

The Relationship Between the Testamentary Disposition and the Belief in the Afterlife in Ancient Egypt

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Abstract

This study discusses the importance of the belief in the afterlife, sustenance after death, family structure and literature from ancient Egypt and submits that the first signs of the testamentary disposition can be deduced. The belief in the afterlife necessitated sustenance of the deceased by the immediate family complemented by provisions made by the deceased prior to death, effectively laying the foundation of the testamentary disposition in ancient Egypt. One must, however, be careful about conclusions of definite testate and intestate succession law from our sources as these are later terminology. It does, however, appear that the first signs of succession law, in particular the testamentary disposition, is present very early in ancient Egypt.

Keywords: provisions made prior to death; belief in the afterlife; sustenance of the deceased; testamentary dispositions; pious foundations; *imyt-pr*; testate law in ancient Egypt; succession law in ancient Egypt

Introduction

To understand the testamentary disposition (and succession law in general) in ancient Egypt, it is fundamentally important to take cognisance of the social context, and, very importantly, the religion of the ancient Egyptian world. The ancient Egyptian understanding of the world was dominated by religion, which affected and controlled every aspect of their lives.¹

The ancient Egyptians were not obsessed with death, but with the afterlife. The afterlife was the ultimate goal of living a life in accordance with *maat*. Living according to *maat* was a way of life, a much more complete understanding or insight into life, order and balance and was the most basic concept of their religion. This was a way of life which would eventually determine at death (with the balancing scales-judgement) if one could enter the afterlife or not. The ancient Egyptians' whole life was, in other words, geared towards the afterlife as they believed in eternal life.

This paper² focuses on the belief in the afterlife as basis for the testamentary disposition in ancient Egypt. We are able to observe the first signs of succession law from the rituals pertaining to offerings and sustenance of the dead. One must, however, be careful not to enforce modern law terms onto the ancient Egyptian world, especially when it comes to the testamentary disposition. As Seidl (1957, 58) correctly emphasises: “Wenn man überhaupt den Ausdruck ‘Testament’ verwenden will, um damit eine ägyptische Urkunde zu bezeichnen, so muß man sich wieder darüber klar sein, daß man damit Vorstellungen, die aus dem römischen Recht stammen, dem Leser suggeriert.” (“When one wants to use the term/word ‘Testament’ at all to refer to an Egyptian document, one must realise once again that it suggests to the reader ideas derived from Roman law.”) This study does not enforce terminology developed by Roman law but attempts to indicate that similar elements or concepts were present in ancient Egypt, which might have been the building blocks of these later concepts, elements and/or terminology.

The sources for law in ancient Egypt are very few and we rely on literary and religious texts, some law texts and agreements, and so on. Texts relating to offerings and sustenance of the deceased from the Old Kingdom³ are used in order to indicate from how early we are able to observe the first signs of succession law in ancient Egypt. According to Pestman (1969, 58) this is actually an advantage because through these sources we come into contact with the law as it affects daily life, i.e., its practical

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- 1 It is important to keep in mind that, even though no law code has been found and it appears that the ancient Egyptians did not have specific legal terminology or legal categories, as we have today, there is ample proof that law existed and that legal ideas and concepts were used as early as the Old Kingdom (Van Blerk 2018, 83).
 - 2 This article is based on Chapters 3, 5 and 6 of my PhD thesis (Van Blerk 2018, 34–48, 65–88 and 89–126) and on a paper read at the University of Copenhagen in 2016 at the Egyptological Conference titled “The Belief in the Afterlife and the First Signs of Succession Law”.
 - 3 See Addendum A for a timeline of ancient Egypt.

application. The law of succession is not always the most progressive or dynamic part of a civilisation's legal system (Pestman 1969, 59), which means that we are actually able to form a proper understanding of a civilisation's idea of succession law.

As there is no clear term for a "will" in ancient Egypt, and because some documents are strictly speaking not "wills", yet they contain elements of testate succession law, I have decided to rather use the term "testamentary dispositions". It is important to note, as Lippert (2013, 4) affirms, that different types of documents were used, depending on the era and on how the inheritance was to be distributed.

The Importance of the Belief in the Afterlife and Sustenance of the Dead

It was important for the ancient Egyptians to do everything in life according to *maat*, and to keep in mind the eventual judgement at death since that would determine whether they would go to the afterlife. Ultimately, it is this belief in the afterlife that determined every aspect of the ancient Egyptians' daily life. The notion of *maat* would represent the continuity and transformation of the person to the afterlife, effectively also representing immortality (Assmann 1990, 122).

The notion of *maat* was the principle that held ancient Egyptian society together, the ideal way of life being to lead a life in accordance with *maat*, which would correspond to socially acceptable or ethical norms of behaviour (Oakes and Gahlin 2004, 462; Allam 2007b, 263–64). *Maat* is one of the earliest abstract terms preserved in human speech (Van Blerk 2006, 1). *Maat* could not be changed or interfered with (Assmann 1989, 75–76). The continued existence of the world and people depended largely on fulfilment of natural cycles,⁴ with the ideal order of familiar things continuing forever (Taylor 2001, 12). Human life was also seen as part of this greater scheme of creation and was further regarded as cyclical (Taylor 2001, 12).⁵

The very first signs of a belief in the survival of death date from the beginning of the fourth millennium B.C.E., since ca. 4400–3200 B.C.E. the corpse was usually laid in an individual pit-grave covered by a low mound of earth to serve as protection and as a marker (Taylor 2001, 13). Objects essential for life, such as stone or ceramic jars with food and drink, tools, weapons, jewellery etc. were placed with the body, indicating that at this stage the afterlife was seen as an extension of earthly existence (Taylor 2001, 13). The earliest written records regarding the afterlife are contained in the Pyramid

4 These cycles would be things like the rising and setting of the sun, motions of the stars, rising and setting of the moon, annual inundation of the Nile, growth and death of plants (Taylor 2001, 12).

