

CHAPTER 4

LAW OF CONTRACT

Women in Egypt concluded contracts on a daily basis. These *inter alia* included marriage and divorce agreements, engagement as a wet-nurse, the purchase of property and agreements regarding self-enslavement. A woman could contract of her own free will and did not need the help of a male guardian to conclude contracts.

1) GENERAL

The term “contract” should be understood in terms of what we understand by the modern sense of “contract” and should also include deeds and statements that were put into writing, and that have therefore survived to give us some insight into the ancient Egyptian Law of Contract.

The ancient Egyptian contracts were also, as in modern times, entered into by two parties, and sometimes even by a third party. The rights and obligations of the two parties were set out in these written agreements.

As has been seen in previous Chapters, a family archive was usually kept, serving as evidence of those rights documented in the deeds and contracts. For example, in the case of divorce the rights of the woman were contained in a deed, made by the husband and kept by the woman, to prove that she was a divorcee and that she was now free to remarry. She was also entitled to the money she had paid to her ex-husband, and as long as she had the deed in her possession, it proved that he still

owed her the money. She returned this deed after she obtained her money back.¹

Most contracts and deeds were oral before the 7th century BC. The development of the Demotic script required that transactions be in written form and this gives us a clearer understanding of the law and legal proceedings of Egypt (Andrews 2003).

2) MARRIAGE AND DIVORCE

According to Pestman (1961 : 108), the husband agreed by way of a deed to provide his wife with a *sp n s.hm.t*, consisting of money and sometimes of a quantity of corn. The payment was at first made to the 1) father of the bride, later on to 2) the bride herself, and 3) still later on it was possibly made fictitiously.

This was payable to the wife should the marriage be dissolved by divorce, as is seen from Papyrus Lonsdale:

“If I repudiate you as a wife ... I shall give you ...”

If a woman repudiated her husband she was obliged to pay him back half of her *sp n s.hm.t*:

“If you will go yourself and if you repudiate me as a husband, you shall give me (back) ... which I have given to you as your *sp n s.hm.t*”
(Papyrus Lonsdale).

An amount, half of what the husband had given the woman as her *sp n s.hm.t*, was then included in these stipulations.

¹ Also see Thèodoridès (1971 : 292-293).

A husband could also promise all his property, by way of a deed, as security for meeting his obligations to his wife, either by giving or selling his property as security or by way of an oath:

“I may receive a 100 strokes and I may be deprived of all things that I shall acquire together with you”. (Ostrakon Varille and Ostrakon Bodl.)

Together with this deed of security, the husband usually also stipulated who his heirs must be, whether his children and/or also his wife (Pestman 1961 : 119). For example, Papyrus Berlin 15692:

“Belongs to you (for) the children which you will bear to me all that I possess and that I shall acquire in the field, in the temple domain and in the town...”.

The wife usually acquired this inheritance on behalf of the children, as can be deduced from Papyrus Cairo 31177:

“While you will not be able to give it to another child than the children which you will [bear] to me”.

Sometimes a husband could also give his wife the right (by way of a statement drawn up by him), to bequeath all his property to the children she had borne him, as she wished, as is seen from Papyrus Kahun I²:

“I draw up an *imy.t.pr* for my wife ... concerning all possessions my brother ... has given to me all goods wherever they are: everything he has given me. She shall give it to whomsoever she wants of her children, which she will bear to me”.

² As translated by Pestman (1961 : 121).

A deed has also survived wherein a husband sold all his property to his wife on condition that she would take care of him during his life as well as see to his burial after his death:

“You have contented my heart with the money-value (of) all and everything that I possess and that I shall acquire”

and this deed then continues:

“You ought to take care of me as long as I live; you ought to take care of me when I am dead; you are the one who attends to my embalment (and) my burial”.³

At the time of the marriage the husband usually made a contract with the wife where in which he stated that:

“If I repudiate you as a wife, be it that I hate you, be it that I want another wife than you, I shall give you 5 (*deben*) of money... and I shall give you half of all and everything that I possess and that I shall acquire together with you from this day and afterwards”. (Papyrus Hauswaldt 15)

Yet another way was possible for a husband to allot his property to his wife, besides 1) appointing her as an heir and 2) promising his property as security: by the drawing up of a deed:

“And I shall give you one third (part) of all and everything that I possess and that I shall acquire”⁴.

The portion that was allotted to the wife might also differ from 1/3 - the ratio 2:1 was not an inflexible rule, as is seen here:

³ P. Ryl. II, as translated by Pestman (1961 : 122-123).

