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# SCRIPTA CLASSICA ISRAELICA

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FOR THE  
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## Legal Ostraca from Herodium

Esther Eshel, Haggai Misgav, and Roi Porat

*Abstract:* This article marks the first publication of two small fragments of legal documents on sherds found at Herodium with estimated dating to the period of the Great Revolt. Lacking a precise date, we surmise that these original sherds could have been brought to the site by refugees from the revolt, in a similar fashion to the documents found at Muraba'at.

*Keywords:* Herodium, Great revolt, Legal Documents, Jewish Epigraphy

### INTRODUCTION

The writing materials known to us from antiquity are stone, papyrus (and sometimes parchment), and potsherds. Legal documents, which had to be kept in an archive or presented as testimony, were usually written on papyrus. Potsherds were the most inferior writing material, and therefore, they are of temporary importance only, such as notes and day-to-day lists.

But yet, legal documents were also written on sherds. Since this use of sherds is quite rare, the discovery prompted a discussion of the significance in the Halachic Jewish world of that time.

The ancient rabbinic sages were familiar with the possibility of writing documents on sherds at their time.<sup>1</sup> It may be presumed that documents of this type were not numerous. They needed to be preserved for at least several days, and sherds, due to their fragility, do not seem suited to this purpose. But as noted, deeds on potsherds have as much validity as those on any other writing material. The archaeological findings support the sages' rulings on the matter, and not only among Jews. We have an Edomite marriage document from Maresha, from the second century BCE, dated from its content as well as its discovery in an organized excavation (Eshel – Kloner 1996, 1–2, 5–6; Eshel 2010, 72–76). While it is possible that this was only a draft or a copy of a document, in any case this ostrakon served a legal function. In Wadi Muraba'at an ostrakon, Mur 72, was found that constituted a legal document and in fact consisted of two successive texts (Milik 1960; Misgav 1996, 22–23). It dates, according to epigraphic considerations, to around the beginning of the first century BCE. It is difficult to know the precise use of this ostrakon; perhaps it was a kind of recording of minutes or summation of a legal proceeding. In any case it was valuable enough to warrant preservation. A similar document was discovered at Qumran containing the wording of a deed of gift, whose historical interpretation is in

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<sup>1</sup> Bills of divorce could be written on 'any material that can be used for writing' (Mish. Git. 2, 3); marriage documents: 'Even if he wrote it on clay...she is betrothed' (Tos. Kid. 1, 1–2); and documents of land sale transactions '...if he wrote it on paper or earthenware...it is thereby sold or given' (BT Kid. 26a).

dispute due to problems in deciphering it. In that case the wording is that of an actual deed, although it could be said to have been a copy or a draft (Cross – Eshel 1997, 28; Yardeni 1997a; Misgav 2018).

In all the cases cited so far, no differences can be detected between the wording of documents on sherds and that known on papyrus documents. That is to say, marriage documents, summaries of legal proceedings, as well as actual documents of transfer of possessions — by gift or sale — could be written on sherds. While with regard to Wadi Muraba‘at, inscriptions on sherds may be attributed to the conditions of life of the refugees or rebels who were compelled to hide in the desert, this cannot be said of Maresha; and even in the Judean Desert, most of the documents were in fact on papyrus. At least some were brought by the cave-dwellers from their original places of residence, and there is no reason to assume that these ostraca were necessarily inscribed before a court that convened in the caves. In any case, no separation can be made between these documents and others.

In various places in rabbinic literature, it can be understood that deeds are a secondary halachic creature. Principally, or in the Talmudic terminology “de-Orayta” (literally, from the Torah), there is no difference between the word of mouth and a lender in a deed.<sup>2</sup> Their validity is the same, their repayment time is the same, and even the encumbrance of the lands derived from them is the same. Nevertheless, the sages created a separation between a lender in a document and an oral lender. The written deeds are mainly used to document a process carried out in life itself. Indeed, several deeds in Halacha create a legal reality by their very existence—property deeds, marriage, divorce, and slave emancipation. Still, these are documents of a different type; the written wording explicitly says, “you are married by this document,” etc., and it has no actual monetary content and details of related results. In the findings, it seems that actually, no such deed was used, except in divorce proceedings.

