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**A Dunhuang Document on the Division of Property
from the Serindian Fund of the Institute
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Abstract: The article is devoted to the study of a document on the division of property—SI O14 (1) from the Serindian Fund of the IOM RAS which, despite its fragmentary nature, provides information of a legal and social character relating to everyday life in a district centre on the borders of the mediaeval Chinese Empire. The document reflects the legal practice in China under the Tang dynasty.

Key words: Dunhuang, Serindian Fund, official and legal documents, division of property

Serindian Fund of the IOM RAS

The Serindian Fund is probably the most linguistically diverse—and therefore the most difficult to process and study—in the manuscript collection of the IOM, RAS. It owes its beginnings to Sergei Fedorovich Oldenburg (1863–1934), who assigned manuscripts from Xinjiang (Eastern Turkestan, Serindia) to a special individual collection and gave the fund its name and press-mark (SI). The very first to be included in it were the manuscripts brought back by the First Russian Turkistan Expedition headed by Oldenburg in 1909–10 (press-mark SI O) and also those sent back at various dates by Nikolai Petrovskii, Nikolai Krotkov, Alexander Kokhanovskii, and other diplomats serving in China. Later, it was expanded with materials delivered by the expeditions led by Vselovod Roborovskii, Mikhail Berezovskii, Piotr Kozlov and Sergei Malov. Today, the fund contains 6,618 items. There are more texts in Uighur than in any other language. There are also quite a lot of Sanskrit manuscripts, Tocharian language manuscripts of Kucha and scraps of Tangut woodcuts. A significant portion of the documents in the Serindian Fund, mainly the non-Chinese ones, have been studied and published.¹

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¹ SALEMANN 1904; MALOV 1932; MALOV 1951; *Sogdijskie fragmenty* 1980 et al.

Even a most perfunctory inspection of the Serindian Fund gives one the impression that the first collectors of manuscripts in Xinjiang paid special attention to non-Chinese documents that reflect the historical sequence of the most ancient civilizations in the region. One virtue of the Fund is that, for many manuscripts, we have an indication of where they were acquired. S.F. Oldenburg placed fragments in envelopes on which he noted in his own hand when they were purchased and sometimes recorded the name of the seller. Chinese documents, for the most part, ended up in the Fund as reverse sides of Uighur or Sanskrit fragments. There are no complete manuscripts in the Fund. Most Chinese language texts are represented by brief extracts of Buddhist content, among which are fragments SI O16 that require restoration and subsequent inventorying. According to the note that Oldenburg made on the envelope, the fragments come from Dunhuang. This makes it possible to conjecture that some other manuscripts in the Serindian Fund whose origin is not indicated also come from there.

A fairly extensive section within the Chinese part of the Serindian Fund, which furnishes rich data for further study and publication, is the collection that Alexander Kokhanovskii, the medical officer of the consulate in Urumqi, put together in Turpan. Until 2005, around 300 Chinese fragments from this collection were kept in one envelope with the single press-mark SI K/3. At present, this part of the Fund is being inventoried and each fragment is being given its own press-mark. Besides this, the IOM Serindian Fund has several fairly large Chinese fragments brought back from Turpan and Dunhuang by Oldenburg's First and Second Russian Turkestan Expeditions. These items are mainly texts of a Buddhist nature, but there are also official and commercial documents.

Non-Buddhist Documents from Dunhuang

The library discovered in 1900 at the Mogao Caves near Dunhuang belonged to a Buddhist monastery, and so the bulk of it (ca. 90%) consists of Buddhist texts that can be subdivided into two main groups: translated works belonging to the canon and original Chinese Buddhist writings. The non-Buddhist part of the Dunhuang manuscripts is very varied in its make-up and includes works of fiction, among them vernacular literature (*suwenxue* 俗文學), works of traditional Chinese philosophy, historical, Confucian and Taoist writings, dictionaries, textbooks, collections of model letters, manuals, medical and divinatory texts, calendars and calligraphic exercises. The

most important part of the non-Buddhist manuscripts is made up of documents—official and business papers of various contents. This part of the collection is highly remarkable and unique in character, as forgotten types of documents were found in Dunhuang that reflect the daily life of Chinese society in a district centre of the borderland. It is well known that, in the Orient, and in China in particular, much care was taken of state papers relating to the activities of the court and the central government, but official papers of provincial and district centres were not, as a rule, kept for long; therefore every find in Dunhuang or Turpan is of tremendous significance for scholars.