5 The ancient Egyptians could attain the afterlife by leading a good life on earth (Baines 1991, 151), so it was eventually the task of every Egyptian to live in accordance with *maat* (Allam 2007b, 263–64).

Texts⁶ of the late Old Kingdom (Taylor 2001, 25). The ancient Egyptians' idea of the afterlife obviously evolved throughout their long history (Ikram 2007, 340).⁷

In ancient Egypt, death was the most strongly ritualised of life's stages (Baines 1991, 144). From the dawn of ancient Egypt's history, as early as predynastic times when the pharaohs' ancestors settled in the Nile valley (ca. 4000 B.C.E.) (Quirke 1992, 141), well before pharaonic Egypt's unification and up to the Roman period, belief in the afterlife was a fundamental aspect of ancient Egyptian religion, a basic component of religion (Ikram 2007, 340; Oakes and Gahlin 2004, 21, 390). The ancient Egyptians were not interested in death itself, which was viewed mainly as a doorway or passage to another existence (Oakes and Gahlin 2004, 21; Quirke 1992, 141), but rather in the afterlife, a fundamental aspect of ancient Egyptian religion. The greatest possible significance is attached to the afterlife, the "desert of eternity" (Assmann 2002, 67). Time spent on earth is only "a trifle" in comparison to the "eternity" spent in the "realm of the dead" (Assmann 2002, 67).

The ancient Egyptians did not see death as the end but as a further change leading to another type of existence (Taylor 2001, 12).⁸ Because they could not make sense of death,⁹ they articulated a vision of the afterlife which was modelled entirely on their daily lives in the Nile Valley and which thus included minute details like food, household effects, entertainment and activities in abundance, the afterlife being a perfect reflection of daily life due to its avoidance of the unknown (Teeter 2011, 9; Oakes and Gahlin 2004, 391).¹⁰ Eternal life in the kingdom of Osiris represented eternal springtime, ample food and the company of family and friends (David 2017, 86). The ancient Egyptians expected to be reborn with idealised, youthful bodies that were free from disease, deformity and the effects of old age (David 2017, 86). It was important therefore that the deceased's body was intact so that the transformation could be achieved with continued existence in the afterlife with unimpaired physical functions (David 2017, 86).

6 The Pyramid Texts are a collection of spells drawing on different traditions and contain several different views regarding the afterlife, with one of the earliest being that the king would ascend to the sky to achieve eternal life (Taylor 2001, 25).

7 Already in these formative years it is possible to recognise the fundamental aspects which would characterise Egyptian funerary practices and which would remain in place for the next four millennia (Taylor 2001, 13–15).

8 Death was seen as a transitional state leading to the afterlife (Taylor 2001, 12).

9 It was from their love for life that the ancient Egyptians derived their firm belief in the afterlife (Taylor 2001, 10–12).

10 It is obvious from the preparations which accompanied their burials that they believed in the existence of an afterlife (Allam 2007b, 265; Oakes and Gahlin 2004, 390) for they stocked their burial chambers and tomb chapels with the bounty of this world and also resorted to magic and rituals in the hope of securing sustenance in the afterlife (Allam 2007b, 265).

Assmann (2002, 67) is of the view that the overwhelming presence of the concept of eternity in the form of monuments and inscriptions meant that life on earth appeared to be almost something like a dream rather than reality. The notion of eternal life evolved throughout many centuries and “the nature of the afterlife came to be formulated within a framework of religious doctrines, texts and practices” (Taylor 2001, 15). The system of belief changed over time, no longer applying only to the king but to all the people, giving everyone an equal opportunity to reach the afterlife (Taylor 2001, 25).

The ancient Egyptians were obsessed with sustenance in the afterlife, because they believed in life after death (Allam 2007b, 265). And because they believed it to be earth-like, they resorted to magic and ritual in the hope of securing sustenance in the afterlife (Allam 2007b, 265). A continued use of human faculties after death is implied with the presence of food offerings in particular. The deceased could eat and drink after death to absorb energy, as in life. For the ancient Egyptians the two forms of surviving death, the spirit of sustenance and the spirit of mobility, shared the task of perpetuating existence for a person (Quirke 1992, 143).

For the ancient Egyptians the living and the dead were part of the same community, resulting in a moral relationship between the dead and the living (Baines 1991, 147, 151). The deceased was dependent upon the actual delivery of food and drink by his/her family and survivors (Allam 2007, 265). Since it was practice in ancient Egypt for the next generation to take responsibility for the care of the deceased, it was very important to have children (Baines 1991, 144) who would receive the deceased’s property (Pestman 1969, 59). There was consequently a strong sense of obligation by the survivors to care for the deceased (Allam 2007b, 265).

After death, the deceased would be sustained not only by prayers and inscriptions on the tomb walls and on funerary papyri, but also by an active mortuary cult. For the wealthy, this responsibility lay with the priests and family, while the poor relied exclusively on family members for their offerings (Ikram 2007, 349).

Succession Law and its Socio-Economic Role

The law of succession¹¹ is concerned with the transfer of property, as vested in a person at his death, to another person or persons. This presupposes the existence of the notion of private property (property owned by a person). The question of succession does not arise where the property belongs to a group, a family, etc., but arises in a society, which

11 The term “succession law” is of course a later development, especially from Roman law. It is, however, important to reflect on earlier building blocks from the ancient Near East, and in this paper from ancient Egypt.

recognises that provision must be made for what needs to happen with the property when the owner of such property dies.