“And I shall give you **half** of all and everything that I possess and that I shall acquire together with you from this day and afterwards.”⁵

These kinds of deeds only required the husband to give his wife the agreed property if they should divorce, but not if the wife left her husband of her own accord or if one of them was deceased.

If the wife repudiates the husband she forfeits her part of the communal property and she does so by a statement in the marriage deed:

“If I repudiate you as my husband, be it that I hate you, be it that I want another one than you, I shall give you 2 ½ *kite* of silver”⁶.

She also then states and acknowledges the fact that she will lose her rights to her share if she repudiates her husband:

“And then I am far from you (from) the 1/3 (part of) all and everything that I shall acquire together with you”. (Papyrus Hauswaldt 14)

A marriage settlement of the 20th Dynasty in the Papyrus Turin 2021 is translated by Cerny & Peet (1927 :32-33, 36) as follows:

“The god rejected... concerning her... all that I acquired with her... for the citizeness ... in front of the Vizier. I brought in four slaves... I am satisfied ... what has been done ... went ... I gave her the female slave Nu... together with ... I will give her up ...[Sed]emamen[pa]ash ... two slaves who were in my possession as [my] share along with her, for she was a child ... the children of Ta[thari] who were in my house, though ... did not ... in front of the Vizier and the officials of the Court ... children [in] this manner ... this day, for Pharaoh has] said ...” **all that he**

⁴ P. Ryl. 37 as translated by Pestman (1961 : 124).

⁵ P. Hausw. 15 as translated by Pestman (1961 : 125).

⁶ P. Hausw. 15 as translated by Pestman (1961 : 125).

acquires along with her” ... consisting of the two male slaves and the two female slaves, total four, with children; the two thirds in addition to her one eighth, and I gave these nine slaves which had fallen to my lot in my two thirds along with the citizeness Tathari to my children along with the house of their mother’s father also. They are not [ignorant] of anything that <I> have brought in with their mother. And I would have given them some of what I am bringing in with the citizeness Anoksunozem, but Pharaoh said, **“Let every woman’s dowry be given to her”**. Said the Vizier to the priest and chief workman Howtenufer and the priest Nebnufer, the children of the prophet Amenkhau who stood before him, (being) the eldest brothers of his children, “What say ye of the statement which the prophet Amenkhau your father has made? Is it true about the nine slaves which he says he gave to you as **his two thirds which he divided with your mother, together with the house of <your> mother’s father?**” They said with one accord, “Our father is correct; they are in our possession in truth”. The Vizier said, “[What think ye of] this arrangement which your father is making for the citizeness Anoksunozem, this wife of his?” They said, “[We have heard] what our father is doing, and as for what he is doing, who shall question it? **His property is his own, let him give it [to whom] he [will]**”. Said the Vizier, “Even if it had not been his wife but a Syrian or a Nubian whom he loved and whom he gave property of his [who] should make void what he did? Let the four slaves which [fall to his lot] with the citizeness Anoksunozem be given [to her] together with [all that he may acquire] with her, which he has said he would give her, “my two thirds her one eighth, and no son or daughter of mine shall question this arrangement which [I] have made for her this day”. Said the Vizier, “Let it be done in accordance with what the prophet Amenkhau, this prophet who stands before me, has said”. The Vizier gave instructions to the priest and scribe of accounts Ptahemhab of the Court of the temple of Usimarê Miamûn saying, “Let this arrangement which I have made stand recorded on a roll in the temple of Usimarê Miamûn. The like was done for the Great Court of Nô. In the presence of many witnesses”.

A list of all the witnesses then follows. No dispute is recorded in this papyrus. It only pertains to the drawing up of a marriage deed for a second wife. To make the deed legal it was carried out before the Vizier and witnesses. It is clear that the children received their mother’s eighth share, possibly the mother’s dowry, together with the two-thirds share their father made over to the children. Cerny & Peet (1927 : 36) mention that the eighth share must have been the share of the wife in some property

of her own family. The children also received their grandfather's house and did not intend to dispute the marriage settlement their father made for his second wife, as they received the property that was intended for them. It is also clear that every person could deal with his property without any restrictions.

3) PURCHASE OF PROPERTY

There is a case documented where a woman took somebody to court because she did not receive payment for the property she sold to him:

“They disputed again today over payment for the parts of the field belonging to the citizeness Ipi which Paneferher, son of Horsiese, her male kinsman, had sold to Ikeni. And they came before (the god) Hemen of Hefat and Hemen said with regard to the pair of documents: ‘Ikeni is right. He gave the money to Paneferherat the time. It is finished’. Thus spoke Hemen in the presence of all the witnesses.”⁷

When a person bought real estate, the seller would hand the deed of sale to the buyer and with this deed, the buyer was able to prove his title. The seller would also give the deed to the buyer which was drawn up for him at the time when he bought the property, and this process continued for as long as the estate was resold. Pestman (1961 : 85)⁸ refers to the following stipulation in all property transfers:

“To you each deed belongs which was drawn up: every deed (which) was drawn up (for) my father (and for) my mother in that respect and every deed drawn up for me in that respect and every deed in virtue of which I am entitled to it; it is yours, as well as the right arising from it; you are the one entitled to it”.