The Dunhuang and Turpan non-Buddhist documents can be divided into four basic types:

1) Legal: legislative acts (*lü* 律), statutes (*ling* 令), and regulations (*ge* 格).

2) Administrative: communal orders (*shetiao* 社條), reports (*zhuang* 狀, *zuozhuang* 奏狀, *shenzhuang* 申狀), reports (*die* 牒), complaints and letters (*shuxin* 書信), although the latter could also be of a personal nature.

3) Relating to libraries: lists of lacunae, catalogues, records of donations for expanding libraries' stocks or putting them in order, and so on. These mostly related to the library of the Mogao Caves, such as "A Document on the donation of sutras by the ruler of Dunhuang Cao Zongshou and his wife Lady Fan" from the year 1002 (*Dunhuang-wang Cao Zong-shou yu Jibeijun-furen Fan-shi juan jing tiji* 敦煌王曹宗壽與濟北郡夫人汜氏捐經題記, Φ-32b), the latest of the known dated manuscripts from Dunhuang.

4) Relating to economic matters: lists of peasant households (*huji* 戶籍), lists for taxation purposes (*jizhang* 籍帳), tax statements (*chakebu* 差科簿), tax registers (*fuyishu* 賦役書), lease documents (*zudianshu* 租佃書, *zhidian-shu* 質典書), contracts (*qiyue* 契約), records of loans (*biandaishu* 便貸書, *daiqi* 貸契), employment contracts (*guyongshu* 僱傭書, *guqi* 僱契), balance sheets (*jizhang* 計帳), receipts (*shoushi* 手實), documents on the division of property (*fenshu* 分書), adoption documents (*yangshu* 養書), manumissions (*fangshu* 放書) and others.

These documents reflect the resolution of a great variety of issues. In Dunhuang there was a large monastic community whose life was shaped by many legal and economic regulations. The documents shed light on the life of the community itself, on its relationships with the laity and on relations between laypeople. It has been suggested that the bulk of the documents came into the monastery library by chance and that there were a great many others in existence that the monks did not consider it necessary to preserve,

not to mention others that they never laid their hands on, but that were in wide circulation in secular society.² The majority of the documents from the Dunhuang Cave Library date from the 8th to the 10th centuries.

Work on classifying and publishing the Dunhuang documents was begun fairly early by Edouard Chavannes. In the 1920s–30s, Henri Maspero in France and Naba Toshisada and Niida Noboru in Japan examined non-Buddhist Dunhuang texts. Publication of the non-Buddhist part of the Dunhuang library continued in the 1950s–80s, which saw the production of, among other things, the first major study of Dunhuang documents in Russian by Leonid Chuguevskii.³ In the 1990s–2000s, following the publication of facsimiles of the greater part of the Dunhuang materials belonging to the largest collections worldwide, including St. Petersburg,⁴ a real upsurge in Dunhuang studies took place, with a large portion of the works being published in Chinese.⁵

Document on the Division of Property SI O14 (1) of the IOM, RAS

In the present article, I shall examine a document on the division of property SI O14 (1) that, until its restoration in 2007, was in an extremely poor state, for which reason it was not included in the complete facsimile publication of the Russian Dunhuang collection. Despite its fragmented state, the document contains certain information of a legal character relating to the life of a community on the border of the Chinese Empire in the Middle Ages.⁶

SI O14 (1) (Pl. 1)

Description of the manuscript. Fragment of 29.5×12.3 cm. 20 incomplete lines of 5–11 characters. Upper margin: 1.5 cm; lower margin: lost. Paper: brown, thickness: 0.015–0.019 cm, spacing: 5 lines per cm. Script: *kai*.