In essence, as Corbett, Hofmeyer and Kahn (2001, 1) put it quite simply, “[t]he law of succession deals with the rules; succession as a legal term, means, ‘an entering into the place and property rights of another’.”¹² It is effectively a way of acquiring legal rights whereby the rights of one person are transferred to another (Burdick 1989, 546).

The law of succession is concerned with the rules that control the transfer of proprietary rights in the assets of the deceased to his or her rightful successors. It is evident therefore that the law of succession can only operate in a system that recognises the institution of private property (Schoeman and De Waal 2005, 2). The law of succession therefore fulfils an important economic function with rules regulating the transfer of a deceased’s assets upon death. This economic function is supplemented by the principle of freedom of testation, which means a person may him- or herself decide on the distribution of his/her assets after death (Schoeman and De Waal 2005, 2).¹³

Importantly, the law of succession also fulfils a social function. This social function refers specifically to maintaining and protecting the family¹⁴ as a social unit, which explains why the law of succession is also influenced by the social trends affecting the family. It is therefore important to remember that the law of succession should always be studied within its broader social context (Schoeman and De Waal 2005, 2).

It can be argued that only the Romans elaborated law,¹⁵ especially as a result of the lack of documentary evidence from ancient Egypt and because of their use of everyday language in their legal deeds (Theodorides 1971, 291). However, in response it must be said that, already at the beginning of the third millennium B.C.E., the social and administrative system was based on the family and even on the individual, with a strong civil organisation developing (Theodorides 1971, 292). Intestate succession law,¹⁶ for

12 This is the situation in contemporary Western law, from a Roman law perspective. The definition provides merely a point of departure to see if elements of succession law are present in ancient Egypt.

13 In South African law, although not absolute.

14 The law of intestate succession applies where there is no will and is based on the notion of family structure and social rules pertaining at the time with respect to devolving the estate to the heirs.

15 Elaborate in the sense that Roman law really “developed” legal concepts and law by implication, which would form the basis of most modern law systems of the world.

16 Intestate succession will not be discussed here, because of constraints regarding length of this article. It will however be dealt with in future publications.

example, prescribes that the immediate family members are the beneficiaries of the *de cuius*'s estate.¹⁷

For this reason, it is important to understand the socio-economic life and norms in ancient Egypt, which should be taken into account when studying the first signs of the development of succession law in ancient Egypt. The social context of ancient Egypt is extremely important seeing that the idea was for the immediate family, specifically the children, to inherit in order to sustain the deceased, and also to keep the family property together. The inheritance could go to the immediate family by way of the basic or customary process, or alternatively in accordance with some instruction given by the deceased prior to death. In practical terms, someone had to take responsibility at the death of the *de cuius* for certain matters pertaining to the burial process, as well as for matters pertaining to the deceased's property, of which the distribution of the inheritance was an important part. Of particular importance in ancient Egypt was the duty to sustain the deceased. This duty of managing the estate fell onto the "eldest son" who acted in a way very similar to the modern-day executor of a deceased estate.

To describe social behaviour, it is important to analyse the motivation behind actions, and not simply the actions themselves as listed in the text (Eyre 1992, 207). Although such an analysis might often seem subjective, it could well be the only way to put an isolated legal text into its wider context (Eyre 1992, 207). It is therefore important to understand the ancient Egyptians' world and the wider influences of their motivations, influenced by, among other considerations, religion, family, and economic factors when considering texts.

The law of succession, besides being a product of society, may also perform a function for the society according to Fleming (1978, 233). Friedman (quoted in Fleming 1978, 233), referring to succession, observes that the law and rules

help define, maintain and strengthen the social and economic structure. They act as a kind of pattern or template through which the society reproduces itself each generation. Rules of inheritance and succession are, in a way, the genetic code of a society. They guarantee that the next generation will, more or less, have the same structure as the one that preceded it. In the long run, for example, there could be no upper class or aristocracy without rules about the inheritance of wealth and privilege, which permit the upper class or aristocracy to continue. And if rules permit free transfer of property and freedom of testation, a middle-class society can be created and maintained.

17 The *de cuius* refers to the deceased person. My definition of *de cuius* is a deceased person who has assets and thus an estate that needs to be dealt with after death. Hiemstra and Gonin (2013, 405) translate *de cuius* as "erflater" in Afrikaans and as "testator" in English. In my opinion the Afrikaans translation is correct, and it agrees with my own definition given above, while the English translation is incorrect, since "testator" only refers to a case where there is a will. It would *prima facie* appear that English does not have an unambiguous word for the *de cuius*.

It is Fleming's (1978, 233–34) view that, in a very general sense, all rules of law (which include all rules of succession) serve identifiable social functions. He goes on to say that the early entrance of free testation in Roman law had little to do with the increasing secularisation of the republic's law, but rather that it was called for to permit the institution of a single heir (*institutio heredis*) in order to prevent peasant plots from being split into uneconomic units or having to support the result of repeated intestate succession by numerous co-heirs (consortiums). According to Fleming (1978, 234) by doing this Roman law achieved the same end as primogeniture¹⁸ in modern systems which uses special legislation for farm holdings. This very same concept of the institution of a single heir¹⁹ is also present in ancient Egypt with the important role played by the eldest son to prevent the split-up of property into uneconomic plots, but also to fulfil the important role of taking charge of the required sustenance of the deceased.²⁰

As Brewer and Teeter (1999, 95) correctly observe, the nuclear family was the core of Egyptian society. Even the Egyptian gods were arranged into the same family groupings. Many genealogical lists indicate how important family ties were. The earliest examples of inscriptions, texts, and paintings reflect the importance of family in ancient Egypt and specifically the nuclear family.