⁷ P. Brookl. 16.205 as translated by Ward (2001).

As stated before, a husband could sell all his property to his wife by way of an *imy.t pr*-document for an assurance that she would look after him during his life and make arrangements for his burial after his death. In the British Museum Papyrus 10525 a husband transferred his property, including a house, to his wife, but he had to give her house as security for a loan. The wife states:

“Receive a deed from the hand of ..., my husband, above (mentioned), concerning the house, above (mentioned), in order to make him act according to each-stipulation, above (mentioned). My heart is content with it; I have a right on him in virtue of the right (arising) from the deeds which he has drawn up for me in order to do the right of it for me, always. I am (however) far from you as regards your house, above (mentioned), without litigating over any title or claim in the world with you”.

It is clear that the wife transferred her rights regarding the house to the creditor by way of this deed. Pestman (1961 : 134) also mentions that the ownership still vested in the husband and that he administered it. If he wished to alienate this property he needed the consent of his wife and she then drew up a deed wherein she waived her rights to the said property, the fact being that the husband gave her security over all the property:

“I have a claim on ..., my husband, above (mentioned), according to the right (arising) from the deeds which he has drawn up for me”⁹.

A wife was also safeguarded against any claims or goods her husband gave to others:

“If a man draws up a *sh (n) s’nh* for a woman and he gives goods of his to another person without the woman or her eldest son having approved of said deed: if the woman or her eldest son brings an action against the man

⁸ P. Leid. 381 as translated by Pestman (1961).

⁹ P. Phil. 6 as translated by Pestman (1961).

to whom the goods are given, they will not be pure for him and he shall not be allowed to be full of them”.¹⁰

4) LOANS

A wife could also lend her husband money, by way of a deed which she had drawn up, and a fine example of such loan by a wife to her husband has survived in Papyrus Louvre 2443:

“You have to claim from me 3 (*deben*) of silver, is 15 *stater*, is 3 (*deben*) of silver again, **in the name of the money which you have given to me**. I shall give you back 5 (*deben*) of silver and 7 *kite*, is 28 ½ *stater*, is 5 (*deben*) of silver and 7 *kite* again”.¹¹

The husband paid interest of 30% and the husband also sold his property as security.

In another case Renepetnofret borrowed 10 *deben* from Andronikos. She agreed to pay back the loan after a year. As security for the loan she specified a plot of land, with the understanding that if she could not meet her obligation to pay him back, Andronikos would be considered the owner of the plot of land, as if he had bought it from her. The sum lent is considered the purchase price. After a year Renepetnofret was not able to pay him back and she thus ceded the plot of land to Andronikos by way of a deed. (Ostraca Hauswaldt 18 a & b)

¹⁰ P. BM 10591 as translated by Pestman (1961 : 44). Also see Chapter 1, Family Law for an outline of the deeds the husband entered into with his wife.

¹¹ As translated by Pestman (1961 : 152). See also Watterson (1991 : 31).

Money could also be borrowed from a person, and a stipulation could also be inserted to benefit more persons than only the one person the money was originally borrowed from. Papyrus Loeb 62¹² refers to a man, Heru, who after borrowing the amount of 70 deben from Panefer, stipulates that:

“He has given it to me in exchange for the document of 21 (*deben*) of pure silver from the treasury of Ptah, which **I have drawn up in his name and (that of) his daughter, Tawenefer**, while it remains in his hand until the day of paying him back the 70 (*deben*) of money above (mentioned)”.

As security Heru drew up a deed on behalf of the borrower and his daughter. The deed served only as security until the 70 *deben* were paid back after a year.

A case is also known where a warrant of execution against Psintaes, on behalf of Chonouphios was issued, as the money and maintenance had not been paid back after the fixed period:

“He has lent 500 *drachms* of silver to the defendant in accordance with a deed which is registered by the *Grapheion*, on behalf of the aforementioned Thaues, also called Asklepiades, in order to procure her 60 *artabas* of *olyra* annually and 72 *drachms* of silver, to which Thaues the wife of Psintaes, and the son of both, Smanres, have consented, while it is further stipulated that the possessions would serve him as a security for the title of the deed”¹³.