Therefore, the deeds grow first of all from real life. It is natural for people living in a specific cultural environment to use the versions of deeds that exist before them. When they come before the sages, these deeds will be discussed according to the Halacha. But the sage does not need to say how to write.

Over time, a unique tradition of writing deeds for Jews in their internal discussions is formed. Therefore, we can view Aramaic deeds in Jewish script as Jewish deeds and teach them in the light of the Jewish legal system. After all, this is the time when the sages work and in which the Mishna is formulated.

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<sup>2</sup> Bab. Tal. BB 175b: ‘Ulla says: By Torah law, a creditor, whether in the case of a loan with a promissory note or the case of a loan by oral contract, can collect the debt from liened property that has been sold by the debtor subsequent to his receiving the loan. What is the reason for this? The property of a debtor at the time of the loan, even an oral loan, is liened by Torah law. And what is the reason the Sages said that one who gives a loan by oral contract can collect the debt only from unsold property? Because of the loss that would be incurred by purchasers of land if the seller’s creditors could seize the land they have purchased’.

## HERODIUM—FIND SPOTS OF THE OSTRACA AND CHRONOLOGY

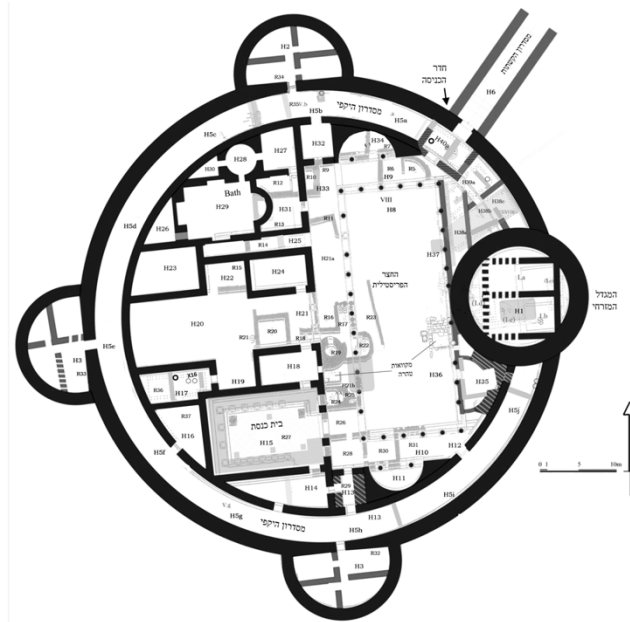
The ostraca under discussion here were discovered at the mountain fortress of Herodium, during excavations by the Ehud Netzer Expedition of the Hebrew University of Jerusalem. They were unearthed in the peripheral corridor in 2016–2017 (Fig. 1),<sup>3</sup> which is situated between the curving walls of the “mantle” surrounding the fortress (Fig. 2). The first ostrakon (HR.38) was found on the ground floor of the northern wing of the “mantle”, in a floor well dated to the time of the Great Revolt (66–71 CE). The second ostrakon (HR.20) was found in accumulations of soil in the southern wing of the peripheral corridor, near remains from the time of the latter revolt, and it seems that this ostrakon should also be dated to that period.



*Fig. 1. Aerial view of Mount Herodium, looking east (photo: Tatzpit. Herodium Archaeological Expedition)*

<sup>3</sup> Yakov Kalman and Rachel Chachy were full partners in leadership of the excavation. The excavation team consisted of the following: Yael Kalman, Yusuf Abu-Amariya, Michael Chernin, Shulamit Terem, Shimon Gasanov, Asaf Ben-Chaim, Yashi Yahav-Matoah, Elad Ternner and Yonatan Bourgel. The ostraca under discussion here are part of the large assemblage found in this excavation. We thank Amichai Noam, who composed the extensive catalogue of this assemblage (Excavation Permit nos. 1-1-2016; 1-1-2017). For preliminary publication of these excavations see Porat et al. (2018); Porat – Kalman – Chachy (2018), 106–14.