In ancient Egypt there was a formal system of private law under which property could be the subject of private transactions (David 2002, 288). This is supported by Goedicke (1970, 190) since private people could own property already in the Old Kingdom and we can therefore postulate a legal sphere that can be summarised under the modern term “private law”. According to Goedicke (1970, 190), “law” and “property” are intimately connected, so that the existence of rights by private individuals presupposes the existence of private property. The belief in the afterlife made it almost essential for in particular immovable or real property to stay intact within the family in order to sustain the deceased after his or her death. The *institutio heredis*²¹ was therefore a concept or idea not foreign to the ancient Egyptians, even though the concept might have been developed and defined by Roman law much later in history. The eldest son would take possession of the family property in order to prevent the property from being split up

18 Primogeniture refers to the system according to which the eldest child (especially the eldest son) inherits his parents' property (Pollard 1995, 633).

19 Thus, also that there would be no absolute testate freedom and the estate owner's wishes will be limited by such set traditions/concepts.

20 Muhs (2016, 5) is of the opinion that the ancient Egyptian state was primarily interested in protecting and enforcing its own property rights for tax collection purposes. The responsibility for protecting and enforcing individual property rights was therefore often shared with a variety of formal and informal organisations, or even private social control (Muhs 2016, 5). According to Muhs (2016, 5) this is most evident in the early first millennium B.C.E., when the Egyptian state fragmented, and the temples took over the responsibility of enforcing property transfer agreements.

21 Essentially the institution/nominating of heirs.

and in order for it to function as an economic unit to provide the necessary sustenance for the deceased.

It is important to note that immovable property was as a rule not divided among heirs but was held jointly by the family (Brewer and Teeter 1999, 97). It was, however, possible that land could be split up (divided), but this was usually avoided (Lippert 2013, 2). It was, however, more difficult in the case of a house to be split up because it was obviously difficult to “divide” a house (Lippert 2013, 2). From the *Codex Hermopolis*²² we have an example of the latter in column 9.19–9.21 from which it is clear that the house itself is not divided but was held jointly, with the profit to be divided (by the eldest son) among the co-owners if the house was sold (Lippert 2013, 2). It would appear that the initial reason to keep the property intact was to make it economically functional for the duty of sustenance of the deceased, but that it was later done for purely economic reasons as the piety (for sustenance) diminished.

The fact is that in ancient Egypt the nuclear family was an essential part and even the foundation of social life, with the emphasis on protecting the family property. This played an important role in the way they viewed their initial obligation for sustenance of the deceased and the resulting emergence of succession law.

Arrangements Made Prior to Death

The continued survival of the dead relied to a large extent on the maintenance of a mortuary cult which would ensure that the deceased was nourished by a supply of offerings in perpetuity (Taylor 2001, 174). This cult was performed by the relatives of the deceased or by the priests, but it required some means of long-term support, which often took the form of an endowment (Taylor 2001, 174).

This endowment was often a plot of cultivatable land dedicated to the deceased as his mortuary estate, whilst the profit of the land yielded the offerings of food, drink, incense and other items to be presented to the deceased (Taylor 2001, 174). Profits of the endowment also provided payment for the cult officials (Taylor 2001, 174).

The importance of making these preparations is evident from the instructions of Prince Hardjedef who instructs his son:

22 The so-called *Codex Hermopolis* is a collection of texts (or rather a manual) which provides guidance for legal solutions in unusual or difficult cases (Manning 2003, 821). The guidelines contained in this document were used by the priest-judges to resolve disputes and served as a guide to the writing of certain legal instruments (Manning 2003, 821). This papyrus is dated to the third century B.C.E. (Allam 2007b, 268). The *Codex Hermopolis* was not confined to local use and thus several copies might have existed, circulating throughout ancient Egypt towards the onset of the Hellenistic era (Allam 2007b, 269–70).

Choose for him [i.e., the mortuary priests who will serve his cult after death] a plot among your fields, well-watered every year. He profits you more than your own son. Prefer him even to your [heir]. (Taylor 2001, 174–75)

Mortuary estates are depicted in the tomb chapels of the Old Kingdom and, in some tombs, endowment documents are carved on the walls, recording the duties of the personnel, the content of the endowment and ways of protecting the interests of the cult (Taylor 2001, 175).

The idea was that the main cult official was the son of the deceased, which ideologically reflected the myth of Osiris in which Horus performed the funerary offices for his deceased father (Taylor 2001, 175).

There was a link in the private sphere between the mortuary cult and the inheritance of property since inheritance was conditional upon the son's fulfilment of his cult duties towards the deceased estate. The task of the eldest son and the priests²³ was to keep the *ka* of the deceased supplied; in return for fulfilling his duty he would receive a share of the largest endowment (Taylor 2001, 175). As the mortuary cult was intended to last in perpetuity it was hoped that the land set aside for the endowment would remain in the family from generation to generation (Taylor 2001, 175).

The belief in the afterlife, the need to make provision for sustenance after death, and taking care of family property and the nuclear family were major reasons for the very first appearance of arrangements made prior to death, which in effect represent the very first testamentary dispositions. It might at first glance look like provisions for the mortuary cult, but one can detect the early signs of succession law and testamentary dispositions already.

