation and enforcement of the division” which entails the no claim, witnesses and oath clauses and occurs in all of the city-states; and (5) “additional conditions and provisions” which include an adoption practice from OB Nippur, a firstborn share from OB Nippur and Larsa, the “equal shares” option in OB Larsa and Sippar, and, lastly, in OB Sippar and Nippur the maintenance (“usufruct”) constructions.

37 Van Wyk (2014b, 467–480), discusses the maintenance construction in OB Nippur where the brothers agree in favour of a *nadītu* sister to provide for a lifetime of maintenance. The maintenance portions in OB Nippur texts are usually allotted in specific amounts of commodities such as wool and oil. Cf. Van Wyk (2013c, 302–342) regarding the practice in OB Sippar.

38 Cf. discussions by Claassens-van Wyk (2013) regarding the unique solutions found in the Nippur family divisions where deceased estate assets are divided meticulously into equal portions of sole ownership. Claassens-van Wyk (2013) discusses the *būr*-clause (bringing-in clause) balancing the value of each deceased estate asset awarded to a beneficiary as a *quid pro quo* in conjunction with the firstborn share of the eldest brother and casting of lots.

Depending on the custom of the Mesopotamian city, the eldest son receives more than an equal share (Postgate 1992, 98–99). For instance, in OB Nippur, the eldest son holds “certain privileges and duties”, and so-called “temple offices” is passed to him (Postgate 1992, 98).³⁹ Thus, the firstborn rule is one of an array elective practices serving as a means for the continuation of the patronage estate (Mendelsohn 1959, 40; Claassens 2012/1, 190).⁴⁰

Conclusion

This article has shifted away from a general classification of the family and tribal division as a single type of division. This is contrary to Kitz (2000a) and Westbrook (1991) who refer to the shared “features” of the “undivided inheritance” or divisions in the book of Joshua and the OB family division. Kitz (2000a, 615) argues that between both sources there is a “basic structural parallel” in a “sequence” present, for the “writers/editors” of the book of Joshua were “familiar” with the OB “inheritance practices” and/or “have the same customs” as the Old Babylonians. Both Kitz (2000a) and Westbrook (1991) generalise the elective practices on lot-casting, the oldest son’s administration of the communally shared property, and the receipt of a greater share in the paternal inheritance.

However, I have shown that although in the family and tribal division the shared communal property was divided, the two divisions do not represent a general division and have no shared standardised pattern. I have identified the family and tribal divisions as two types by means of my analysis method. The method served as an aid to identify each as a certain type, within a framework of requisites, with a limited comparison of two of the elective practices. The requisites, present in an oral division and recording, are the “basic materials” for a specific type of division (Van Wyk 2013b:423–427).

In this article the requisites of each division were established, and then the practices were identified that the concerned parties choose to bring about the dissolution of the shared property (cf. Van Wyk 2013b, 427–432; 2014b, 443–483).

39 The **edadi**-ship allocations were significant assets for allocation in the Nippur family divisions. Cf. Claassens-Van Wyk (2013).

40 Mendelsohn (1959, 40) mentions that the Laws of Lipit Ištar (LL) and the Laws of Hammurabi (LH) referred to such status and of equal partition (24 by LL and 65, 167 and 170 by LH). Mendelsohn (1959, 39) opines that there are no documents from the Ur III period which state that the first-born son received a higher status than others, although in the Isin-Larsa period mention was made of an eldest brother. In Alalakh, just as in Nuzi and Ugarit, there is textual evidence that the father could move away from the rule of firstborn share and appoint a “first-born” as a beneficiary to his estate (Mendelsohn 1959, 38–39).

The table below gives an overview of my summary of conclusions⁴¹ of the requisites, and two of the elective practices, in the two different divisions: the tribal and family division.