**Fig. 2.** Plan of the Herodium mountain fortress. In black, the walls from the Herodian period; in gray: walls from the time of the Great Revolt and the Bar-Kokhba Revolt (plan: Rachel Chachy. *Herodium Archaeological Expedition*).

The mountain palace fortress of Herodium, which was built by King Herod in the second part of the first century BCE about 10 km south of Jerusalem, served Jewish rebels during the Great Revolt. They held the fortress from the outbreak of the revolt in 66 CE until its conquest by the Romans in 71 CE. Josephus relates that the site served as an outpost for rebels, apparently from Edom (*Wars* IV, 515–520; VII, 163; see Schwartz 2015, 5–6). It seems that the location of the fortress, between the edge of the settled area and the Judean Desert, was utilized by the Edomite rebels primarily to defend the nearby settled area (Porat et al. forthcoming).

#### THE OSTRACA

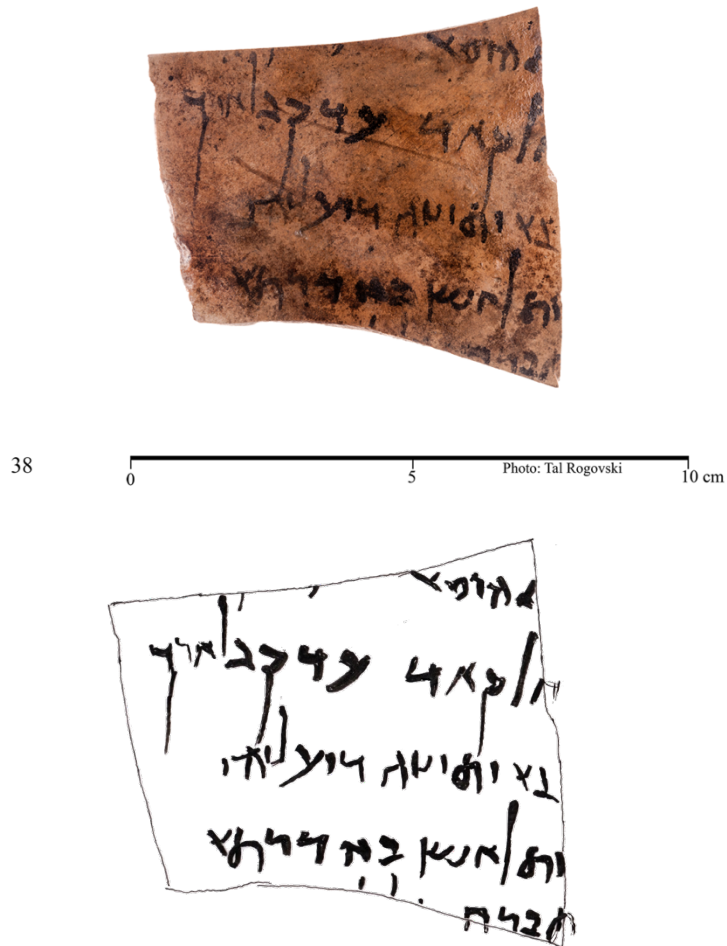
The assemblage of ostraca from Herodium, most if not all of which were inscribed on body fragments of various pottery vessels, mainly jars, does not differ in nature from similar assemblages from the nearby sites of Masada, Machaerus and Qumran. The sherds were inscribed in ink, mainly in the rapid, flowing, cursive Jewish script. The characteristics of some of the letters of this script are similar, sometimes to an extreme, in their simplicity, with lines omitted and letters sometimes attached. In some cases, certain letters were written in a more formal manner but this does not attest to the formality or special skill of the scribes. It should be remembered that official deeds on papyrus, which were written before a court, were also written in cursive script, and in cases of “folded” bills of divorce (BT BB 160b), the script is so cursive as to be illegible. In finds from