Mortuary provisions for sustenance and rituals after death were extremely important, and the scenes and texts²⁴ in the tombs of the Old Kingdom in particular provide valuable insights into many aspects of ancient Egyptian culture (Wilkinson 2007, 42). As Goedicke (1970, 1) indicates, we have from the Old Kingdom inscriptions regarding legal and administrative matters. Regarding legal documents we can distinguish between the royal legal document and the private legal document (Goedicke 1970, 1). Apart from nobility, we sometimes also have private people as authors of documents (Goedicke 1970, 1).

23 Apart from the eldest son, the main personnel of the mortuary cult were the priests called *hemu-ka* (literally servants of the *ka*) and a lector priest called *khery-hebet*, literally “the keeper of the sacred book” (Taylor 2001, 175). This priest directed the cult proceedings, reading the words of the ritual from a papyrus scroll (Taylor 2001, 175).

24 These refer to scenes and texts relating to craftsmanship, farming practices, the structure of the administration and lifestyle of the elite (Wilkinson 2007, 42).

According to Allam (2007a, 13), a large number of texts report specifically that many kings bestowed lavish donations upon temples, and there were prestigious services for many pharaohs, constituted for their needs in the afterlife, for which abundant resources were dedicated. These deeds and benefactions were arranged in settlements and supervised by some state institutions (Allam 2007a, 13). As Allam correctly states, many records attest to the fact that foundations²⁵ or endowments were established as early as approximately 2500 B.C.E.

At the beginning of the Old Kingdom, the beneficiaries were the deceased king and officials, and the supplies (mainly foodstuffs) were supplied from the “fields” (Helck and Otto 1982, 590), but private foundations did become more popular later on (Helck and Otto 1982, 592). Private foundations (endowments) were established as early as the middle of the third millennium B.C.E. (Allam 2007a, 13). According to Goedicke (1970, 205), the primary objective of private legal inscriptions in the Old Kingdom was the pious private foundation (*Totenstiftung*). This forms the material prerequisite for the service of the dead, which was essentially for the survival of the deceased’s needs (Goedicke 1970, 205). Provision made in these pious private foundations referred to the use of property rights in either land or income incurred from it (Goedicke 1970, 206).

According to Kemp, the pious foundation was a fundamental part of ancient Egyptian society and was intended to ensure the perpetual maintenance of the cult of statues. Kemp goes on to say that this cult of statues refers to gods, kings and private individuals. These foundations took the form of a fund, established by an initial donation or contracts, which referred to property or the securing of income from elsewhere. The fund had to be kept intact as a unit, in theory, for perpetuity (Kemp 2001, 85).

Despite the strong sense of obligation to care for the deceased by surviving family members, this piety diminished over time, which gave rise to doubts as to whether an individual would be properly provided for after death by the survivors (Allam 2007b, 265). It therefore gradually became common to make arrangements during one’s own lifetime for the provision of sustenance after death (Allam 2007b, 265). This was done

25 Today a foundation is defined as “a juristic person consisting of a collection of assets or fund devoted to a defined (usually charitable) purpose and managed by administrators” (Honoré and Cameron 2002, 48). The Latin term usually found in connection with a foundation is *ad pias causas*, meaning “for charitable purposes” (Hiemstra and Gonin 2013, 153). Honoré and Cameron (2002, 55) go on to state the following: “[A] foundation is not an alternative to a trust. It is simply a possible owner of trust assets, like a trust corporation to whom the founder makes a gift of the trust assets, or a corporate beneficiary to which he makes a gift of property to be administered by an administrator by way of bequest. It has no special role other than that of enlarging the range of legal persons who may play a part in the law of trusts.” They make an important point when they state: “[T]he foundation is not a fiduciary institution alternative to the trust. It is a juristic person, like a *universitas*, and, like it, may act as a trustee or have its assets managed by trustees or administrators” (Honoré and Cameron 2002, 49).

by means of the above-mentioned foundation²⁶ and other “testamentary disposition” documents like the *imyt-pr*, for example. Family members or even others outside the family could be enlisted for this task (Allam 2007b, 265). Thus, in ancient Egypt the opportunity existed for a person to bequeath to such people fields or revenues, obliging them to present the required mortuary offerings and to celebrate the required services. However, if these people did not meet their obligations, others were to take their place. The fact is that the prescribed duties had to be fulfilled and compensation would then be received. Mortuary services could thus be provided from generation to generation (Allam 2007b, 265). Muhs (2016, 45) observes that whatever the source of revenues, the funerary offerings that the endowments generated usually reverted to the mortuary priests who performed the offerings, and thus constituted a private redistribution network. Of importance is that these arrangements made prior to death would provide the first signs and building blocks for testamentary dispositions and by implication testate succession law, for it also allowed the *de cuius* to effectively change the customary intestate succession law by nominating beneficiaries of his or her choice.

Returning to the ancient Egyptian foundation, the religious and ethical injunction to care for the deceased lost its force over time, and a legal obligation was created in its place (Allam 2007b, 265). In this sense, Allam (2007b, 272) is of the view that the foundation is meant here in the broader sense. It is meant as an institution designed by a human objective with its appointed purpose being the fulfilment of an enduring goal.

Muhs (2016, 34) further suggests that most of the surviving transcripts of verbal agreements are either wills/testaments or transfers and that all these texts survive as inscriptions or fragments of inscriptions in tomb chapels. There are a few important texts from this period which do give us some valuable information relating to testamentary dispositions.