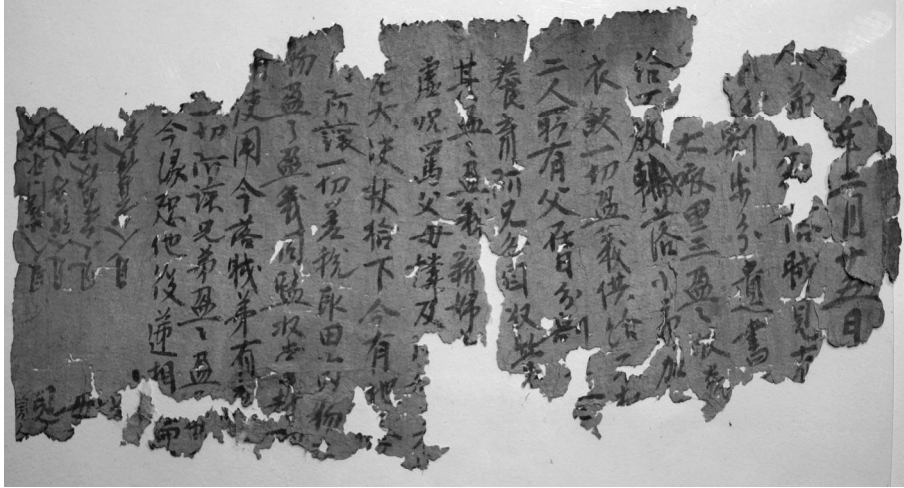
² TROMBERT 1995, 2.

³ *Kitaiskie dokumenty iz Dun'huana* 1983.

⁴ *E cang Dunhuang wenxian* 1994–2000.

⁵ For a detailed bibliography of works in Chinese devoted to the study of Dunhuang documents, see: *Dunhuang yanjiu lunzhu mulu* 2000; *Dunhuang yanjiu lunzhu mulu* 2006.

⁶ The document and a Russian translation of it was first published in: POPOVA 2010, 75–78.



Chinese text

- (01) □□年二月廿五日 〔
- (02) 人弟加落賊，見有 〔
- (03) □□割出。分遺書 〔
- (04) □□大吸里，三盈盈收養 〔
- (05) 給不放輪（淪）。落小弟加 〔
- (06) 衣飯，一切盈義供給不掌 〔
- (07) 二人所有，父在日分割□三 〔
- (08) 養育阿兄，各自收管 〔
- (09) 其盈盈，盈義新婦 〔
- (10) 虛呪罵父母，憐及□□□□不 〔
- (11) 老大決杖拾下。今有地□ 〔
- (12) 付阿讓（孃），一切差稅取田內物 〔
- (13) 物。盈盈、盈義同監收掌，封 〔
- (14) □使用。今落賊弟有□□ 〔
- (15) □一切阿讓（孃）、兄弟盈盈、盈義分 〔
- (16) □今緣恐他後遞相論 〔
- (17) 見人兵馬使劉 〔
- (18) 見人兵馬使張 母 〔
- (19) 見人張張□（押字） 見人 〔
- (20) 見人薛永興 見人 〔

sian Dunhuang collection (*E cang Dunhuang wenxian*, vol. 8 (1997), 157) and it may come from the same source.

Fragment SI O/14 (1) belongs to the category of Dunhuang documents dealing with the division of property (*jiachan fenshu qi yang wen* 家產分書契樣文). It does not give a precise quantitative description of the property subject to redistribution, but on the other hand it gives a detailed account of the worldly and morally instructive motives behind the ruling.⁷ This peculiarity in the drafting of the document was entirely in accord with the general ethical orientation of the traditional Chinese law.

Document SI O14 (1) has not survived in its entirety. Keeping in mind the customary standard width of paper at 25–29 cm, we can assume that we are in possession of less than half the text, while further 8–12 characters are missing at the bottom.