Wadi Muraba‘at and Nahal Hever, from the time of Bar-Kokhba, documents in Aramaic were written in cursive script, while those in Hebrew were written generally in formal script; however, this may have stemmed from an intentional policy of returning to Hebrew in managing the rebellion as an order from above (Naveh 1992, 98–102). The documents published here, in any case, were written entirely in cursive script.

The ostraca under discussion here contain clear expressions of a legal nature, which, as noted, are similar to other documents from the period. Thus, they apparently should be understood in the same context.

**Ostracon 1 (HR.38) (Fig. 3–3a)**

L.3489; B.8309.



*Fig. 3–3a. Inscription 1 (photo: Tal Rogovsky, Herodium Archaeological Expedition, Hebrew University; drawing: Haggai Misgav)*

Context: Peripheral corridor in the mountain fortress, northern wing (H5b); on a floor from the time of the Great Revolt.

Description: jar fragment, reddish brown. Maximum width: 7.5 cm, maximum height: 6.8 cm.

Inscription: remains of five lines. Average height of letter 0.6 cm. Letter width 1 mm. Black ink.

This was apparently a deed written in Aramaic, mentioning a plot of land and its boundaries (lines 2–3), rights of possession or negation thereof (lines 1, 4), and perhaps mention of a ‘receipt’ (line 5). These components are found on almost every deed of sale of real estate, even if the arrangement of the elements differ.

*Reading:*

- .1 ]°[...][...][...][...]  
 .2 ]הלקא ד<א> עד קבלחרך  
 .3 ]בא ותוניה די עלוה<sup>א</sup>  
 .4 ]ל ית לאנש בה דרתא  
 .5 ]תברה

*Translation:*

- 1 [... ] to raise [...]  
 2 [...] This portion up to the front of the window  
 3 [...] And the rooms on it  
 4 [... N]obody has a courtyard in it (or: Nobody has a right to possess a courtyard)  
 5 [...] a receipt

*Commentary*

#### Line 1:

[...]הרמא] — Verb from the root *ר"ו* in *Af'el* stem, meaning ‘raise’.

A deed of sale, XHev/Se 21, belonging to the Seiyâl Collection outlines the actions the buyer is permitted to carry out pertaining to the asset (Yardeni 1997b, 76–83):<sup>4</sup>

לעלם רשי יהוסף זבנה וירת[ו]הי באת[ריא] אלך למחפר ולהעמקה למב[נה] ולהרמא למקנה ולמזבנה] ולמעבד בהון כל די יתצבון מן יומא] דנה ועד לעלם...

*Translation:*

‘Forever empowered (are) Yehosef the buyer, and his inheritors, regarding those pla[ces] ]to dig and deepen, to bu[ild] and to erect, to buy and to sell[ and do with them whatever they/you desire, from] today and forever ...’ (ll. 6–9) (Yardeni 1997b, 82).

We may reconstruct in ostracon 1 the infinitive: ]הרמא, ‘to raise’.

Therefore, the purchase included not only the area, but also the space above it, which allowed the buyer to build to any height he chose and dig to any depth. That was

<sup>4</sup> For the use of the Hebrew language in economic documents discovered in the Judean Desert, see Eshel 2006, esp. 253–54.

presumably also the case in the document in question. Thus, it seems that in this line and presumably in the lines that preceded it as well, the buyer's rights were delineated in terms of the actions that could be taken with regard to the property purchased. As noted above, the boundaries of the property are only detailed after this clause; that is also the case in XHev/Se 8a (Yardeni 1997b, 34–37), where it states (ll. 4–5): די תפתחנה לגה בתך ורשה לא: '... that you might open it into your house. And you >you<, have no right with me in that courtyard', and only in line 8 and thereafter are the boundaries of the property delineated.