The first signs of succession law are firmly rooted in the religious environment. According to David (2002, 288), because of the emphasis placed on funerary customs, many legal transactions are concerned with situations relating to funerary property. Special arrangements were made in order to ensure that the upkeep and provisioning of the tomb continued in perpetuity (David 2002, 288).²⁷

Sustenance after death, but also the burial of the deceased, was an important part of the process of dealing with the dead and the duty to bury the deceased in a tomb. Egyptian common law decreed that whoever buried a person inherited a large amount of the

26 The mere word or concept of “foundation” is also a concept developed later in history. One must be careful linking a later concept to the ancient Egyptians, but these arrangements appear to be similar to “foundations”. Essentially, however, the purpose was to make arrangements prior to death for what needed to happen after death, thus effectively being a “testamentary disposition”.

27 A special priest, the *ka*-priest, was appointed and undertook this duty in return for an income from the deceased’s estate (David 2002, 288–89). This duty was very often that of the eldest son.

deceased's property (Romer 2003, 77). The obligation to bury the deceased and perform certain burial duties that entitled a person to inherit provided a direct nexus between the belief in the afterlife and succession.

The assets of the deceased were to be used to sustain him or her and it was obvious that the family property should be protected. When a person died, the practice was that the deceased's children received his or her property (Pestman 1969, 59). To this end, the notion of adoption was well known in ancient Egypt and ensured a nuclear family. The eldest son held the position, as it were, as head of the family and was also responsible for matters to be dealt with upon the *de cuius*'s death (Pestman 1969, 65). The obligation of the immediate family, more specifically the children, to sustain the deceased after death laid the foundation for succession law in ancient Egypt as it would form the basis for customary intestate succession law. The duty of sustenance fell on those who would also become the first customary intestate succession law heirs. The "template" for customary intestate succession law was laid down by the arrangement of those family members who survived the deceased and had the duty to sustain the deceased.

The testamentary disposition document was a way to alter customary intestate succession. As Mrsich (1975, 1251) observes, it is important to keep in mind that it is conceivable that the ancient Egyptians did not necessarily use only one specific document to achieve this but used a range of documents. It would also appear that the ancient Egyptians had "testamentary freedom" (Mrsich 1975, 1236). As Westbrook (2003, 58) correctly points out, we have examples of testaments in ancient Egypt dating from the Old Kingdom.

Initially the focus in making these provisions prior to death was to provide sustenance to the deceased in the afterlife. These very first provisions made before death are referred to as "pious foundations" because of their close relationship with religion, especially the belief in the afterlife.²⁸ These early pious foundations, in my opinion, would have been influenced by the socio-economic environment of the ancient Egyptians, necessitating the gradual, normal development of what I will call the testamentary disposition in all its different forms in ancient Egypt.

As Lippert (2013, 4) points out, modern legal historians are reluctant to use the term "will" or "testament" for these documents, as they do not conform strictly to the Roman legal definition of *testamentum*. For purposes of this study, the term "testamentary disposition" refers to any disposition of property by the *de cuius* prior to death, only becoming effective upon the *de cuius*'s death, taking on the form of a variety of documents in ancient Egypt. As Seidl (1957, 57) indicates, we have evidence as early

28 It is, however, very clear from the oldest documents that we are immediately able to identify elements and signs of succession law concepts that would later be defined as, among others, trusts, usufruct, and *fideicommissum*.

as the Old Kingdom that the deceased owners of property relied on dispositions made prior to death.

If a person in ancient Egypt wanted to bequeath property to someone other than the expected heirs in terms of customary intestate succession, he or she had to draw up a document (Lippert 2013, 4). This document could also be used to ensure and emphasise the inheritance rights of a specific person, even though this person might already be an heir in terms of customary intestate succession (Lippert 2013, 4). The document could also be used to give effect to special terms, or to exclude an heir or heirs (Lippert 2013, 4). It is important to take note that legal documents drawn up by private people generally remain within this closed sphere and have no direct relationship with the public administration of the state (Goedicke 1970, 1). These documents, in their nature, deal primarily with questions of ownership and property (Goedicke 1970, 1). It would appear that there is some uniformity in style, suggesting the existence of a legal style (Goedicke 1970, 2).

The earliest endowments in the form of pious foundations with their close relationship with the mortuary cult already contain elements of succession law, and this is apparent from the Egyptians' earliest "transfer documents". It is important for this study to focus on the broader denominator of testamentary dispositions in order to be able to identify and discuss the very important legal succession law concepts and elements relating to testate succession law.

Jasnow (2003, 123) is of the view that mortuary endowments may be considered a special type of property transfer, because the person endowing the property places special stipulations upon it in order to avoid the division and loss which might adversely affect his or her cult offerings. As Eyre (1992, 210) correctly observes, it is typical of ancient Egyptian documents that a "will" is virtually indistinguishable from any other class of property transfer.

From the Third to the Fourth Dynasty of the Old Kingdom we know that Metjen makes reference to compensation of land, implying the ability to transfer these rights freely (Jasnow 2003, 102) by means of an *imyt-pr* document which enabled someone to transfer personal and real estate to another (Logan 2000, 49). It would appear that there was a constant interflow between royal and private mortuary cult property (Jasnow 2003, 102). As the transfer was frequently from father to son (at least in religious and literary texts) and since *imyt-pr* itself translates as either "that which is in the house," or, more probably, "that which the house is in" (i.e., the document), *imyt-pr* has been translated as "will" (Logan 2000, 49). Metjen received property from his mother as he drafted an *imyt-pr* document in which land, with dependant fields and cattle, was given to him and his children (Logan 2000, 51). From Metjen's inscriptions, we know that the continued maintenance of his various estates and funerary cult were guaranteed (Logan 2000, 51).