Table 1: Overview of the requisites in the tribal and family division

<i>Requisites</i>	<i>Tribal Division</i>	<i>Family Division</i>
Parties Involved	Heads of the 12 Israelite tribes	Family members
Estate Owner	Yahweh:	Deceased parent of the inheritance estate:
	decision to divide and discretion to uphold division	no involvement in division
Property	Land of Israel	Deceased parent's estate:
		Variety of assets differ in each family estate Necessitate choice from array of practices
Consent (by whom)	Only by Yahweh, the estate owner,	All the co-beneficiaries (heirs) in agreement,
	decisive role in choice of practices:	decisive role in choice of practices:
	firstborn share and lot-casting	array of choices
<i>Raison d'être</i>	Yahweh distributes the land among his servants by means of a grant on condition that the servants adhere to Yahweh's will.	All parties agree to distribute in escaping the perils of co-ownership by dissolving co-ownership by means of exchange, donation and/or bringing-in of assets into portions of sole-ownership
	Yahweh retains ownership.	Each party is a sole-owner.
	Division: One-time event,	Division: One-time event,
	depended on Yahweh's will to uphold	but can re-divided by court settlement or new agreement

41 The article's length does not permit the thorough study of the book of Joshua, as well as OB family divisions. If the traditional view is followed, then research may be conducted in how the assumed shared features between the OB legal corpora and the book of Joshua affected the dating and composition of Josh 13–21. Or conversely, how does the proposed view in this article influence the complex and often contentious study of the book of Joshua?

Parties Involved

In the tribal division, the heads of the tribes are the representatives who act in a collective membership as part of the covenant community, to receive the allotted land portions. In the family division, the family members of the deceased owner are the appointed co-beneficiaries of the estate owner's assets. They act in their capacity as co-owners and contractual parties in the division of the shared inheritance. Unlike the heads of tribes, only the co-beneficiaries dictate the time and manner of the division.

Type of Estate Owner

In the tribal division, the god Yahweh is the divine estate owner and even after the division among the tribes, the land stays in the realm of Yahweh. However, in the family division, the estate owner is a deceased family member, who consequently with his death, has no further say in the management and control of the shared inheritance.

Type of Property

In the tribal division, the communally shared property is the land occupied by the Israelite tribes, as promised by the god Yahweh. While in the family division, the deceased estate owner bequeaths his or her estate, consisting of various types of assets, as a shared inheritance to the beneficiaries. The assets vary in each family estate and shared inheritance, while in the tribal division the land of Israel remains as the only identified property.

Consent (by whom)

The book of Joshua presents the overall divine intervention and guidance of the god Yahweh who gave his ultimate permission and consent for the tribal divisions. In the family divisions, the co-beneficiaries agree to the terms through symbolic expressions, oath and the presence of witnesses to emphasise the seriousness and binding consequences of the terms. Only the oath in the family division shows some influence by the god.

Raison d'être

The *raison d'être* in the tribal division is based on the grant of the land by Yahweh to distribute the land to his servants, on the condition that the servants' religious and ethical behaviour shall continuously adhere to the will of Yahweh. Yahweh, the estate owner prior to the division, still retains ownership. Unlike the tribal division, the estate owner in a family division is not involved in the division. In the family division, the *raison d'être* for the division is to escape the perils of co-ownership by means of an exchange or donation or bringing-in of assets. The division changed the shared inheritance to be awarded in portions of sole-ownership for each party.

Lot-casting and firstborn share are two of a wide range of elective practices that differ in their function in the two types of divisions. In the tribal division it was a method for each tribe to gain possession of the allocated property and prevent contesting the boundary by another tribe. Still, Yahweh's ultimate command and control is present, through which he directs his will in the allocation of the allotted portions. In the OB family division, it was used as a practical method to equalise a fair distribution of the allotted portions among the sole-owners. All the participants agreed beforehand to the appropriation of the portions and their *bona fide* intentions should be clear because any of them may end up with any allotted portion. In the family division the parties have an array of practices that they could utilise in the dividing of the shared inheritance, depending on their circumstances and city state customs.

To conclude, the tribal and family division differ in their origins and reasons for the division, separated by each type's unique cultural and personalised circumstances before the different types of parties involved can choose to utilise elective practices that offer distinct functions in each type of division.

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