### Line 2

<א>[—The term חלקא in this case meaning 'portion', 'share' or 'land parcel', is mentioned more than 20 times in ostraca from Idumea as חלק or with the definite article—חלקא occasionally with the combination די חלקא; see for example חלקא זי אבאנשי (Yardeni 2016, 286–87; JA 267). This combination can be compared with the document describing the apportioning of slaves from Elephantine: זי זנה חלקא זי '... and divided (between) us the slaves of Mibtahiah our mother. And behold, this is the portion which came to you as a portion, you Jedaniah...' (Porten – Yardeni 1989, 48–50); TAD B 2.11, line 3).

The letter *dalet* after the word חלקא does not seem to belong to this word, since there is a space after it. Neither does it seem to be the beginning of the next word. This may be an error by the scribe, who left out the letter *alef*, to be reconstructed as: <א> meaning 'this'.

עד קבלהרך — the words קבלהרך were written running together, and should be separated into two words: קבל חרך. The preposition קבל means 'opposite'. This term apparently notes the boundary of the plot 'up to' some point, perhaps someone's window. In other deeds, the term חך לקבל or similar expressions appear at the end of a deed, cf. וקים לקבלך 'it is valid accordingly' (Sokoloff 2003, 76).

These are concluding and confirmation formulas, in which the writer accepts everything written above, or, so to speak, 'opposite this'.<sup>5</sup>

Here, in contrast, the word appears in its literal sense, as the marking of a place.

חרך — window, opening. See the description in Song of Songs 2:9:

הנה-נה עומד, אחר פתלנו--משגים מן-הסלכות, מציץ מן-החרכים Gazing through the window'. This meaning can also be found in the Jewish Palestinian Aramaic, meaning 'window, opening' e.g. in the Neofiti Targum על חרכא to Gen 26:8 בעד החלון (See Sokoloff 2017, 222). It is possible that the boundary marker was a neighbor's window.

### Line 3

בא[—Because the context is cut off, we cannot know how to reconstruct the beginning of the line.

ותוניה—The word תוניה means 'rooms', mentioned in Deed of Sale XHev/Se 8:

זבנת לך יומה זנה לביתה] די לי] ודרת בית קורה בכפר ברו לתונה] די פ] תיח למדנחה לגו ביתה רבה דך

<sup>5</sup> See חיתום שטרות in Tosef. BM 1:13; TB BB 176a.

‘[I] sold to you the house[ that I own ] and the ‘courtyard of the beam (?)— house in Kefar *Bṛw*, the/its rooms [that o]pen to the east inside that large house...’ (l. 2) (Yardeni 1997b, 26–33).

עלֹהֶ׃—the last three letters are not clear. The shape of the *he* is different from the letter *he* in the same line. The *he* can also be read as *dalet*, and the *waw* as a *yod*, and the *yod* as a *waw*. In this case other possibilities can be suggested: על ידֶ׃—as a marker of place or possession; or: עליהֶ׃ ‘which is on them’.<sup>6</sup>

#### Line 4

ל[ית] או ל[ית]—The first word may be completed as ל[ית] or ל[ית], the negative particle. דרתא—the word דרה, which means ‘courtyard’, with the definite article. It seems that this line negates the right of another person’s possession of the courtyard.

#### Line 5

תברא—[תברא in the context of a legal document means ‘receipt’, for example: הווא שטרא דיהווא דיתמי דנפק תברא עליה meaning that there was a certain promissory note inherited by orphans from their father, stating that someone owed them money, ‘against which a receipt was produced’ by the borrower, stating that the debt was already paid (BT BB 7b). The receipt declares the removal of financial obligations between the parties. Another possible reading is: ברת ברה— ‘outer house’ (or ‘the house of his son’); that is, a continuation of setting forth rights sold with the property.