This fragmentation makes it impossible to reconstruct the contents completely. It deals with a complex family dispute involving the redistribution of property to which one of three brothers has his rights restored. The document indicates that he suffered at the hands of brigands (*luozai* 落賊), i.e., he was taken away as a slave during a raid by nomads. If we turn to the texts of other documents from Dunhuang, such as “The Second Examination of Shen Li’s Complaint about the Seizure of Land with the Grave of His Elder Brother in the Years of Tian-fu (901–904) of the Tang Dynasty” (*Tang Tian-fu niandai Shen Li wei xiong fen tian bei qin chenzhuang bing pan* 唐天復年代神力爲兄墳田被侵陳狀并判, P.4974), they also mention “brigands”, more precisely “Uighur brigands” (*huihu zei* 回鶻賊). That was the designation of the hostile neighbours of the Chinese with whom they may have been in a state of war.

During the time the youngest brother was a captive, his father died and under his will the property passed to the other two brothers, Yingyi and Yingying. By law, it should have been divided equally between them. The document indicated the location of the plots of land in accordance with the will. The allocation of land is said to have taken place during the father’s lifetime, which was not against the law, provided no separate registration was made. The text mentions an “aunt” (*niang* 孃), evidently an unmarried or widowed sister of the father, who “fed and brought up the eldest brother”. Part of the family property also ends up in her possession, which was not contrary to Tang law.⁸

⁷ Similar documents are cited in: SHA Zhi 1998, 455–467; NIE Xiaohong 2009, 204–222.

⁸ NIDA Noboru 1933, 609.

When the youngest brother, Jia, turned up, he came under Yingyi's care. His brother provided him with board and clothing, but did not allow him the right to deal with the property. The loss of part of document SI O14 (1) consigned to oblivion some story connected with Yingyi's young wife. We do not know the reason why she "unfairly cursed and abused the mother and father" and with whom she "took up". It is not entirely clear whether it was her that the eldest brother (Yingyi), as head of the clan, ordered to be beaten ten times with heavy sticks. This passage confirms the possibility of punishment within the family without reference to the authorities, but this penalty seems excessively light. The Tang Code was quite specific with regard to such insults to senior relatives of a husband: "All cases of a wife or concubine who curses with bad language her husband's paternal grandparents or parents are punished by three years of penal servitude".⁹

Still, in any case it is evident that the division of property registered by the document took place precisely because of this family quarrel. As a result, part of the land and other property passed (from Yingyi?) to the aunt and some kind of restrictions were imposed on the brothers Yingyi and Yingying. The situation was finally resolved by part of the property from each of the three relatives—the brothers Yingyi and Yingying and the aunt—passing to the younger brother. The phrase "that which in equal measure is in the possession of Yingying and Yingyi" (盈、盈義同監收掌) remains obscure. The question of the presence or absence in mediaeval China of property held in common by the family, which makes the definition of private property somewhat difficult, was inseparably connected with the very nature of Chinese law that was also part of the traditional ideology. To prove the existence of family-held property researchers often cite a clause about the punishment of slaves for the killing of their master, the commentary on which states: "Those who are on the same household register and are persons of commoner status or more and who have their goods in common (*he you cai fen zhe* 合有財分者) are all considered to be masters".¹⁰

Document SI O14 (1) is also notable for showing the names of witnesses (*jianren* 見人), although they have not fully survived. Witnesses guaranteed the genuineness and implementation of a transaction, ratifying the document with their signatures. As a rule, they were respected local inhabitants with a family, means and position. Document SI O14 (1) gives the names of such witnesses, including two officers (*bingmashi* 兵馬使). The position in the text of some names vertically above others ("upside down") is easily ex-

⁹ *Gu Tang lü shu yi*, ch. 22, 16a; *The Tang Code*, vol. 2, 368.

¹⁰ *Gu Tang lü shu yi*, ch. 17, 10b; *The Tang Code*, vol. 2, 250.

plained: when the scribe reached the left-hand edge of the sheet, being unable to enter all the names of the witnesses in order, he turned the page around and wrote the last names above the others in mirror image.¹¹

Conclusion

Document SI O14 (1) draws a legal line beneath a lengthy property saga of a wealthy family from the border regions of mediaeval Chinese Empire. The re-examination of a will, the restoration of the property rights of a relative (the long-absent youngest brother) and the recognition of a woman's property rights—the actual facts reflected in the document—were evidently in line with legal practice in China under the Tang dynasty.

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¹¹ TROMBERT 1995, 34.

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