The *Inscription of Nikaure* dates from the Fourth Dynasty. Nikaure²⁹ was a prince, the son of Khafre³⁰ (Breasted 2001, 88). From the text it is clear that every bequest (to each of the eight beneficiaries) is a town or towns, with the district or nome given first, followed by the name of the town, with the names being compounded with that of Khafre (Breasted 2001, 89). The assets Nikaure bequeathed to his heirs consisted of fourteen towns³¹ and two estates in the pyramid city of his father (Breasted 2001, 89). These two estates alluded to must have included his “town house” and gardens (Breasted 2001, 89). The fourteen towns were left to five heirs: his wife and his three children, with the fifth name being lost (Breasted 2001, 89). Specific assets are bequeathed to specific beneficiaries, making these bequests legacies and the beneficiaries legatees.

During the Fourth Dynasty, Heti also made a will (or more literally gave out an “order” from his “living mouth” stating the following (Theodorides 1971, 293):

As for my children truly, that which I have constituted for them, as assets of which they shall enjoy the usufruct,³² I have not granted any of them the right to dispose of his (share) as a gift or in consideration of payment ... an exception being made for the son may have and to whom he shall transfer (it). They are to act under my eldest son’s authority as they would act with regard to their own property; for I have appointed an heir against the day when I shall go to the West.

Those funerary priests who shall act under his authority he shall call upon them for my funerary offerings each day and on certain festivals ... but I have not granted him the right to require of them any service whatsoever, other than the funerary offerings (which shall be made) for me each day ...

From the above it appears that the author of the “will” is turning property into an endowment to provide for his mortuary cult. Heti assembles his children into a family syndicate, placed as a consequence of his disposition under the authority of his eldest

29 The spelling used by Breasted (2001, 88) is Nekure. The name Nikaure in the original text is given by Sethe (1903, 16) as . The name is transcribed as “Nikaure” by Dobson and Hilton (2004, 53). This appears to be correct as my transliteration is “*n kʿw re*”.

30 Khafre, or Khafra, (2558–2532 B.C.E.) was the son of Khufu, fourth ruler of the Fourth Dynasty and builder of the second pyramid at Giza (Shaw and Nicholson 2008, 167). Khafra became ruler after the death of his half-brother Djedefra, and his royal titulary included the new *sa Ra* (‘son of Ra’) epithet, which Djedefra had used for the first time (Shaw and Nicholson 2008, 167). According to Shaw and Nicholson (2008, 167) it is assumed that the head of the great sphinx was a portrait of Khafra as it is situated immediately next to his causeway and valley temple. Although there have been suggestions that the geological condition of the sphinx indicates that it was carved earlier, the archaeological and circumstantial evidence appear to support its synchronicity with the Fourth Dynasty pyramid complexes (Shaw and Nicholson 2008, 167).

31 According to Breasted (2001, 89) eleven of these fourteen towns are named after Khafre, and there is no reason to doubt that the other three were also so named, but these names are unfortunately now unreadable.

32 The word “usufruct” is the word used by the translator of this text. Essentially it means that one has only access to the use (*usus*) of the “fruit” (*fructus*) of the asset.

son, who is to administer the estate (Theodorides 1971, 294). This deed of foundation by Heti makes it clear that each member of the family syndicate will receive only revenue from this estate, which has been made indivisible in perpetuity (Theodorides 1971, 294).

From the early Fifth Dynasty, Niankhka “made a disposition for his wife and children to function as *w^cb*-priest for Hathor” (Logan 2000, 52) or literally gave out an “order” from his mouth.

Two *stst* of fields have been conveyed ... to these priests in order (that they) priestly *w^cb* therefrom ...

he said with his mouth to his children while he was on his feet, alive ...

my estate-administrator ... is not empowered to give away ... any possessions ... by means of an *imyt-pr*, but shall perform rituals for this my heir ...

A common Old Kingdom statement, reconstructed by Goedickens (1976, 181), forbids disposing of funerary property by means of an *imyt-pr*:

I have not empowered any Ka-priest of my estates to transfer land, people, or anything which I gave to him so that offerings can be made to me therefrom; or to sell to anyone or to transfer by means of an *imyt-pr* to anyone ...

From the tomb in the Khaefra Necropolis from the Fifth or Sixth Dynasty, the owner of this tomb is establishing endowment for his mortuary cult:

he made this while he was alive upon his feet ... I do not empower [my brothers], my sisters, or any of my offspring ... [to transfer what I have given them], which I conveyed to them to make *pri hrw* offerings to me therefrom ...

In the text known as *Papyrus Berlin 9010*³³ (which dates from the Sixth Dynasty), the defendant alludes to the “customary intestate succession” when he claims, without referring to any documents, that his father’s property should remain with him because the testamentary disposition brought forth by the other party was not authentic. The eldest son thus initially relied on the customary intestate succession law, but there are indications that the deceased made a testamentary disposition prior to death. This

33 Muhs (2016, 36) indicates that there are two fragmentary transcripts preserved on clay tablets from Balat in the Dakhla Oasis. Clay tablets were used in the Balat region during the Old Kingdom instead of papyrus, presumably because papyrus plants did not grow there and papyrus was not regularly imported from the Nile Valley at that time (Muhs 2016, 36–37). Muhs (2016, 37) suggests this may indicate that similar documents may have been written on papyrus in the Nile Valley but have not survived. *Papyrus Berlin P.9010* may have been just such a papyrus.

testamentary disposition made prior to death is similar to the Roman law “testament” (Seidl 1957, 57).