#### Conclusion

From the remains of the inscription, it seems that this is part of a contract of sale or transfer of ownership of a house, perhaps a unit that included a courtyard and a house. It mentions rooms, and perhaps a window or an opening, and the apparent prohibition against using the courtyard of the house of the buyer. Such a prohibition was found in the above mentioned He/Se 8a, where the buyer is forbidden to use the house courtyard.

In deeds of sale it was accepted to set out various clauses involving the sale, but because the deed in question is very fragmented and most of it is missing, it is difficult to know what it included. At the end of the deed, a receipt is apparently mentioned, or perhaps the continuation of the conditions of the deal. The fact that such a deed was found at the site was not surprising. As will be recalled, refugees from the Bar-Kokhba Revolt took packets of documents with them to the desert, confirmations of payments, deeds, marriage deeds and receipts, in addition to the keys to their houses and various kitchen items. Obviously, they did not think they would end their lives there, but rather that they would return home. If indeed these were also refugees active in the fortress, they too may have brought with them documents that they would need when they returned home, after the successful end of the revolt. Of course, we cannot be certain today what the circumstances of the transaction were and how it ended, whether successful or not.

<sup>6</sup> We thank Dr. Tania Notarius for her suggested reading עלֹהֶ׃ and additional comments.

**Ostracon 2 (HR. 20) (Fig. 4–4a)**

L.3407; B.7630



**Fig. 4–4a.** Inscription 2 (photo: Tal Rogovsky, Herodium Archaeological Expedition, Hebrew University; drawing: Haggai Misgav) [<https://drive.google.com/drive/u/0/folders/1Vku-wUM85e2bQG7isCEK109utkwccGce>]

Context: Peripheral corridor in the mountain fortress, southern wing (H5h). Accumulation of soil.

Description: Jar fragment, light brown. Maximum width: 7 cm, maximum height: 8.2 cm.

Inscription: 3 lines, 15 letters. Average height of letter: 0.7 cm; Thickness of letter: 1 mm. Black ink.

As noted, this sherd also appears to have the context of an Aramaic legal document. In this case, no legal wording was preserved in the body of the document, but the word שטר — deed — is apparently preserved, and if this is indeed the signature of a witness, then the context is clear — witnesses signed documents to validate them and allow their future authentication in case of objection. As shown below, it is possible that ostraca 2 includes actually two documents written consecutively.

The following may be read in the remains of the sherd:

- .1 [שהד י[ע]קב ב]ר
- .2 ]ד°ן ב°
- .3 ]שטר די

Translation:

1. [...] witness, Jacob son of [...]
2. [...]
3. [...d]eed of [...]

### Line 1

]ר[קב י[ע]שהד—‘witness, Jacob son of [...]’. This is the signature of one of the witnesses to the document. The writing is not that of a professional scribe. It was often the case that witnesses did not know how to read or write, and only learned to write their names. In any case, they certainly did not have the skills for official writing.

### Line 2

It is difficult to know whether there are remains here of another name, or perhaps a place. Below line 2 there is a large space where another line could have fit.

### Line 3

[... די שטר]—‘[...d]eed of [...]’. This writing looks more professional.

The signatures of the witnesses usually come at the end of the deed, and nothing additional follows them. If the first and the second lines preserve the names of witnesses, then the third line, which comes after a space, would already note the beginning of a new document. Noteworthy here is Ostrakon 72 from Muraba‘at (Milik 1960, 172–74), which also apparently had two different legal texts written in succession on the same sherd, with the space of about one line between them, like the deed under discussion here. It has been suggested that Ostrakon 72 be interpreted as having to do with a record of ‘court proceedings’, that is, rulings of some tribunal that were written down as minutes. We also have leases belonging to Bar-Kokbha’s leaders, Muraba‘at 24 (Milik 1960, 122–34), which were written in succession on a long papyrus scroll, and they too, apparently were part of archival documentation of transactions. A mishnaic verse is relevant here: ‘two bills of divorce that a scribe wrote on the same paper one next to the other’ (Mish. Git. 9,6), attesting that writing two documents one after the other was possible both in a source and not only for archival needs (Misgav 1996, 24, n. 17). In the case before us, if the