Thaues Asklepiades was someone else than the wife of Psintaes and according to Pestman (1961 : 46), she could hardly have been anyone else than the daughter or other relative of the money-lender, as the latter had lent money on her behalf by way of the deed (as security) and he now claimed back the maintenance that was

¹² As translated by Pestman (1961 : 45).

¹³ P. Tor. 13 as translated by Pestman (1961: 45) from the Greek.

outstanding and due to Thaues Asklepiades as well as the money that had been lent. It is thus possible that a father or the husband of a woman could institute an action against a money-borrower on behalf of her, seeing that the deed made provision for this.

5) SELF-ENSLAVEMENT

Even though self-enslavement seems to have been illegal in Egypt, it was widely practiced by men and women. To sidestep the illegal nature thereof, the servitude was only stipulated for a limited period.

Watterson (1991 : 33) mentions that sometimes the disposal of property extended to the self-enslavement of the women herself.

We know only of two reasons for which a woman was forced to self-enslave herself:

- 1) as “payment” to a creditor for bad debt
- 2) to be assured that her needs and financial security would be provided for.

The women paid a monthly fee, as if they were receiving a service (Picone 2001).

Because the service was a legal institution, a contract had to be drafted in such a way that the terms, conditions and responsibilities of the parties concerned, were set out.

The woman could also include her children, born and unborn, and grandchildren in the execution of such an agreement (Picone 2001).

The agreement¹⁴ of one such woman who had committed herself to the temple of Saknebtynis read as follows:

“The female servant,.....,has said before my master, Saknebtynis, the great god, I am your servant, together with my children and children’s children. I shall not be free in your precinct forever and ever. You will protect me; you will keep me safe; you will guard me. You will keep me sound; you will protect me from every demon, and I will pay you 1-1/4 kita of copper...until the completion of 99 years, and I will give it to your priests monthly.”

These contracts were usually the voluntary engagement in their enslavement by women.

6) ENGAGEMENT IN WET-NURSING

Wet-nursing was one of the few highly paid jobs that were permitted for women of all classes. The high rate of mortality amongst women during birth meant that it was a profession that was always in demand (Tyldesley 1995 : 78).

Poor women that had more than enough milk for their own child’s needs, could therefore hire themselves out as wet-nurses: a custom that was prevalent in the upper classes. The work of a wet-nurse was undertaken in a professional manner, by way of the drawing up of contracts. In one such contract (Papyrus Cairo Dem. II 30604) a woman agreed to nurse a child for three years, and she was given in return:

“... a salary of 350 *drachma*, oil and her board”.

¹⁴ Picone (2001), primary source unknown.

Usually the parents of the baby drew up a legal contract with the wet-nurse and they then agreed upon the breastfeeding of the child for a fixed term and for a fixed salary (Tyldesley 1995 : 78).

The office of royal wet-nurse was a very much desired office because it was one of the most important and influential positions a non-royal woman could wish to hold (Tyldesley 1995 : 79), and according to Watterson (1991 : 44-45):

“Wet-nurses exerted a great influence on the children they nursed, a factor that was especially significant in royal circles...”.

Some high officials also found it politically profitable to marry royal wet-nurses, as can be seen from the tomb¹⁵ of Amenemhab, whose wife is shown on a relief suckling a young prince. Kenamun’s wife is also shown¹⁶ suckling the baby king Amenhotep II.

SUMMARY

It can be concluded that women were entering contracts on a daily basis in ancient Egypt. Contracts included marriage and divorce deeds, engagement in wet-nursing, the buying and selling of property as well as arrangements for self-enslavement.

Marriage deeds were at first entered into by the husband and his father-in-law, and later on were concluded between the husband and the bride-to-be. The wife was a

¹⁵ Tomb No. 85.

¹⁶ Tomb No. 93.

“silent partner” in the greatest part of these contracts, although she had to make specific stipulations regarding divorce.

Women could conclude property contracts, either for the buying or the selling of property, and they could do so without the help of a guardian. A deed was drawn up by the seller whereby the property was transferred to the buyer of the property. All rights in the property then vested in the seller.

A Woman could also lend to or borrow money to and from other persons, and she did so by way of a deed drawn up. She could also lend money to her husband in exchange for security from him. Her rights were thus firmly protected by the deed.

Options available for a woman to increase her income included entering into contracts for self-enslavement and wet-nursing. In entering a contract for self-enslavement, she undertook to be the servant of a person for a fixed period of time, in exchange for her own, and her children's, maintenance. As wet-nurse she received payment, money and *in natura*, for services rendered in breastfeeding another's child.