These early texts from the Old Kingdom are only some examples and might refer only to persons of royal birth or to elite members of society, but the essence of certain concepts and elements of succession law pertaining to testamentary dispositions is clearly identifiable and universal in nature, irrespective of the social status of its participants.³⁴

Conclusion

From the dawn of ancient Egypt’s history, the Egyptians cherished the hope of eternal life. From the pre-dynastic to the Roman period, the belief in the afterlife was a fundamental aspect of ancient Egyptian religion. Death was merely a passage from this life to the afterlife. The ancient Egyptians were not interested in death itself, but rather in the afterlife.

To them, the living and dead were part of the same community, and therefore there was a moral relationship between the dead and the living. This explains why the ancient Egyptians were obsessed with sustenance in the afterlife, for the deceased was to be sustained after death, and was thus dependent upon the actual delivery of material goods by the family, with a strong sense of obligation by the survivors.

There were, however, doubts as to whether an individual would be properly provided for after death by the survivors and it gradually became customary to arrange, during one’s own lifetime, for the provision of sustenance after death. This was done by means of the foundation and other “testamentary disposition” documents, like the *imyt-pr*, for example. These are the first building blocks of testamentary dispositions/testate succession law.

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34 I agree with Westbrook (2003, 87) that although ancient Egyptian law lacked features of modern law, the seeds of many modern legal institutions are already in evidence. The legacy to later legal systems must be sought in these “embryonic forms” rather than in developed structures. The contents of these texts, and also texts from the Middle and New Kingdom, will be dealt with in future studies.

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ADDENDUM A: TIMELINE

(Source: Wilkinson 2016, xxxi-xxxiii)

PERIOD / DATES (BCE) / DYNASTY / KING	DEVELOPMENTS IN EGYPT
<i>Early Dynastic Period, 2950-2575</i>	
First Dynasty, 2950-2750	
Second Dynasty, 2750-2650	
Third Dynasty, 2650-2575	Step Pyramids at Saqqara
<i>Old Kingdom, 2575-2125</i>	
Fourth Dynasty, 2575-2450	Great Pyramid at Giza
Fifth Dynasty, 2450-2325 (nine kings, ending with Unas, 2350-2325)	Pyramid Texts
Sixth Dynasty, 2325-2175 (five kings, ending with Pepi II, 2260-2175)	Harkhuf's expeditions
Eighth Dynasty, 2175-2125	
<i>First Intermediate Period, 2125-2010</i>	
Ninth/Tenth Dynasty, 2125-1975	Civil war
Eleventh Dynasty (1st part), 2080-2010 (three kings, including Intef II, 2070-2020)	
<i>Middle Kingdom, 2010-1630</i>	
Eleventh Dynasty (2nd part), 2010-1938 (three kings, ending with Mentuhotep IV, 1948-1938)	

PERIOD / DATES (BCE) / DYNASTY / KING	DEVELOPMENTS IN EGYPT
<p>Twelfth Dynasty, 1938-1755 (eight kings, including: Amenemhat I, 1938-1908 Senusret I, 1918-1875 Senusret III, 1836-1818)</p> <p>Thirteenth Dynasty, 1755-1630</p>	Golden age of literature
PERIOD / DATES (BCE) / DYNASTY / KING	DEVELOPMENTS IN EGYPT
<i>Second Intermediate Period, 1630-1539</i>	Civil war
Fourteenth Dynasty, c.1630	
Fifteenth Dynasty 1630-1520	Hyksos invasion
Sixteenth Dynasty, 1630-1565	
Seventeenth Dynasty, 1570-1539 (several kings, ending with Kamose, 1541-1539)	
<i>New Kingdom, 1539-1069</i>	
<p>Eighteenth Dynasty, 1539-1292 (fifteen kings, including: Ahmose, 1539-1514 Thutmose I, 1493-1481 Thutmose III, 1479-1425 Hatshepsut, 1473-1458 Amenhotep III, 1390-1353 Akhenaten, 1353-1336 Tutankhamun, 1332-1322 Horemheb, 1319-1292)</p>	<p>Reunification</p> <p>Battle of Megiddo</p> <p>Amarna revolution</p>

PERIOD / DATES (BCE) / DYNASTY / KING

DEVELOPMENTS IN EGYPT

Ramesside Period, 1292-1069

Nineteenth Dynasty, 1292-1190

Twentieth Dynasty, 1190-1069
(ten kings, including
Rameses V, 1150-1145
Rameses XI, 1099-1069)

Third Intermediate Period, 1069-664

Twenty-first Dynasty, 1069-945
Twenty-second Dynasty, 945-715
Twenty-third Dynasty, 838-720
Twenty-fourth Dynasty, 740-715
Twenty-fifth Dynasty, 728-657
(five kings, starting with Piankhi, 747-716)

Political division

Kushite conquest

PERIOD / DATES (BCE) / DYNASTY / KING

DEVELOPMENTS IN EGYPT

Late Period, 664-332

Twenty-sixth Dynasty, 664-525
(six kings, starting with Psamtek I, 664-610)

Twenty-seventh Dynasty
(First Persian Period), 525-404
(five kings, including Darius I, 522-486)

Twenty-eighth Dynasty, 404-399

Twenty-ninth Dynasty, 399-380

Thirtieth Dynasty, 380-343

Thirty-first Dynasty
(Second Persian Period), 343-332

Persian conquest

PERIOD / DATES (BCE) / DYNASTY / KING	DEVELOPMENTS IN EGYPT
Macedonian Dynasty, 332-309 Alexander the Great, 332-323	
<i>Ptolemaic Period, 309-30</i>	Death of Cleopatra