witness is mentioned who apparently signed the document, possibly in his own unskilled hand, this was not a document to be filed or a copy, but rather the original itself, as attested in the above mentioned Mishnaic verse. Of course, we cannot know the essence or content of the document itself. In the marriage contract from Maresha the word חתם was inscribed in the last line, with another writing tool. We have proposed that this word marks the place for a signature (Eshel – Kloner 1996, 20).

#### DISCUSSION AND CONCLUSION

The discovery of legal documents at rebel sites should come as no surprise. The rebels lived at the site for quite some time, sometimes for a few years; they conducted their daily lives, worked for a living, had families, tried to hold out against the forces that sought to annihilate them; they did not spend all their time fighting. Almost all the ostraca from the time of the rebellions bear the names of individuals and the names of plots and locales, quantities and products, all of which attest to managing matters of daily life. Transactions made there could sometimes have stemmed from the expectations of a return in the future to their previous abodes, or from a desire to conclude transactions that were at risk; some of the documents may also have been written before the rebellions. This situation might be compared to that depicted in Jeremiah 32, where Hanamel, the son of Jeremiah's uncle Shallum sells a field in Anathoth to Jeremiah while the latter was incarcerated in the palace prison compound in Jerusalem during an actual time of battle. In Qumran, a gift deed was found on a sherd that may also have belonged to the time of the revolt. That document itself cannot be precisely dated, certainly not to the few years in this period that divided wartime from peacetime. It should be remembered that some of the legal documents from the time of the Bar-Kokhba Revolt that were found in the Judean Desert were also written at the very time of the revolt, and some of them were even written at Herodium ('Herodis' as the documents call it). These include marriage contracts (*ketuboth*), divorce documents and leases, with dates from the time of 'Simon the president of Israel'—the three years during which he ruled in Judea being an almost continuous time of war.<sup>7</sup>

Of course, due to the limited finds, we cannot draw the opposite conclusion, that life at the site was a peaceful routine. Even in Jerusalem at the time of the Great Revolt, almost none of the epigraphic finds show anything of the history-changing events occurring there at the time. Not only are the battles not obvious epigraphically, neither are the religious and ideological rifts that split the entire people. These were manifested by the historians that chronicled the period. As for the Bar-Kokhba Revolt, we are fortunate that a few letters from the archives of relatives of Bar-Kokhba's generals survived; if we had to rely only on the epigraphic evidence, we would know nothing about the course of the revolt. This is the situation in the case of both the Great Revolt and the Bar-Kokhba Revolt. We interpret the finds in light of the written sources, and not the opposite. It is important to maintain this separation, and not only in this realm — the attempt to build a historical

<sup>7</sup> It should be noted that a number of economic documents from the Great Revolt were found in the Muraba'at caves (see Eshel – Broshi – Jull 2005, 45–50). The possibility cannot be ruled out that some of these documents were brought to the caves by rebels who came from the Herodium area, possibly after they migrated to that area after the destruction of Jerusalem and of the surrounding villages (see Porat – Eshel 2008, 338–39).



picture based only on findings (which, even when they speak from ostraca, are fairly mute), is like a blind man trying to create a picture of an elephant by feeling its trunk.

This article marks the first publication of two small fragments of legal documents on sherds found at Herodium with estimated dating to the period of the Great Revolt. One of them is a part of a contract of sale or transfer of ownership of a house, perhaps a unit that included a courtyard and a house. In the other sherd only few words were preserved, but they enable us to identify the inscription as a legal document.

These sherds could have been brought to the site by refugees from the revolt, in a similar fashion to the documents found at Muraba'at.

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